



*Shaping the future for birds*

October 23, 2012

Public Comments Processing  
Attn: FWS-R5-ES-2012-0059  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Drive, MS2042-PDM  
Arlington, VA 22203.

*Sent via regulatory portal*

**Subject: Comments on FWS-R5-ES-2012-0059, Environmental Impact Statement for Beech Ridge Energy's Habitat Conservation Plan**

Dear Sir or Madam:

Thank you for the opportunity to provide comments on the Environmental Impact Statement (EIS) for Beech Ridge Energy's Habitat Conservation Plan (HCP). American Bird Conservancy (ABC) is a 501(c)(3) non-profit organization dedicated to the conservation of native birds and their habitats throughout the Americas.

Although wind power could be an important part of the solution to global climate change, wind development can impact birds -- including eagles, songbirds, rare and endangered species -- through collisions with turbines and associated power lines, and through loss of habitat. By 2030, there are expected to be more than 100,000 wind turbines in the United States, and these are expected to kill at least one million birds each year -- possibly significantly more. Terrestrial wind farms are also expected to impact almost 20,000 square miles of bird habitat, some of it critical to threatened species.

ABC believes that birds and wind power can co-exist if wind projects conform to bird-smart principles. Bird-smart wind power employs careful siting, operation and construction mitigation, bird monitoring, and compensation to reduce and redress any unavoidable bird mortality and habitat loss.

Regarding the EIS for Beech Ridge Energy's HCP, ABC offers the following comments and questions:

### **Migratory Bird Comments:**

The EIS predicts that the project will kill between 10,000 and 26,281 birds over its lifetime, yet the project will have no permit under the Migratory Bird Treaty Act (MBTA). By not requiring project mitigation that will prevent the deaths of those 10,000 - 26,281 birds, FWS is essentially authorizing their take without an MBTA take permit. The EIS implies that there is no MBTA take permit that U.S. Fish and Wildlife Service (FWS) can grant (page 18). That is true only because FWS has chosen not to use its delegated authority to promulgate regulations that would create MBTA take permits for wind, most recently when it rejected ABC's rulemaking petition earlier this year, on the same day that it issued the voluntary wind energy guidelines.<sup>1</sup> This issue is further explained in a recent letter to FWS regarding the proposed Incidental Take Permit for the Criterion Wind project in Maryland.<sup>2</sup> (See Attachment 1. The Criterion letter's explanations regarding MBTA and the Bald and Golden Eagle Protection Act also apply to the Beech Ridge project.)

In addition, several of the birds that the EIS states are present at the project site are FWS-designated Birds of Conservation Concern, as well as birds that are listed in the North American Landbird Conservation Plan as needing conservation action to increase their numbers. FWS participates in Partners in Flight, which produced the Conservation Plan.<sup>3</sup> ABC is particularly concerned about the Golden-winged Warbler (a candidate for listing under the Endangered Species Act and on the ABC-National Audubon Society U.S. Red WatchList) and the Cerulean Warbler (on the Yellow Watchlist). The Conservation Plan states that the goal for both of these species is to increase their populations by 100% percent. The EIS, however, states that the Beech Ridge project would be expected to contribute to their population decline (page 192). What steps will FWS take to ensure that this project contributes to that 100% population increase conservation goal instead of contributing to species decline? Will the habitat mitigation being undertaken by the project for endangered bats meet the habitat and habitat management needs of these two species?

Likewise, ABC is also concerned about other vulnerable species named in the EIS as present at the project site. The Bay-breasted Warbler, Blue-winged Warbler, Kentucky Warbler, Wood Thrush, Prairie Warbler, and Canada Warbler are all FWS-designated Birds of Conservation Concern and on the Yellow Watchlist. The North American Landbird Conservation Plan

---

<sup>1</sup> ABC's rulemaking petition, co-authored with attorneys at Meyer Glitzenstein & Crystal, is available at [http://www.abcbirds.org/abcprograms/policy/collisions/pdf/wind\\_rulemaking\\_petition.pdf](http://www.abcbirds.org/abcprograms/policy/collisions/pdf/wind_rulemaking_petition.pdf).

<sup>2</sup> Meyer Glitzenstein & Crystal to FWS on behalf of Save Western Maryland, American Bird Conservancy, et al. October 1, 2012. Public Comments Concerning The Draft Environmental Assessment, Habitat Conservation Plan, And Application For An Incidental Take Permit By Criterion Power Partners, LLC (FWS-R5-ES-2012-0032).

<sup>3</sup> Rich, T. D. et al. 2004. Partners in Flight North American Landbird Conservation Plan. Cornell Lab of Ornithology. Ithaca, NY. Available at [http://www.partnersinflight.org/cont\\_plan/PIF2\\_Part1WEB.pdf](http://www.partnersinflight.org/cont_plan/PIF2_Part1WEB.pdf). See Volume I, pages 18-19 for the population increases recommended for each species.

recommends a 50% population increase for each of these species. But the EIS states that the Beech Ridge project would be expected to contribute to population decline for them (page 192). What steps will FWS take to ensure that this project contributes to that 50% population increase conservation goal instead of contributing to species decline? Will the habitat mitigation being undertaken by the project for endangered bats meet the habitat and habitat management needs of these species?

Furthermore, the EIS likely underestimates the population decline that will result from this project and its expansion, for two reasons. First, FWS's take estimates are based on regional averages that do not include mortality from western Maryland's Criterion Wind Power project, which is described as 16.01 birds per wind turbine (adjusted estimate) in FWS's Environmental Analysis for the project's HCP for endangered bats.<sup>4</sup> The regional estimator used in the Beech Ridge EIS should be revised to include Criterion and the various estimates of take based on the revised regional estimator should also be revisited. After all, Criterion Wind is closer to the Beech Ridge project than the Maple Ridge project in New York, which is included in the regional estimator. Second, the population figures FWS uses in the Beech Ridge EIS for the Birds of Conservation Concern detailed above are based on data representing 1995, with no adjustment for population decline since then, even though some species, such as Golden-winged Warbler, are believed to be declining 8 to 9% annually (EIS page 210). The EIS states that adjusting the 1995 population estimates for population decline would likely be inaccurate (footnote 39 on page 210), but the decision not to adjust the 1995 population estimates has already introduced error in the EIS by relying on old data. ABC recommends revising the EIS to show possible population ranges for these species that address the annual decline. This will also require adjusting FWS's predictions of how much the species will decline as a result of the project, again producing a range.

The strength of the mortality predictions in the EIS could also be improved through the use of mortality estimate ranges for rare species. Manuela Huso and David Dail of U.S. Geological Survey have developed an approach to predicting mortality ranges for rare species at wind projects, which Huso described in a presentation she gave in October 2012 in Portland, Oregon at The Wildlife Society's annual meeting.<sup>5</sup> ABC recommends that FWS consult with Huso about using the new estimator in the Beech Ridge EIS for the rare species present at the site.

---

<sup>4</sup> See page 4-19 in FWS and Ecology and Environment, Inc. July 2012. Draft Environmental Assessment for Proposed Issuance of an Incidental Take Permit for the Indiana Bat Under Section 10(a)(1)(B) of the Endangered Species Act for the Criterion Habitat Conservation Plan, Garrett County, Maryland. Available at <http://www.fws.gov/chesapeakebay/EndSppWeb/Criterion%20docs/Draft%20Criterion%20Wind%20Environmental%20Assessment.pdf>.

<sup>5</sup> Manuela Huso and David Dail. October 2012. Absence of Evidence or Evidence of Absence? Presentation at the 2012 Annual Conference of The Wildlife Society, Portland, OR. Huso can be reached at [mhuso@usgs.gov](mailto:mhuso@usgs.gov).

## **Eagle Comments:**

ABC is concerned about the potential impacts of this project and its expansion on eagles, especially Golden Eagles. The EIS states, “[t]he Service assumes that Golden Eagles migrate through and winter in the Project area” (page 107). The project is also very near a major raptor migration corridor. (See state of West Virginia in ABC’s Wind Development Bird-Risk Map).<sup>6</sup> Under the Bald and Golden Eagle Protection Act (BGEPA), it is a violation to kill a single eagle without the appropriate permit. This fact needs to be better explained in the EIS. It is contradicted by statements such as “However, if during monitoring operational restrictions are not effective at avoiding and minimizing and *significant impacts* to eagles and other migratory birds occur, then BRE will consider the potential for off-site mitigation to offset documented impacts including possible off-site habitat preservation and/or restoration” (EIS page 53, emphasis added). If eagles are killed in any quantities, regardless of whether the quantities are “significant,” the project will be violating BGEPA unless it has an eagle take permit.

This raises an issue that FWS needs to address. The Federal Register notice for the 2009 eagle take permit rule says that FWS will not issue Golden Eagle take permits east of the 100<sup>th</sup> meridian except for immediate safety emergencies.<sup>7</sup> Nevertheless, the 2007 eagle take permit rule allows Golden Eagles to be added as a covered species to Multi-Species HCPs. However, because neither the 2007 or 2009 eagle take permit rules analyzed the environmental impacts of allowing take of eastern Golden Eagles, FWS should analyze those impacts under the National Environmental Policy Act (NEPA) before allowing take of eastern Golden Eagles to occur. After all, eastern Golden Eagles are only believed to number between 1,000 and 2,500 individual birds.<sup>8</sup> ABC strongly recommends that FWS address this lack of NEPA analysis before *any* take of Golden Eagles occurs at wind projects in the eastern United States.

ABC is also concerned that the EIS underestimates the potential risk to Golden Eagles at the project site. The EIS identifies major problems with the avian surveys: they did not include winter (Golden Eagles are known to winter throughout the general area), and they missed the peak of Bald and Golden Eagle migration (page 99). Nonetheless, the project’s Avian Protection Plan records 16 sightings of Golden Eagles at the project (APP page 24). ABC therefore recommends that FWS re-run its eagle take prediction model once the project’s additional eagle surveys are complete and ask the project owner to adjust the project’s eagle take permit acquisition plans and mitigation accordingly.

---

<sup>6</sup> American Bird Conservancy. 2012. Wind Development Bird-Risk Map. Available at [http://www.abcbirds.org/extra/index\\_wind.html](http://www.abcbirds.org/extra/index_wind.html).

<sup>7</sup> See page 46840 of Federal Register, Vol. 74, No. 175, September 11, 2009.

<sup>8</sup> See Todd Katzner, et al. (January 2012) Status, Biology, and Conservation Priorities for North America’s Eastern Golden Eagle (*Aquila Chrysaetos*) Population. *The Auk*, 129(1):168–176.

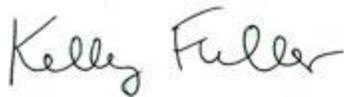
**Proposed Mitigation Comments:**

The EIS should be revised to clarify whether FWS believes the cut-in speed mitigation proposed for Indiana bats will be helpful to birds and if so, upon what basis. There are contradictory statements in the text. For example, “For the Proposed Action and each action alternative, the turbine blades would be feathered (pitched) to rotate at <2 revolutions/minute when wind speeds are below the cut-in speed, thus minimizing bat and bird mortality” (EIS page 36). But also, “The Service is aware of no evidence to date that supports an assumption that curtailment strategies for bats also reduce mortality of birds” (EIS page 107).

In addition, the EIS states that FWS has recommended the project owner add bird diverters or high-visibility markers to the guy wires of permanent meteorological towers on the site, but the project owner has refused (footnote 18 on page 51). ABC agrees with this recommendation and thinks it is a very small thing to ask of a project that the EIS predicts will kill between 10,000 and 26,281 birds over its lifetime, especially given how inexpensive bird diverters and markers are in comparison to the cost of a single wind turbine. Furthermore, if the project does not have these bird diverters or markers, the project is not in adherence with the voluntary wind guidelines, which state, “Avoid guyed communication towers and permanent met towers at wind energy project sites. If guy wires are necessary, bird flight diverters or high visibility marking devices should be used” (FWS Land-based Wind Energy Guidelines, pages 49-50).

In closing, thank you for this opportunity to comment. Please add ABC to the notification list for this project, using the name and address below.

Sincerely yours,



Kelly Fuller

Wind Campaign Coordinator | American Bird Conservancy  
1731 Connecticut Ave NW, Third Floor | Washington, DC 20009  
(202) 234-1781, ext. 212 | kfuller@abcbirds.org