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January 31, 2006

By Overnight Mail

Gale Norton, Secretary
United States Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

H. Dale Hall, Director
United States Fish and Wildlife Service
1849 C Street, NW
Washington, D.C. 20240

Dr. Benjamin Tuggle, Chief
Division of Federal Program Activities
United States Fish and Wildlife Service
1849 C Street, NW
Washington, D.C. 20240

Re: Compliance with the Federal Advisory Committee Act in Connection With
the "Collaborative Process" to Revise the Interim Guidance on Avoiding and
Minimizing Wildlife Impacts from Wind Turbines

Dear Secretary Norton, Director Hall, and Dr. Tuggle:

We are writing on behalf of National Wind Watch, Inc, the Humane Society of the United States, the Alliance to Protect Nantucket Sound, and Juniata Valley Audubon, Chapter of National Audubon Society, concerning the Fish and Wildlife Service's ("FWS") intention to convene a committee to engage in a "collaborative process" to revise the FWS's Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines ("Interim Guidance"). See Attachment 1, at 2 (article indicating the FWS's intent to engage in collaborative process to "adjust and improve" on the Interim Guidance, and noting that "[t]he initial participants include USFWS, AWEA, CESA, and Audubon."); Attachment 2, at 2 (public announcement concerning collaborative process stating that process "may result in a product that



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is significantly different than the existing USFWS Interim Guidance”). The first meeting of this committee is apparently scheduled for February 9, 2006, in Washington, D.C. See Attachment 3.

In particular, we are writing to inquire whether the FWS intends to comply with the basic openness and accountability provisions of the Federal Advisory Committee Act (“FACA”), 5 U.S.C. App. 2, which applies to any committee “which is . . . established or utilized by one or more agencies . . . in the interest of obtaining advice or recommendations for . . . one or more agencies or officers of the Federal Government.” FACA § 3(2). Because it appears that the FWS is directly involved in the establishment, selection of members for, and management of the committee that will participate in the collaborative process, the process is plainly subject to FACA.

In light of the significant public controversy surrounding the impact of wind turbines on our nation’s treasured wildlife – in particular on bats and birds – and considering the current rapid expansion of wind power throughout the country and the potentially devastating impact this expansion could have on wildlife if the turbines are not properly sited, it is particularly critical that the agency adhere to FACA’s requirements for public access and accountability here. Among other requirements, a FACA advisory committee must be chartered and it must provide public notice of, and conduct, open meetings, and must make all documents prepared by or for the committee, as well as meeting transcripts, available to the public. See FACA §§ 9, 10, 11.

FACA also requires that an effort be made to ensure that advisory committees are “fairly balanced in terms of points of view represented and the function to be performed.” FACA §§ 5(b), (c). There is tremendous controversy surrounding wind energy and its potential impacts on wildlife and the environment, and it is important that the participants in the collaborative process represent a fair cross-section of views on the matter. Indeed, even within the environmental community there are widely varying viewpoints concerning the level of scrutiny that should be applied to wind power projects, such that the participation of certain environmental organizations, in addition to the wind industry representatives, does not ensure a “fairly balanced” process. For example, the National Audubon Society has not been known to raise significant concerns about the impacts of wind power projects on bats. Other conservation organizations, in contrast – such as the groups on behalf of whom this letter is being sent – have consistently raised legitimate and important conservation concerns about industrial wind power projects, and should be included in the collaborative process to ensure a fair representation of views and expertise. We are very concerned that if the FWS does not fulfill this FACA requirement, then the process will simply be an opportunity for the wind power industry to force its views on the agency, and will result in the agency revising its Interim Guidance in a manner that makes turbine siting and operation easier for the industry, but detrimental to wildlife. Accordingly, we urge the agency to carefully adhere to this component of the FACA.

Please let us know by February 8, 2006, whether the FWS intends to comply with FACA in connection with the “collaborative process” to revise the Interim Guidance. If the FWS does not intend to do so, please let us know the basis for that decision.

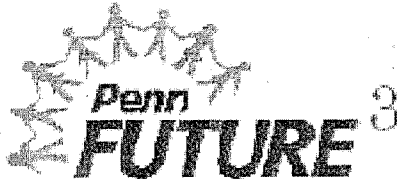
We look forward to your reply.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kimberly D. Ockene', written in a cursive style.

Kimberly D. Ockene

Eric R. Glitzenstein



BIRDS, BATS AND WIND FARMS

Wind energy is the fastest growing form of electric energy generation in the world. By the end of 2005, there will be close to 9000 Megawatts (MW) of U.S. based wind generation, serving about 3 million people with fuel-less power that does not cause pollution and improves energy security and reliability.

All power generation has some level of environmental impact, including wind power. And recent stories about the impact of wind turbines on birds and bats have led some communities to express great concern and call for major changes in wind development. Some even call for a moratorium on further wind development, because they believe the potential impact is great and the science as yet undeveloped. Let's examine the science, the options, and consider some policy approaches.

Two types of impacts to birds are of concern: direct mortality from collision, and indirect impacts from avoidance, habitat disruption and displacement.

It is possible to do wind development wrong. The early Altamont Pass project in California has had significant impact on birds. 5400 turbines -- employing several generations' old and much smaller technology, poorly located in a high raptor use area -- are killing an estimated 880 to 1300 raptors a year. Discovering this unintended outcome was shock treatment for the new wind industry and created many problems of perception for all wind farms. These problems have lingered to the present.

Since the early days of the industry, numerous technology improvements, better siting, and measures to mitigate bird impacts tell a much different story. A comprehensive analysis of mortality data collected at wind farms was conducted by the National Wind Coordinating Committee, whose membership included the Fish and Wildlife Service, the National Renewable

Energy Laboratory, and conservation groups as well as representatives of the wind industry.

The committee reports an average of 2.19 avian fatalities per turbine per year for all species combined, and 0.033 raptor fatalities per turbine per year. For the current population of wind turbines, that is some 10,000 to 40,000 fatalities per year. For comparison, avian fatalities due to collisions with building and windows kill an estimated 98 million to 980 million birds a year. Communication towers result in 4 million to 40 million fatalities a year. This science on the impact of wind development on birds is reasonably well understood and when properly applied achieves the balance between clean wind energy development and the need to minimize impacts on wildlife.

Bats have entered the picture in an unexpected and troubling way. Monitoring results from two mid-Atlantic wind farms, Mountaineer in West Virginia and Meyersdale in Pennsylvania, indicate a problem with bat kills. A seven-month study during 2003 at Mountaineer recorded 2100 bat fatalities for the 44-turbine site. A more intensive study conducted by Bat Conservation International (BCI), financed largely by the American Wind Energy Association (AWEA), during a critical six-week period of 2005, indicated roughly 1,300 to 2,000 bats killed at Mountaineer and 400 to 660 at Meyersdale. No bats protected by the Endangered Species Act were found dead at either site.

The science concerning cause, impact, and mitigation are not well understood. The wind industry acknowledges this problem and is committed to finding a solution, but finding one will take time. A Bats and Wind Energy Collaborative has been formed including the U.S. Fish and Wildlife Service (USFWS), the National Renewable Energy Laboratory (NREL), AWEA and BCI.

Part of our science appraisal should include the impacts of conventional power technology. In Pennsylvania, that means old technology coal and

nuclear facilities. Across the United States, an estimated one million acres are disturbed every year by mining related to electric power generation. A scientific study in *Nature* (January 2004) has estimated that global warming, which most scientists believe is caused by our use of fossil fuels such as coal, may lead to the extinction of one million species by 2050. Anecdotal evidence of global warming includes this year's historic three category 5 hurricanes and the fact that temperature records indicate 2005 will be the first or second warmest year on record.

The environmental and health costs are very high from the traditional sources of electricity. In Pennsylvania, the Union of Concerned Physicians estimates 35,000 asthma attacks and 3000 heart attacks per year are attributable to fine particulates from coal fired power generation. Every lake in Pennsylvania has a mercury advisory, with one in six women of child bearing age with elevated blood mercury. Much of this mercury comes from coal-fired power plants.

Pennsylvania is blessed with an abundance of migratory flyways for songbirds and raptors, and we intend to keep it that way. Hawk Mountain is a Mecca for raptor sightings. Those who have concern are very legitimate voices who are just now attempting to understand how this new form energy development may impact birds and bats, and how to avoid or mitigate that impact.

We are not alone. At present, the USFWS, National Audubon Society, BCI, AWEA, NREL, Clean Energy States Alliance (CESA), U.S. Bureau of Land Management (BLM), the General Accounting Office (GAO), and the National Academy of Sciences are all working, often collaboratively, to minimize the impact of wind energy on wildlife while maximizing the opportunities for the development of wind power.

With the wind industry in the U.S. rapidly advancing, environmental advocates, regulators, wildlife and industry professionals are just learning how to interact effectively. They are still developing ways to facilitate information sharing to resolve some concerns and focus investigation.

USFWS, which has enforcement responsibility for the tough Migratory Bird Treat Act, issued the *Interim Guidance to Avoid and Minimize Wildlife Impacts from Wind Turbines* in 2003. It has been

criticized by many as "an overly prescriptive regime for wind development that is not commensurate with the observed or expected risk posed by wind development on avian species, based on the current information available." USFWS has just this month committed to engage in a new collaborative, facilitated process to discuss opportunities to adjust and improve on the *Interim Guidance*. The initial participants include USFWS, AWEA, CESA, and Audubon; with BLM, the American Bird Conservancy, Defenders of Wildlife, the International Council of Fish and Wildlife Agencies and others to join.

Included in this reappraisal will be a consideration of the "Adaptive Management Principles" advanced by BLM in June 2005, *Final Programmatic Environmental Impact Statement, Wind Energy Development on BLM-Administered Lands in the Western United States*. Part of the U.S. Department of Interior, BLM has the stewardship responsibilities for federal lands, including wind energy development.

Adaptive Management is presented as a science-based strategy that recognizes that monitoring and experimentation are the best means to advance the science and develop mitigating measures, where uncertainty exists. In translation, it is a means to allow the wind industry to continue to develop, but with close monitoring and feedback to build into best management practices.

To be clear, if a site is clearly high impact, it will not be built on. The best example is for sites that may have high seasonal concentration by birds. The original *Interim Guidelines* called for three years of pre-construction monitoring. Adaptive Management would call for one year of investigation, complemented by existing information from comparable sites, and a solid monitoring plan to address remaining concerns. It balances appraised risk with the benefits of wind generation versus conventional power. It is site-specific and not prescriptive. It allows for continued learning and incorporation into project development.

By 2010, the various states in the mid-Atlantic with portfolio standards will require 2000 MW of new wind energy; by 2015 it will be 4000 MWs about 2000 turbines. A significant amount of that development will occur in Pennsylvania.

The Keystone state needs to learn from the national experience and participate in its further development. We should join the USFWS collaborative process. We also need to develop the institutional infrastructure to bring the very best science and best scientists together, from both bird and bat experts and wind industry professionals. This alone will clarify a great deal.

Our current systems will not be able to handle the projected load. They need to be improved. We need to develop both statewide policy, built on an

Adaptive Management Strategy, which allows continued development that incorporates learning, better science and information clearing houses, and Commonwealth-specific best management practices.

Above all, unless there is solid evidence of unacceptable impact, we need to continue to advance the only major clean energy technology that is today capable of transforming Pennsylvania into a clean energy environment.

Announcement of New National Wind Siting/Wildlife Collaborative

January 2006

A new national collaborative process will be launched in early 2006, with the goal of reducing the risk of wildlife impacts from the siting and operation of wind power projects. In recent months, representatives from the United States Fish & Wildlife Service (USFWS), the American Wind Energy Association, the Clean Energy States Alliance, the International Association of Fish and Wildlife Agencies, and the National Audubon Society, have been working to design this new national forum with the goal of reaching consensus on how best to reduce the impact of wind power development on wildlife.

Wind projects have the potential to adversely affect wildlife, birds and bats in particular, through direct impacts and through disturbance to habitat. According to a recent GAO report, the impact of wind power facilities on wildlife varies by region and by species. While studies showing raptor mortality in California and bat mortality in Appalachia have raised concerns, documented bird and bat mortality from wind power in other parts of the country has not been documented in high numbers. With the current growth of the wind industry, it is important that there be a widely applicable, scientifically based approach to assessing impacts that wind projects may have on wildlife resources.

At the federal level, the USFWS is the primary agency tasked with implementing wildlife conservation. In 2003, the Service issued interim guidance on avoiding and minimizing wildlife impacts from wind turbines. Strong concerns were raised by the wind industry and others that the guidelines were impractical, inappropriately restrictive, and developed without adequate input. On the other hand, wildlife conservationists expressed concern that the interim guidance did not provide for adequate assessment of risks, mitigation of habitat loss, evaluation of cumulative effects, or enforceable standards. Now, in a collaborative effort, representatives of the wind industry, state energy and wildlife officials, and wildlife conservation organizations have agreed to work together to attempt to develop a consensus-based approach to enable wind siting to go forward in a way that reduces detrimental impacts on wildlife and habitat. The first meeting of the collaborative will be facilitated by RESOLVE, Inc., a dispute resolution firm. The collaborative's work will be informed by and complement ongoing state and regional efforts to address wind-wildlife interaction. This process is not intended to replace the public review process used by the USFWS to develop national policy, and if the product of the collaborative is to be adopted as policy by the USFWS, it will undergo such a review through a separate process administered by the USFWS.

The primary purpose of the collaboration process is to review the USFWS interim guidance and other existing guidance documents, and to develop a set of national principles, best management practices, and/or a tool-kit that can be used at both the federal, regional and state level to effectively assess and address risk to wildlife from wind development, in the context of the requirements of federal and state wildlife laws. The stakeholders are committed to establishing a consensus-based approach to resolving wind/wildlife conflicts. The collaborative will strive to develop (a) general guidance for

assessing risks; (b) protocols applicable to determining site sensitivity, collecting baseline information, and conducting post-construction monitoring; (c) principles for use of adaptive management; (d) possible approaches for use of mitigation and compensation measures, and (e) a framework for coordinating state and federal approaches to addressing wind development-related wildlife issues. The collaborative intends to develop a framework that will accommodate geographical factors, wildlife habitats, and use and movement patterns, wind development characteristics, and different responsibilities of various regulatory authorities.

Collaborative Process:

Through its work, the collaborative group will try to create a consensus-based set of recommendations to improve the USFWS's national guidance. The outcome of the collaborative process is not predetermined, and may result in a product that is significantly different than the existing USFWS Interim Guidance. The intent is to develop guidance that will assist in identifying and addressing appropriate issues and questions in the assessment and, where necessary, reduction of risk to wildlife associated with proposed wind developments. It is also the intent of the collaborative to develop procedures that allow for states, local authorities and the USFWS to work in partnership in implementing a consistent, stream-lined process for achieving compliance of wind development with relevant wildlife laws.

The initial partners for the collaborative are American Wind Energy Association, Clean Energy States Alliance, International Association of Fish and Wildlife Agencies, and non-government wildlife conservation organizations. Additional partners/participating stakeholders will include representatives from state wildlife and natural resources agencies, major wind developers, the USFWS, and other key stakeholders.

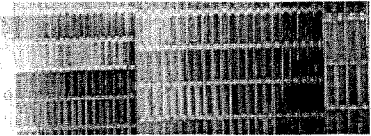
The structure of the collaborative will consist of the establishment of an initial policy group to develop the national/state framework and principles, and a science group to provide necessary technical support. The collaborative also will be informed by various state and regional initiatives and workshops.

Contact for More Information:

Brian Millsap, United State Fish and Wildlife Service, Brian_A_Millsap@fws.gov
Benjamin Tuggle, United State Fish and Wildlife Service, Benjamin_Tuggle@fws.gov
Sam Enfield, American Wind Energy Association, sam.enfield@PPMenergy.com
Tim Cullinan, National Audubon Society, tcullinan@audubon.org
Mark Sinclair, Clean Energy States Alliance, msinclair@cleanegroup.org
Steve Ugoretz, International Association of Fish and Wildlife Agencies,
Steven.Ugoretz@dnr.state.wi.us

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Events Calendar

National Collaborative on Wind Energy & Wildlife Impacts

Date 2/09/2006

Time 07:30 - 18:00 EST

Location RESOLVE, Inc. 1255 23rd Street NW, Suite 275

City Washington

State DC

Description A new national collaborative process will be launched in early 2006, with the goal of reducing the risk of wildlife impacts from the siting and operation of wind power projects. In recent months, representatives from the United States Fish & Wildlife Service (USFWS), the American Wind Energy Association, the Clean Energy States Alliance, the International Association of Fish and Wildlife Agencies, and the National Audubon Society, have been working to design this new national forum with the goal of reaching consensus on how best reduce the impact of wind power development on wildlife. On February 9th the Policy Group for this new collaborative will meet to discuss future plans.

Sponsors

Contacts Madeleine West

Contact Email mwest@resolv.org

Price Observer Lunch: \$15

[\[Register For National Collaborative on Wind Energy & Wildlife Impacts\]](#)[Return to Calendar](#)

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Attachment 3