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November 8, 2016

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**Re: SUPPLEMENTAL NOTICE OF VIOLATIONS OF THE ENDANGERED SPECIES ACT, MIGRATORY BIRD TREATY ACT, BALD AND GOLDEN EAGLE PROTECTION ACT, AND NATIONAL ENVIRONMENTAL POLICY ACT IN CONNECTION WITH THE CAMP PERRY AIR NATIONAL GUARD WIND ENERGY PROJECT IN OTTAWA COUNTY, OHIO**

By letter dated October 24, 2016, the American Bird Conservancy and Black Swamp Bird Observatory (collectively “ABC/BSBO”) put you on notice of violations of the Endangered Species Act (“ESA”), as well as other federal environmental laws, in connection with the proposed installation and operation by the Ohio Air National Guard (“ANG”) of a wind turbine at Camp Perry in Ottawa County, Ohio. We are now supplementing that notice with information recently obtained by ABC/BSBO in response to a Freedom of Information Act (“FOIA”) request to the U.S. Fish and Wildlife Service.

As explained in the October 24 notice letter and in comments submitted by ABC/BSBO on ANG’s 2016 Draft Environmental Assessment (“Draft EA”), a newly released FWS radar study demonstrates that vast numbers of migratory birds and bats move through the project area, including through the rotor sweep range of the proposed turbine. However, ANG and FWS inexplicably failed to address the results of this and other advanced radar studies – which have now been published, *see* <https://www.fws.gov/radar/factsandfiles/index.html> (2016) – in the Draft EA and Biological Opinion (“BiOp”). In response to a FOIA request to FWS, ABC/BSBO have now obtained a document – which is entitled “Summary Thoughts Regarding Camp Perry Wind” and written by Jeffrey Gosse, the FWS’s Regional Energy Coordinator. The Gosse document, which is attached to this supplemental notice, reinforces that if ANG were to proceed with this ill-conceived project it will be doing so in flagrant violation of federal environmental law.

The Gosse document confirms that, contrary to the self-serving assurances of ANG’s paid consultants that birds will generally fly above the wind swept area of the proposed turbine, the empirical radar data *prove* that huge numbers of birds and bats *do* fly at altitudes that would bring them in the direct path of the proposed turbine. The Gosse document, therefore, strongly reinforces that the project poses a much greater risk than either ANG or its hired consultants have claimed.

Indeed, the Gosse document confirms that the recent radar reports “indicate high nocturnal migration passing along this portion of the shoreline [where the turbine is slated to be constructed]” and, in fact, reflect the “highest diurnal [Target Passage Rates (“TPRs”)] that we are aware of for any site on the Great Lakes shoreline” which, as “we [FWS] have previously stated may result from the close proximity to known stopover sites including Magee Marsh, Black Swamp Observatory, Ottawa National Wildlife Refuge, Metzger Marsh and Cedar Point National Wildlife Refuge . . . .” The Gosse document concludes that “[b]ased on the available data” as embodied in the radar studies, “*the Camp Perry site would be one of the worst potential sites for wind development that we have observed,*” and that wind power projects should be “locate[d] away from the Great Lakes shoreline because of the typically high TPRs found along the shores and the dawn flight to shore observed for nocturnal migrants.” (emphasis added).

Equally troubling, the Gosse document was generated in 2014, meaning that that the FWS (and, presumably, ANG) were fully aware of the devastating results of the radar studies long *before* ANG issued its draft EA for public comment and the FWS issued its BiOp. Yet neither the EA nor BiOp make any mention of the radar results. Instead, the EA relies heavily on the erroneous assumptions of ANG’s retained consultant that are designed to downplay the anticipated effects of the turbine.

In short, the Gosse document not only reaffirms the recklessness of ANG’s decision to place a wind turbine in a location that the FWS has declared “one of the worst potential sites for wind development” anywhere in the country, but the document also reaffirms how federal environmental laws will be broken unless ANG abandons the project. From an ESA standpoint, the BiOp on which ANG is relying was plainly not based on the “best available scientific and commercial data available,” 16 U.S.C. § 1536(a)(2), since the BiOp makes no mention of the advanced radar study data that were then available to FWS demonstrating the grave risks associated with the project. The Gosse document also reinforces that since those data were not addressed in the BiOp they necessitate reinitiation of section 7 consultation because they “reveal effects of the action that may affect listed species . . . in a manner or to an extent not previously considered.” 50 C.F.R. § 402.16(b).

The Gosse document also buttresses ABC/BSBO’s arguments, as set forth in the October 24 letter, that the proposed project violates the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act and, at minimum, cannot proceed in the absence of a full Environmental Impact Statement, especially in view of the terrible precedent the project will set for further industrial wind development in a location that the FWS has consistently admonished must be protected from such development.

As set forth in the October 24 letter, ABC/BSBO would be happy to meet with you or your staffs to discuss these issues further and to assist ANG in developing energy solutions that do not entail building a massive wind turbine in one of the worst imaginable locations from a wildlife protection standpoint. Once again, however, should ANG proceed with the project in violation of federal environmental law, ABC/BSBO will consider all appropriate steps, including litigation, to enforce the nation’s wildlife protection laws.

Sincerely,

/s/ Eric R. Glitzenstein

Eric R. Glitzenstein

/s/ William S. Eubanks II

William S. Eubanks II

Counsel for ABC/BSBO

Summary Thoughts Regarding Camp Perry Wind  
By Jeff Gosse, Regional Energy Coordinator

When we first reviewed the fall 2011 DeTect report, we suspected that most of the nocturnal migration events had been missed based upon the Target Passage Rates (TPRs) depicted in Figure 4-3 (Attachment 1). The Service survey conducted in spring 2012 on Lake Erie indicated the highest target passage rate during the night hours (Attachment 2, Figure 14). This is the same pattern that the Service has found at every site sampled on the five Great Lakes.

Target passage rates in the spring 2012 (Figure 4-3, Attachment 3) and Fall 2012 (Figure 4-3, Attachment 4) DeTect Reports indicate that nocturnal TPR was high during the night when the equipment problems were resolved and sampling was more continuous. Nocturnal TPRs were quite similar among the DeTect Spring 2012, DeTect Fall 2012, and the Service spring 2012 report with night hours showing TPR between about 500 – 750 targets/1-km front/hr. There were seasonal differences between the two DeTect reports and location, VSR orientation, and bandwidth differences between the Service and DeTect reports so the degree of similarity is somewhat surprising. However, all three reports indicate high nocturnal migration passing along this portion of the lakeshore.

The surprising difference between the DeTect reports and the Service report is the respective TPRs for the diurnal period. The Service report shows low TPR during the daytime hours which is consistent with all of the Great Lakes sites that the Service has sampled. The Service has often observed higher diurnal TPRs in agricultural areas than in non-agricultural areas, but in all cases diurnal TPRs have been much lower than nocturnal TPRs. However, for all three DeTect reports, the peak diurnal TPRs have been high, about 650 – 750 targets/1-km front/hr in the fall and about 500 targets/1-km front/hr in the spring which is roughly comparable to the nocturnal TPRs.

If we assume that DeTect has done a thorough job of editing the data and removing false targets such as insect clutter, then these are the highest diurnal TPRs that we are aware of for any site on the Great Lakes shoreline. As we have stated previously, this may result from the close proximity to known stopover sites including Magee Marsh, Black Swamp Observatory, Ottawa National Wildlife Refuge, Metzger Marsh and Cedar Point National Wildlife Refuge although the Service site also had potential stopover sites nearby. The Service has consistently observed high nocturnal TPRs along the Great Lakes shorelines although the Camp Perry site is still higher than some. However, Camp Perry is the only known site where similarly high diurnal TPRs are also found indicating a high TPR on an almost 24 hour basis.

The Service strongly disagrees with the practice of presenting data showing mean altitude of targets as is done in various figures and tables for all three seasons of the DeTect Reports. The graphs shown in Figures 4-5 and 4-6 (Fall 2011) and Figures 4-4 and 4-5 (Spring and Fall 2012) already show a difference when using median heights rather than mean. However, any of the centralized methods of measuring altitude tend to be biased upward with mean altitude being the most biased. We often utilize this example to demonstrate the bias: If 100 targets are recorded for a period and 80 of them are flying at 100 m with 20 flying at 1000 m, the mean altitude of the group is 280 m, well above the Rotor-swept Zone (RSZ). However, in this example, 80% of the targets were flying through the middle of the RSZ.

The most informative method of demonstrating where targets are flying and their relative risk is with graphs similar to the one shown in Figure 4-8 for each of the three seasons. As can be observed from

these graphs, large numbers of targets are within the RSZ. Additionally, large numbers are very close to the RSZ so a relatively small decrease in altitude would result in targets flying within the RSZ. These graphs would be further improved if these raw numbers were adjusted for the volume sampled and separated into biological time periods (see Service report, pp. 13-15 and 29-32).

For all three DeTect reports, the data found in Table 4-4 indicates that very large percentages are flying within the RSZ except during their nocturnal observations. However, had the data been corrected for volume sampled, this nocturnal percentage would be higher and the other times periods would be excessively high. If the point of much of the data presented in the DeTect reports was to suggest that most of the targets are not at risk because they are flying outside of the RSZ, DeTect's own data, when appropriately looked at, indicates that this is not the case.

There are several methods to evaluate risk of wind development at a site. One method is to consider TPR since the probability of an individual fatality can be multiplied by the total number of individuals in the area. This has to be taken with some caution because TPR is not a population estimate and numbers can vary among sites, seasons, and equipment. Within reason, TPR can be an indicator of relative risk at a site. A refinement could be to determine which individuals are at greater risk because they are flying within the RSZ. However, we know that flight altitude can and does change with time of day and weather conditions. Therefore, while a target slightly above or below the RSZ may be at less risk than one flying within the RSZ, it is not at no risk.

The Camp Perry site may have the highest overall TPR of sampled sites on the Great Lakes because of the unusually high diurnal TPRs. It also has high percentages (uncorrected for volume) of the targets flying within the RSZ, again, to a large extent because of the high diurnal TPR found at this site. The Service has been encouraging wind development to locate away from the Great Lakes shoreline because of the typically high TPRs found along the shores and the dawn flight to shore observed for nocturnal migrants. Based upon the data available, it would appear that the Camp Perry site would be one of the worst potential sites for wind development that we have observed.