



Comments of the Society for Conservation Biology
On the U.S. Fish and Wildlife Service
Draft Land-Based Wind Energy Guidelines

May 19, 2011

Submitted to: windenergy@fws.gov -- "Wind Energy Guidelines Comments"

The Society for Conservation Biology is a global community of nearly 10,000 conservation professionals. The following comments are based upon principles we have enunciated in previous policy statements as applied to the draft wind energy guidelines of the Fish and Wildlife Service. In particular we have addressed these issues in our "Recommendations for actions by the Obama Administration..." (2008), our Statements to the UNFCCC Conference of the Parties (2009 and 2010), and our testimony on public land management and climate change (2009) all of which are available on our website at www.conbio.org or on request.

The FWS has asked for comments, and especially comments that focus on the following points:

- 1) The approach, utility, consistency, detail, and scientific validity of the draft Land-based Wind Energy Guidelines (Guidelines).
- 2) Use of the Guidelines as regulatory for wind facility development on all Federal lands. At a minimum, regulatory for all Department of Interior jurisdictional lands where commercial, wind projects are being/might be constructed (e.g., National Wildlife Refuges, Bureau of Land Management and National Park Service lands).
- 3) Use and application of the Guidelines for a residential/farm sized turbine.
- 4) Use of the draft Guidelines, once finalized, as regulatory versus voluntary on all lands, public and private.

We offer comments on those points but also on several others.

Overall, the Secretary of the Interior has the legal duty to apply the several statutes cited in the draft in a way that fulfills the purposes of those laws in a way that is most useful to all parties in guiding activities



that affect wildlife and the environment toward a restoration of biological diversity. In this case, the Secretary has the opportunity to develop a powerful win-win outcome if the guidelines are made final in a manner that is true to the best available science applied in a practical manner.

That means that useful guidelines provide those seeking to develop wind energy assurance that good faith adherence to them will reward the developer and those investing in and purchasing from the project with a clear path forward and with the ability to build into his or her plans any changes or adjustments that may be necessary as conditions change. To the extent that guidelines are not clear or require unlimited amounts of research they can thwart the replacement of dirtier and more damaging or risky forms of energy production.

To be most fair and useful in terms of ensuring compliance with the law, the guidelines would be better if they were to distinguish between the requirements of the laws that provide for incidental taking permits, and apply to harm through habitat alteration, such as the Endangered Species Act, and those that simply provide for criminal penalties for the intentional or knowing taking of specific migratory birds, such as the Migratory Bird Treaty Act. Compliance and enforcement of these are very different but guidelines should not confuse one with the other or be confusing for any interested party.

For example, in order to avoid even the prospect or remote risk of criminal prosecution, a developer or landowner or investor needs to know when and how compliance with the guidelines will be deemed complete and how much that compliance will cost at the outset.

Offsets, Cumulative Impacts, and the Rational, Non-Arbitrary Application of the Laws

Traditionally the Service has, to our knowledge, not applied the MBTA to mountaintop removal, or strip mining, or coal bed methane development for fuel to fire electric generators. Mountain top removal has undoubtedly killed thousands of migratory birds, as well as bats and other species, will the dumping of fill from such operations in streambeds has killed thousands of amphibians and fish. The Service has also not applied its laws, either directly to emitters, or to the agencies adopting rules or issuing permits, to the downwind effects of coal-fired power plants, such as acid rain or ground level ozone. The Service is also taking the position so far that it will not apply these laws to actions with large national or regional impacts with regard to emitting or permitting greenhouse gases and black soot, yet it admits in the introduction to these guidelines that climate change is the greatest threat. Therefore, the Service should develop similar, and inter-related guidance for other types of actions likely to take or harm these species.

All Federal agencies, unlike private persons, also have a (Section 7(a)(1) ESA) duty to use their authorities to help listed species recover when Federal actions are under consideration as well as a duty not to jeopardize such recovery. In either the application of section 7 or 10 the cumulative impact of the full life cycle and alternative actions must be understood and tracked to some reliable degree. This is not within the means of most individual developers but it is within the means of the government if permits are to have any meaningful application in today's world of climate stresses on the one hand and sophisticated data bases on the other.

Therefore, the Secretary should develop guidelines that are linked to a data base and applied with an understanding of each protected species, and linked to each law and assessment required or potentially required, and to the cluster of beneficiaries, or project partners and purchasers of the power to be produced, as well as the project proponent.

For example, rather than consider just the siting options for one project at a time – say at the ridge or back from the ridge – for reducing the likelihood that raptors will be struck by turbine blades as they soar on thermals, the Service should include the utilities likely to purchase the power and the large land management agencies or owners likely to permit other uses.

Without making the guidelines complicated for the single project proponent, the Service should place them in the context of both the resources and the various threats to them. The Service should then consider the net impact of the project over its life cycle when compared to alternatives that are available now to those



wholesale producers, and permittees, of power generation. For example, the Federal Energy Regulatory Commission and the state public utility commissions as well as the regional grid administrators and the utilities selling retail power all have roles in deciding which power can be sold when and for how much and to whom.

Commercial wind farms are selling to these distributors and networks and users and competing against natural gas and now coal, nuclear and hydro suppliers to one degree or another. To the extent that the Service can encourage well sited wind farms with appropriate blinking lights and other precautions, the Service may be able to allow or require the operators of dams such as the Bonneville Power Administration to provide more water to threatened salmon runs when needed or to agricultural users if salmon do not need it at that time, for example. Almost universally, as gas fired plants can be easily turned up or down to match fluctuations in wind power production, the more wind power available, the less natural gas will be burned and thus the less nitrous oxide and carbon dioxide and (from leaks, methane) will be emitted, reducing ground level ozone that inhibits plant growth and stresses the pulmonary health of animals and people and climate change, respectively. Therefore, the Service should in the process of applying these guidelines request of such agencies the information necessary to calculate the likely displacement of stresses on the ground and in the air by a properly cited wind farm.

Offsets or Off-Site Mitigation:

Wind developers should be given the option to provide their estimates as well of the likely offsets of including their power in the power supply for the regions in which their power will be sold, while land managers should go beyond the power sector alternatives, such as fossil fuel operations that might be on the same owner's land and provide information on other stresses facing the same protected species, from feral cats to white nose syndrome in bats. Developers and others might be allowed to offset their impacts with prairie pothole restoration or feral cat reduction where those are applicable. The Service should complement that information with the remainder, that is, with data on stresses at further reaches or ends of the species migration routes from winter nesting sites to summer feeding sites for example. The Service should also consider applying its laws to other sources of losses to the same species, such as the reduction of prairie potholes and the keeping of feral cat feeding stations.

Thus wind precautions for whooping cranes, for example, whether it be in an overall Habitat Conservation Plan or not, should take into account the effect not just of wind farms, but of tar sands developments on the crane's habitat near Wood Buffalo National Park in Alberta and the likelihood of oil spills at pumping stations, river crossings and offloading ports in the range of the whooping crane. These guidelines should be applied with an up to date knowledge of the status of cranes and other species affected and be informed through interagency consultations such as that with the State Department that have or have not considered the impact of permits for pipeline expansions on the whooping cranes.

Scientific Integrity and the Best Available Science:

Comments by some commentators and discussions with others preparing comments indicate that a large number of peer reviewed studies cited by the Federal Advisory Committee in its 2010 report have been removed from those cited by the proposed guidelines. They also assert that the latter now include a number of non-peer reviewed studies and assumptions about wind noise or birds avoiding turbines that are not based on peer-reviewed science.

To the extent that these assertions are correct we wonder why such substitutions were made and by whom, and we urge the Secretary to rely on the best available science, while also using the precautionary principle where knowledge is lacking. This approach must be applied fairly to all stressors that humans can control, however, and the Secretary has broad authority to reach those harmful activities. We urge the Secretary to determine and divulge why, how and by whom the changes in science cited were made and to reward or discipline those responsible depending on how justified the changes were in sharpening the application of



relevant science to the process.

SCB has published statements on directly relevant matters including the following from our Copenhagen Climate Statement:

...

- Require agencies to use greenhouse gases as a metric for land-use decisions through

environmental assessment requirements and other laws and policies in order to reduce emissions.

4) Phase out existing sources of GHG emissions as quickly as possible, starting with the dirtiest first. This will avoid and minimize negative effects while maximizing the net positive impacts of improved environmental quality on ecosystems and human health. For example, in the energy sector,

such combinations include efficiency, demand management (e.g., reforming utility rates to help lower income users while encouraging higher volume users to be more efficient), and the use of renewable

energy sources and the cleanest available fuels. Natural gas could be used as a transition fuel along with full assessments of alternatives and costs. Studies in the U.S. and elsewhere have shown that major economies and some developing nations have several times the renewable energy capacity that

they need at practical prices when external costs and subsidies are considered. The Chairman of the

U.S. Federal Energy Regulatory Commission declared in 2009 that the U.S. is likely to need no new

traditional base-load (coal or nuclear) power plants if better efficiency standards and related initiatives are implemented. Policy responses include:

- Replace highly polluting technologies with appropriate combinations of the best available

technologies, determined transparently through environmental impact assessment and full life cycle cost accounting.

...

1) The approach, utility, consistency, detail, and scientific validity of the draft Land-based Wind Energy Guidelines (Guidelines).

The Guideline need to include all relevant peer reviewed and other verified data and analysis not rely upon untested assumptions and separate compliance with the different legal demands of each type of statute.

2) Use of the Guidelines as regulatory for wind facility development on all Federal lands. At a minimum, regulatory for all Department of Interior jurisdictional lands where commercial, wind projects are being/might be constructed (e.g., National Wildlife Refuges, Bureau of Land Management and National Park Service lands).

If they are improved as noted above, and complemented with parallels for other energy sources and stresses on the species of concern, the Guidelines could be very



useful on all land based stresses.

3) Use and application of the Guidelines for a residential/farm sized turbine. *The scale of single turbine's impacts is probably too small to apply these guidelines unless a highly endangered species is nearby but that must be clarified.*

4) Use of the draft Guidelines, once finalized, as regulatory versus voluntary on all lands, public and private. *At this point, the Guidelines do not seem to distinguish well enough between the laws involved nor reveal alternatives well enough across the range of reasonable alternatives available to all involved parties to be either. This is because, for even voluntary guidelines, if they are not fulfilled, it implies intentional or knowing disregard for the consequences, but if they are too vague or open-ended to fulfill in a reasonable time then they create a lose-lose situation for the public and the resource and the developer. This will also depend on the statute involved and the actors to whom they are applied as stated above – that is, the ESA has procedures and guidance for incidental take and recovery, in general, whereas the MBTA does not, so improved guidelines would be most helpful there.*

We look forward to working with you on these and related issues.

Thank you,

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Policy Director