

**JOINT PUBLIC COMMENT ON THE NEW YORK STATE OFFICE OF RENEWABLE ENERGY SITING
Draft Uniform Standards and Conditions, Chapter XVIII, Title 19 (Subpart 900-6)**

7 December 2020

Dear Mr. Moaveni,

We appreciate the opportunity to provide these comments on the draft uniform standards and conditions, which paired with separate draft regulations, are required to implement the Accelerated Renewable Energy Growth and Community Benefit Act (hereafter “Act” or “Accelerated Renewable Energy Act”). We support elements of the Act, draft regulations, and draft standards and conditions; however, on balance we have serious concerns about the lack of consideration of impacts to birds and other wildlife. Below we provide comments and recommendations for ameliorating these concerns.

All signatories of this letter firmly support renewable energy development as part of a multifaceted approach to combating climate change. The likely impacts of climate change to humans and birds are well-documented, and renewable energy is an important component of our collective response. However, commercial-scale renewable energy development, and wind energy development in particular, can have its own negative impacts on birds and other wildlife. Estimates vary, but all sources agree that hundreds of thousands of birds are killed each year due to collisions with wind turbines. Less data is available for solar facilities, but one study placed annual bird mortality at over 100,000.

Fortunately, substantial efforts have been made to develop best practices to minimize the impacts of wind energy development on birds. The U.S. Fish and Wildlife Services published its *Land-Based Wind Energy Guidelines* in 2012. Many states and NGOs have developed their own recommendations, including New York’s 2016 *Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects*. Efforts are underway to develop similar guidelines for solar energy development.

The Accelerated Renewable Energy Act, the associated draft regulations, and the draft uniform standards and conditions unfortunately do not adhere to best practices for minimizing impacts to wildlife. Entirely too much emphasis is placed on speed and quantity over minimizing impacts. This will undoubtedly lead to increased conflict as projects are planned in a less-informed and less-inclusive manner. We understand the desire to speed the process, but it must be done in a way that assures positive, balanced outcomes for birds and other wildlife.

A recent study by New York’s own Cornell Laboratory of Ornithology and others shows that the United States and Canada have lost nearly 3 billion birds – almost 30% of the total population – since 1970. We must not let our shared sense of urgency to address climate change overwhelm the importance of protecting our vulnerable bird populations, which already face an overwhelming suite of threats.

New York has an opportunity to set a positive standard for developing renewable energy while protecting birds and other wildlife, but it will require substantial revision to the draft regulations and uniform standards and conditions.

We have three key concerns regarding the draft uniform standards and conditions:

- Lack of Provisions to Ensure Appropriate Facility Siting
- Lack of Required Pre-Application Field Studies
- Lack of Post-Construction Wildlife Mortality Monitoring

Each of these is described in greater detail in the Key Concerns section below, and recommendations to ameliorate these through revisions to the draft uniform standards and conditions are provided. Relevant recommendations separately provided on the draft regulations by signatories of this comment letter and others¹ should also be carried forward to the uniform standards and conditions to ensure that these are effectively integrated.

Key Concerns

Key Concern #1: Lack of Provisions to Ensure Appropriate Facility Siting

Environmentally responsible renewable energy development starts with appropriate facility siting, which is by far the most important aspect of minimizing impacts to wildlife. There are currently few technologies available to minimize impacts once turbines are installed, so it is crucial to avoid the most high-risk locations. Despite this, the draft uniform standards and conditions provide no clear mechanism to influence facility or turbine siting. It is also not clear that there is any location or scenario under which a project proposal might be denied. Not only is appropriate siting critically important to minimizing impacts to wildlife, but crucial to minimizing conflict.

In addition to considering impacts to species of conservation concern (which should include state-designated species of Special Concern and High Priority Species of Greatest Conservation Need), the number of individual birds affected is also critically important. Certain features on the landscape concentrate birds and other wildlife and should be avoided. For example, Golden Eagles and other raptors use ridgelines during migration, and migratory songbirds are found in large numbers along the Lake Ontario shoreline. These concentrations and movement pathways of wildlife must be considered in addition to rare species, and facilities planned accordingly.

Solution

This concern can be ameliorated by identifying natural features of importance to wildlife where development is not appropriate, and requiring science-based setbacks from these areas as needed. Below we provide examples of such setbacks established by resource management agencies and other conservation land use experts.

The USFWS (2016) Region 3 *Midwest Wind Energy Multi-Species Habitat Conservation Plan* public review draft defined Covered Lands, “those areas eligible to receive ESA incidental take authorization for proposed and existing wind energy facilities” in the plan area. This included (pg. 1-14 to 1-16):

- “Land more than 1 mile from the edges of rivers supporting bat and bird migration corridors and/or concentrations of wintering waterfowl.”
- “Land more than 3 miles from the shores of the Great Lakes. This criterion minimizes the potential for impacts of wind energy development on migrant water, shorebirds, and other migratory birds.”
- “Land outside of floodplain areas along the Mississippi and Illinois rivers. This criterion minimizes the potential for impacts on important bird and bat migratory corridors.”
- “Land outside a bird migratory area in Illinois and bird migratory areas around large lakes in Minnesota.”
- Provisions for bats.

¹ American Bird Conservancy et al. JOINT PUBLIC COMMENT ON THE NEW YORK STATE OFFICE OF RENEWABLE ENERGY SITING, Draft Regulations Chapter XVIII, Title 19 (Subparts 900-1 – 900-5; 900-7 – 900-14). Comment letter dated 4 December 2020.

USFWS has also indicated elsewhere that wind facilities should be no closer than 3km to Great Lakes shorelines, such as a November 4, 2011 letter regarding a proposed wind facility on the Garden Peninsula in Michigan (copy available upon request), which states “...we recommend that no turbines be constructed within three miles of a Great Lakes shoreline.”

The US Department of Energy’s (2008) *20% Wind Energy by 2030* report defined areas appropriate for consideration for wind energy development. These criteria excluded, but were not limited to (pg. 177):

- “National Park Service and Fish and Wildlife Service managed lands” plus a 3km setback.
- “federal lands designated as park, wilderness, wilderness study area, national monument, national battlefield, recreation area, national conservation area, wildlife refuge, wildlife area, wild and scenic river or inventoried roadless area” plus a 3km setback.

The Nature Conservancy has published multiple resources focused on appropriate wind energy facility siting, including the 2011 *Wind Energy: Great Lakes Regional Guidelines* and the 2019 *Site Wind Right: Accelerating Clean, Low-Impact Wind Energy in the Central United States*.

Drawing collectively from the documents above, and other sources such as American Bird Conservancy’s Wind Risk Assessment Map and National Audubon Society’s Important Bird Areas map, we propose the following starting point for development of New York State-appropriate exclusion zones and setbacks:

Feature / Exclusion Zone	Setback
Federal and State lands managed for conservation	2 miles
Areas with high Golden Eagle densities	N/A
Streams and lakes with high densities of Bald Eagle nests	1 mile
Rivers, wetlands, and lakes supporting bird migratory corridors and/or concentrations of waterfowl	1 mile
Great Lakes shorelines	5 miles
Intact natural habitats	2 miles
Important bird stopover habitat in migratory corridors	2 miles

We reiterate that these are intended to be a useful starting point for a more in-depth analysis by state biologists, though we believe these to be reasonable based on available guidance and literature.

Establishment of such setbacks in the uniform standards and conditions would greatly reduce wildlife-related conflict in the wind energy facility siting process by minimizing the chances that facilities will be sited in high environmental impact risk locations. This would provide a good balance between the benefits of renewable energy and the impacts to wildlife, and set a positive standard for other states.

Key Concern #2: Lack of Required Pre-Application Field Studies

The draft regulations provide opportunities for the New York State Department of Environmental Conservation (NYSDEC) to provide input on proposed project plans, albeit with limited time to do so. However, this input is based on a desktop analysis, using what is often limited available information. Because of this, field studies to characterize wildlife populations are crucial to assess likely impacts and inform low-impact project siting, establish compensatory mitigation needs, and set a baseline for impact assessment. However, the draft regulations currently only allow for a single year of study based on input from NYSDEC and other agencies, with no guidelines for timing of these surveys.

This is problematic for two reasons. First, some studies must be conducted over multiple seasons (e.g., for species present in winter as well as spring and fall migration). Studies must be conducted over multiple years for rare species or those with high inter-annual variation in presence and abundance. Unusual climatic conditions in a given year and other uncontrollable factors can substantially influence species' presence, reinforcing the need for additional study in some instances. Second, it is important that field studies encompass a survey season, and not be interrupted due to the timing of pre-application meetings. Sufficient field study data is crucial to minimizing conflict, and reducing the chance of projects being approved despite unacceptable risks and impacts.

Solution

This concern can be ameliorated by requiring, at minimum, a single year of appropriate wildlife studies prior to submission of the wildlife site characterization, using the State's 2016 *Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects* as guidance. The agency can then review the study(ies) and require an additional year of studies as stated in 900-1.3(g)(2) of the draft regulations, if needed. This is standard procedure for the industry and poses no burden on renewable energy developers - they typically work with biological consultants, who advise them regarding surveys that are needed to evaluate risks to wildlife, and then conduct these studies. The State's 2016 guidance would assure that practices are relevant and appropriate.

Key Concern #3: Lack of Post-Construction Wildlife Mortality Monitoring

Monitoring direct wildlife impacts from wind energy facility operations, i.e., bird and bat collisions with turbines, is a standard practice in the industry. Accurate wildlife fatality data is crucial to understand actual impacts because pre-construction wildlife risk assessment is not yet a reliable predictor. For example, most avian fatalities occur at night and pre-construction studies typically provide little or no species information on the nocturnal migrants that are likely to pass through a wind project. Furthermore, there are no fatality studies in New York involving the new generation of wind turbines that are taller with much larger rotor-swept zones. We can't assume their collision impact will be the same as the older models.

Fatality monitoring is particularly important when species of conservation concern are known to inhabit a site, and thus likely to be negatively affected by development. It is also difficult to understand how mitigation requirements will be determined or adaptive management followed if impacts are not evaluated. Without accurate fatality monitoring, the actual impacts are not known, creating unnecessary uncertainty and associated conflict.

Solution

This concern can be ameliorated by requiring post-construction fatality monitoring in appropriate instances. As with the solution for Key Concern #2 above, this is standard procedure for the industry and does not pose a burden on renewable energy developers. We are happy to provide a recommended protocol for these surveys and supporting science if that would be beneficial.

Thank you again for this opportunity to provide input, and for considering these recommendations.

Sincerely,

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