

Wind Energy and Wildlife Workshop
Oregon Chapter of The Wildlife Society, The Dalles, 5-6 November 2008
Panel Discussion Notes

Participants:

Ed Arnett, Co-Director of Programs for Bat Conservation International, TX
Doug Young, Energy Projects Coordinator for USFWS, OR
John White, Energy Siting Section, Oregon DOE, OR
Jeff Tayer, South Central Regional Director, WDFW, WA
Carla McLane, Planning Director, Morrow County, OR
Suzanne Leta Liou, Senior Advocate, Renewable Northwest Project, OR
Bob Sallinger, Conservation Director, Audubon Society of Portland, OR

Topic: Wind Energy Permits, Wildlife Guidelines, and Future Directions.

Format: Each panelist gave an overview then there was 30 minutes for questions.

A. Overviews

1. Ed Arnett

Bat Conservation International (BCI) supports alternate energy sources, but there is a growing concern, especially around cumulative impacts on wildlife which could be unsustainable. Minimizing such impacts is an essential element of green energy. To do so, we need a sound foundation of scientific information. BCI launched the Bats and Wind Energy Cooperative, a collaborative research endeavor. The Cooperative is developing and sharing scientific wildlife research protocols for wind energy, which are peer reviewed through a scientific advisory committee. BCI is also working with states on developing guidelines (e.g., PA, OH, TX). Ed is serving on the federal FACA committee (note: FACA refers to the Federal Advisory Committee Act). After the 2003 interim guidelines were issued by USFWS, the Secretary of Interior announced the formation of a FACA committee to advise the USFWS as it develops updated guidelines. It is important to note that the FACA committee is not writing guidelines but rather providing recommendations from a diversity of perspectives to USFWS, who will write the updated guidelines. The committee is broad and diverse and includes representatives from the wind industry, state fish and game agencies and the Association of Fish and Wildlife Agencies, tribes, non-government organizations (environmental, energy), and energy agencies (state and federal). The goal is to develop recommendations to avoid or minimize impacts to wildlife by land-based wind energy facilities (they are not addressing off-shore facilities). The committee has met 5 times and has several subcommittees (e.g., science and tools, existing guidelines review, etc.). See USFWS' website ([http://www.fws.gov/habitatconservation/windpower/wind turbine advisory committee.html](http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html)) for publicly available information. The FACA committee hopes to provide their recommendations in Oct 2009, then USFWS will develop an updated set of voluntary guidelines based on those recommendations (timeline unknown). Key question: since the guidelines will be voluntary, how will they work on the ground? Lastly, the perception of financial community is important.

2. Doug Young

Doug was the co-chair of the committee that developed the Oregon Columbia Plateau Ecoregion Wind Energy Siting and Permitting Guidelines (the guidelines -- note: the guidelines were provided to all workshop participants). The committee was very broad and varied interests and expertise were well represented. The guidelines were developed over 14 months, and the process was intense at times due to the diverse interests. Everyone brought their issues to the table, worked through issues, and compromised; including the wind industry which faced potential economic impacts, depending on the outcome. Why the guidelines were developed: there is an increased emphasis on renewables -- renewables are part of the solution of our national energy dilemma. However, renewable energy sources need to be developed in a thoughtful way, looking at the trade-offs between socioeconomic benefits and impacts to wildlife and, in some cases, fish species and their habitats. The guidelines are targeted to developers and permitting entities (e.g., subjurisdictional [defined below] agencies). The guidelines feature a sequential approach with flexibility, and they include technical information. They were designed for the 5 counties in the Columbia Plateau ecoregion, but have broad applicability throughout Oregon. There is a plan to modify the guidelines for other geographic areas. What makes the guidelines unique is that they are readable, concise, general, and sequential through steps (permitting actions, key decision points, and key input points). The guidelines outline 5 steps key to successful permitting and operations (including modification if necessary): (1) macrositing, (2) pre-project assessment, (3) micrositing, (4) actions and protections during construction, and (5) operation (including monitoring). The guidelines also address mitigation and are linked to ODFW's Fish and Wildlife Habitat Mitigation Policy (mitigation policy) and include examples and suggestions (e.g., ratios, locations). Lastly, the guidelines include a discussion about cumulative effects and a series of recommendations for next steps.

3. John White

The role of Oregon Department of Energy (ODOE) is permitting a certain set of energy facilities, which provides a different perspective from the other panelists. Relative to the term "subjurisdictional permitting agencies," it refers to who the decision maker on permitting an energy facility is. Thirty years ago, the Oregon Legislature established the Energy Facility Siting Council (EFSC), a 7-person council, staffed by ODOE, which makes siting decisions (i.e., recommends permit issuance) for large energy facilities. The council was established because large energy facilities can be locally unpopular but are important to the state so must get sited somewhere. The council makes decisions for the benefit of the state rather than subject the decision-making process to local political forces. That 30-year old legislation established state jurisdiction over large energy facilities. "Large energy facility" is defined differently by energy type. The threshold for council purview of wind facilities was 25 megawatts (MW) until 2001 when the Stateline Wind Project, north of Pendleton, was built (the first modern wind facility in Oregon). The 2001 legislation then raised the EFSC permitting threshold for wind energy to 105 MW, so developers now need a site certificate from the council if the project is equal to or >105 MW peak generating capacity. Smaller facilities are regulated by counties (through conditional use permits) through county land use processes, which differ by county. The new guidelines help provide some wind project uniformity for consideration of wildlife resources at the county level. At the state level, the EFSC permitting process is a standards-based process for large facilities. The council looks at county ordinances (land use) in the permitting process, but also looks at a variety of impacts (e.g., there is a habitat standard which includes the ODFW mitigation policy).

This makes adherence to ODFW's mitigation policy and the state's Endangered Species Act siting standards that are enforceable through the site certificate. The mitigation policy ranks quality of habitat into categories 1-6. For example: Category 1 habitat in the Columbia Plateau Ecoregion has been generally associated with Washington ground squirrel habitat; the Category 1 habitat goal is avoidance). The council generally requires a habitat mitigation plan to mitigate for the footprint impacts of the proposed facility. The habitat mitigation plan is attached to the site certificate as a separate plan and explains what will be done to preserve and enhance habitat to make up for the proposed facility's footprint impacts. The site certificate contains requirements to restore areas temporarily disturbed during construction through a separate restoration/ revegetation plan to restore areas back to the habitat quality before disturbance. The council has recognized concern about avian and bat impacts and has encouraged the development of a wildlife monitoring model which has been followed by wind facilities. The council wants to site wind facilities as responsibly as possible so recognizes the need to determine impacts. If there are permanent habitat impacts, the site certificate stipulates the need for mitigation.

4. Jeff Tayer

Washington has a similar energy facility regulatory overlay as Oregon but not identical. Washington also has an energy facility siting council. Washington is an opt-in state, i.e., developers can opt-in to EFSC permitting process or go through the county conditional use permitting process. Most developers have gone through county processes. As history on why the Washington guidelines were developed: the industry was frustrated by the regulatory process for large projects that overlapped different counties and that was different by county and by WDFW district. The industry hired an attorney and proposed a collaborative process to resolve issues through the development of consistent statewide wind energy permitting guidelines. The Washington guidelines were initiated 6 years ago; WDFW staff and others are now reviewing (5 year review process) and revising the guidelines. The Oregon guidelines built on the Washington effort, and Washington will use information from the Oregon guidelines development process. Thus, the process is iterative and improving and the states are not reinventing the wheel. The Washington guidelines, of course, are skewed towards Washington, which has lost 2/3 of its historic shrub steppe habitat. The remaining shrub steppe is fragmented and degraded - but windy. Many shrub steppe associated wildlife species are on the state Threatened and Endangered species list. The Washington guidelines focuses on avoiding fragmentation and loss of shrub steppe habitat. The Washington guidelines also don't require mitigation for low level habitat (e.g., crop lands) but the requirements escalate for high-quality habitats. The goal is to influence siting at the preconstruction phase. Regarding the issue of voluntary vs. regulatory: the stakeholder process was voluntary but the resulting standard is regulatory. WDFW would not have invested so much into the process if there was no expectation that the guidelines would be fully implemented. Incremental escalation of mitigation and consistent mitigation standards were issues for the wind industry and the guidelines provides consistency (e.g., makes clear that no mitigation is required in croplands). The proactive approach of industry has made this effort unique.

5. Carla McLane

There are 36 counties, which means 36 independent commissions/courts and land use processes for permitting of wind facilities that generate less than 105 MW peak generating capacity. Counties take issue with the term “subjurisdictional” because counties are jurisdictions. Counties work closely with the Energy Facility Siting Council (siting council) for large wind facility permitting processes. But below the 105 MW threshold, counties have clear permitting authority. Developers can choose to opt-in to the siting council process if the project is less than 105 MW peak generating capacity but might be controversial. Wind facilities are governed by Conditional Use Permits (which cover commercial development of energy for sale; transmission lines are governed separately). Counties have clear statewide standards through the land use planning process. Each county may interpret the standards a little differently but are operating under the same statute. Morrow County does not have specific standards or an ordinance for wind facilities. Gilliam and Umatilla counties have developed energy-specific and/or wind-specific language. Counties work together on projects that overlap more than one county, but individual counties implement their own standards (there are often similarities between counties). Counties are tied to a 120-day timeline from submittal of a conditional use permit application to approval, including appeals. The siting council permitting process operates within specified timelines, but it can be delayed. The county permitting timeline can be delayed at a developer’s request, which doesn’t happen often. For standards, the counties primarily look at the farm standards in rule. Land Conservation and Development Commission rules are designed to protect farmland from development. This brings up the issue of competing priorities – Goal 3 in state land use law protects agricultural land. Renewable energy is a priority under land use planning but there is the potential for conflicts. Counties do look at wildlife during the general conditional use permitting process. The Oregon guidelines will provide a better process for understanding potential impacts on wildlife. For Morrow County, the guidelines provide a baseline reference. If interested in related land use law, Carla is participating on a legal issues panel at the Oregon Planning Association meeting in December, and she encourages attendance.

6. Suzanne Leta Liou.

The Renewable Northwest Project is a non-profit coalition of renewable energy public interest groups and industries. The organization’s goal is to increase renewables in the Northwest. There are strong environmental benefits for developing renewables. Oregon has recently required that 25% of its energy portfolio to consist of renewable energy sources by 2025. Society needs to tackle carbon emissions. We will see increased focus on renewable energy at both the state and federal levels due to the Oregon Governor’s initiatives, the new presidential administration, and pending cap and trade legislation. However, we want to see it happen in a way that protects wildlife. The Renewable Northwest Project was involved in developing the Washington guidelines. Washington has SEPA (State Environmental Protection Act), so has a different regulatory framework than Oregon. SEPA applies to the siting council and county permitting processes. In developing the Oregon guidelines, there were several key wildlife issues that were difficult to discuss: pre-project study and post-project monitoring timeframes, cumulative impacts, mitigation, and curtailment of wind turbine operations. (1) Pre-project study and post-project monitoring timeframes: the guidelines gave flexibility based on habitat quality and the amount of information available but provided boundaries around the timeframes. (2) Cumulative impacts: see page 36 of the Oregon guidelines for a general opinion, “here’s what we know and what we need to know about specific species impacts, data repository.” (3) Mitigation: see page 21 – talks about ODFW habitat mitigation goals and standards and recommendations for

permanent and temporary impacts, addresses wildlife displacement and mortality. It was hard to get to a level of specificity but it was important to address these issues. (4) Curtailment: the Washington guidelines stated that curtailment is not an option. It is hard for a project proponent to get financing if curtailment is an option but the environmental community wants this option left on the table. Mention of curtailment was left out of the Oregon guidelines because it is a consensus-based document and not intended to be everything to everyone. Industry will fight efforts to curtail and wanted to be truthful about that. Lastly, see the programmatic recommendations on page 26. ODFW needs to give guidance to developers and permitting authorities but needs funding to do that. The committee recognizes that state funding is difficult in this budget environment, but industry will promote adequate staffing for ODFW to help implement the guidelines. Industry wants the guidelines to be applicable across the state because there are wind project proposals in other areas of the state that could benefit from the guidelines. The role of Renewable Northwest Project is to facilitate discussion and try to bring industry to the table, and to get a shared opinion across the industry (which is varied). RNW Project staff is in the process of presenting information on the guidelines to wind energy developers.

7. Bob Sallinger

Audubon expressed its appreciation to everyone on the task force – members came in looking for common ground; there were difficult discussions but the process resulted in a good product. If the guidelines are fully implemented, wildlife will be better off. Audubon's objectives are to support renewable energy because the organization sees climate change as the biggest threat to humans and wildlife, but we want it done in a responsible manner. We don't want to replicate dams (cheap, clean power that has caused salmon problems and expensive "fixes."). Audubon gets a lot of calls about wind power and the public perception is unfairly negative. People call Audubon expecting that the organization will try to stop wind power; in response Audubon educates on the issues. Industry needs to be conscious of public opinion. A key point when discussing impacts to wildlife: the past is not a prologue. Wind farms may have low mortality now, but that may not hold true in the future. As wind farms expand across the landscape, impacts will increase. There will be more and more pressure on high quality wildlife habitats in the future as we build more sites. We need to think more broadly and more long-term than a single species or groups of species. There are 178 species on the Audubon/American Bird Conservancy continental watch list, and even a larger number of common birds are in precipitous decline. One example is the horned lark which has high mortality at some wind sites and has seen a greater than 50% decline nationwide. Wind power may be impacting the last healthy populations. We need a strong regulatory backstop and currently don't have one. We also need an orderly process – wind power projects are coming too fast and furious now to provide oversight. The Oregon guidelines came out well but the challenges lay in its implementation. (1) Funding – the guidelines are predicated on a large role for ODFW, and will fail without large involvement. ODFW doesn't have the capacity now. (2) Education – we need to get the guidelines out and make people aware of them – counties, agencies, industry, the public. The public needs to see that we are doing this responsibly, and the guidelines are a resource for the public as well. (3) The guidelines need to be statewide. They are focused on the Columbia Plateau ecoregion at the present time. The general concepts are applicable statewide, but we need to look at regional differences (e.g., off-shore ocean, southeastern Oregon). (4) The guidelines committee didn't reconcile an ability to shut down (curtailment) projects or parts of projects. Audubon understands the industry perspectives but can't have a train wreck that we have no

ability to address (e.g., not being able to address avian fatality problems at Altamont). (5) We need standardization of survey protocols. (6) We need a central data repository. (7) We need to target research to address issues the guidelines couldn't address because there wasn't information. As an example of why the guidelines are needed statewide, a proposed 104 MW project on Steens Mountain got through county review without the conditional use permit application looking at or mentioning the project's wildlife impacts. This points out an opportunity because the developer is now looking at the guidelines, but the project is still not aligned with the guidelines. We need a backstop regulatory process for situations where developers "go rogue."

B. Questions for the Panel

Q: What is the timeline for the revised Washington guidelines?

Jeff: The revision is funded by the legislature and we will report back to the legislature this session – hope to have something by January.

Q: For pre-project assessments do you have a certain time for all of the possible effects? Can you modify the permit?

Doug: The guidelines are not prescriptive. There is limited specificity on recommending a duration of certain work. Pages 10-13 address pre-project assessment (literature, study types). The time needed will be site-specific. Developers need to work early and often with resource and permitting agencies to determine that the project is developed correctly. In the macrositing stage, the goal is to avoid key habitats; during micro-siting, review can help minimize effects and determine mitigation.

Suzanne: There is a standard protocol to assess pre-project mortality.

Q: (follow-up question) Is the permit for the life of the project or for a certain time period? Is there a restoration or turbine modification requirement?

John: There is a 2-3 year deadline for construction to begin, then 2-3 years to finish construction. Developers can extend these time periods but need to justify the extension to the siting council. The permit doesn't have a limit as there is an assumption that the use will be continued indefinitely. Re-powering would probably require an amendment through the council to update language.

Carla: The developers have 4 years to initiate the project after approval. The permit is valid for as long as the use is in effect. What isn't clear is if re-powering to increase MWs above the siting council threshold would kick in a requirement for a siting council permit (certificate). It appears that a site certificate would be required but there will already be infrastructure on the ground. Most conditional use permits include language on decommissioning so counties look at both reclamation of temporary impacts and decommissioning if, at some point in time, the facility no longer functions as a wind facility. In the latter case, permits require that the facility be removed and the land be reclaimed to the extent possible (however, the landowner may choose to retain roads). The permit generally requires a decommissioning plan and a bond.

Q: The guidelines depend on macrositing to be a critical part of the process to avoid impacts, but industry confidentiality requirements prevent agency input at this stage. The

wind industry already has agreements with landowners before agencies are involved, which is problematic if Category 1 habitats are involved.

Suzanne: Every company has a different approach to confidentiality because the industry is so competitive. We encourage companies to reach out to agencies as soon as possible. We acknowledge that this is an issue, but developers do risk assessments early in the process and should be looking at those deal-killer issues (as outlined in the guidelines).

Q: (follow-up question) Is it incumbent on agencies to identify Category 1 habitats to help developers avoid key habitats?

Sarah Parsons (Iberdrola Renewables): We don't have a perfect map. The guidelines provide information resources that developers can use (e.g., ODFW's Oregon Conservation Strategy Conservation Opportunity Areas, The Nature Conservancy's ecological assessments, a list of sensitive habitats in the guidelines).

Bob: The issues of no disclosure and no shut-down options interact to cause a problem. State or counties need to be able to tell the developer that a project is unlikely to go forward before a lot of money is spent. Macro-siting is critical to minimize impacts.