

# State Fish and Wildlife Agency Wind Energy Guidelines

Deb Hahn  
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# State Authority

- Legal mandate to manage fish and wildlife within the state



# The State of the States

- Differing approaches
  - Public utility commissions or the like
  - Local communities with or w/o zoning requirements
- 6 states have specific wind siting authority (CO, MN, ND, OR, VT and SD)
- Typically a size threshold designates authority

# Who Has Authority?

- CA – County
- PA – No permitting process
- TX - No permitting process
- WA - State >105 MW, local <105 MW
- NY – Townships or counties
- WV – State PSC
- WI – State PSC >100 MW, Local <100 MW
- MN – Local <5 MW, State Siting Board >5 MW

# The State of the States

- 3 states have mandatory siting requirements (CO, OR, WV)
- Numerous States have final or draft guidelines
  - CA, AZ, IA, KS, NH, NM, PA, VT, SD, WA, WI, NY, ME, TX, IN

# State Environmental Quality Acts

- 16 states have SEPA's
  - Each have specific requirements that determine if they effect wind development
- 8 states have similar laws that do not require an environmental assessment



# Overview of State Guidelines

- Washington
- California
- Pennsylvania
- Texas
- New York
- Wisconsin



# Washington - Approach

- Interim guidelines – June 2001-February 2002
  - Department of Fish and Wildlife and SE Washington Audubon
- Current guidelines – July 2002-August 2003
  - Department of Fish and Wildlife and Renewable Northwest Project
- Updating Current Guidelines with large stakeholder group





# Washington – Purpose

- To provide guidance on biological studies and agency comments



# Washington – Regulatory Framework

- Most wind projects are permitted via local land use processes (County Conditional Use Permit)
- Wind projects can opt into a statewide Energy Facility Site Evaluation Council process
- Statewide Environmental Policy Act requires environmental comprehensive analysis (checklist or EIS) of all wind projects

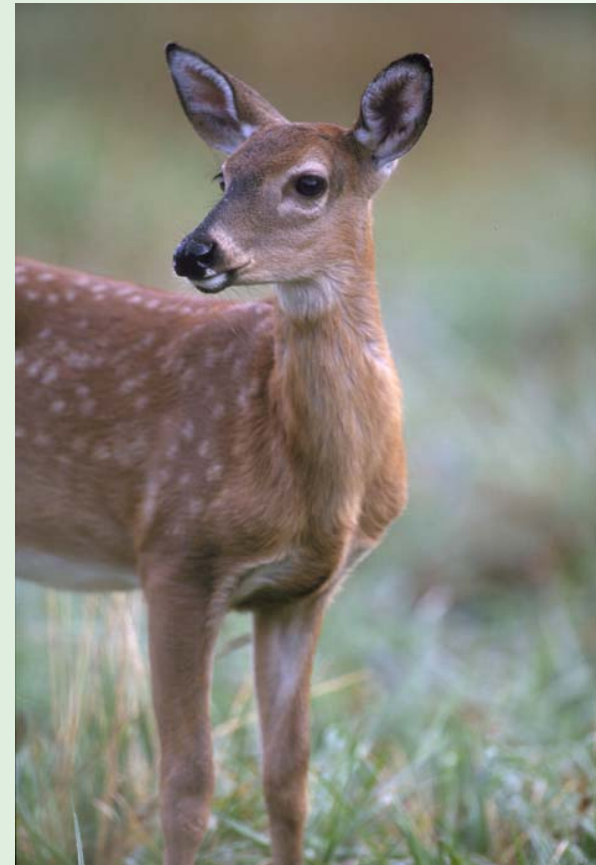
# Washington – Content

- Baseline and Monitoring Studies and Surveys
- Traditional Mitigation
- Adaptive Mitigation



# Washington – Key Component

- Goal - No loss of habitat functions and values.
- Mitigation – to avoid or compensate for impacts to fish, wildlife, or habitat from the proposed project activity.



# Washington - Mitigation

## ■ General Principles

- Mitigation measures include all species except state endangered, or federal threatened or endangered
  - If T/E species present, additional mitigation may be necessary
- Encourage locating projects on disturbed lands
- Discourage from using or degrading high value habitat

# Washington - Mitigation

- Direct bird and bat strikes
- Mitigation for permanent and temporary impacts
- Different ratios for low, medium, and high value native lands
- Alternative mitigation program

# California - Approach

- Began in 2005
- California Department of Fish and Game and California Energy Commission
  - Collaborative partnership with stakeholders, wildlife and regulatory agencies to develop technical guidance
- Designed to complement national guidance



# California – Purpose

- Aid companies in successfully siting facilities to avoid or decrease “take”
- Provide data for assessment of habitat use by wildlife
- Provide guidance to outline potential mitigation strategies
- Provide standards and guidance for use by local government when making land use decisions



# California – Regulatory Framework

- California Environmental Quality Act (CEQA)
  - Requires consultation with California Dept. of Fish and Game (CDFG)
- CDFG Statues
  - California Fish and Game Code § 3513 MBTA
  - California Endangered Species Act § 2080
  - California Fish and Game Code § 3511 “Fully Protected Birds”
  - California Fish and Game Code § 3800 Non-Game Birds
  - California Fish and Game Code § 3503 Raptors

# California – Why Guidelines?

- Bird and bat impacts
- Disruption of migratory pathways
- No standard surveys or monitoring protocols
- Past attempts at reducing impacts were not that successful
- Locally issued land use permits

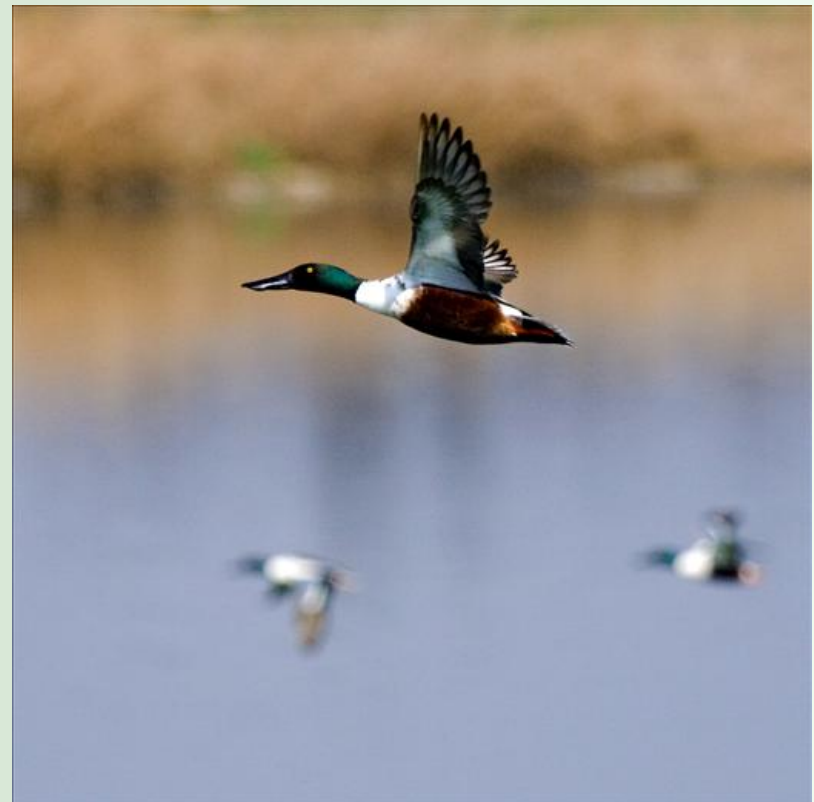


Photo By Kevin Morrison

# California – Key Components

- Framework for discriminating between and classifying high, medium, and low risk projects
- Specific study design and data analysis recommendations for avian site use
- Regional focus

# Pennsylvania - Approach

- Invited the wind industry to discuss the draft agreement
- April 2007 - Finalized a cooperative agreement
- February 4, 2008 - 15 companies are signatories to the agreement.



# Pennsylvania - Objective

- To help avoid, minimize, and potentially mitigate adverse impacts wind energy has on the state's wildlife resources



# Pennsylvania - Content

- Standardized protocols for pre- and post-construction monitoring and impact review
- Risk assessment for birds and mammals
- Address potential impacts to migratory pathways of birds & mammals
- Separate guidelines for wind development on State Game Lands



# Pennsylvania – Regulatory Framework

- Jurisdiction over birds and mammals under Title 34 of the PA Code.
- No state laws or regulations on wind facility siting
- Local government has land use authority
- Involved in PA Dept. of Environmental Protection permits that have potential impacts for T&E species they have jurisdiction over
- Issue Special Use Permit that allows for handling of birds and bats during surveys

# Pennsylvania – Key Components

- Sharing of data
- Confidentiality of information allowing use of data without disclosing proprietary information
- Standardized data collection and methods
- Use of Best Management Practices

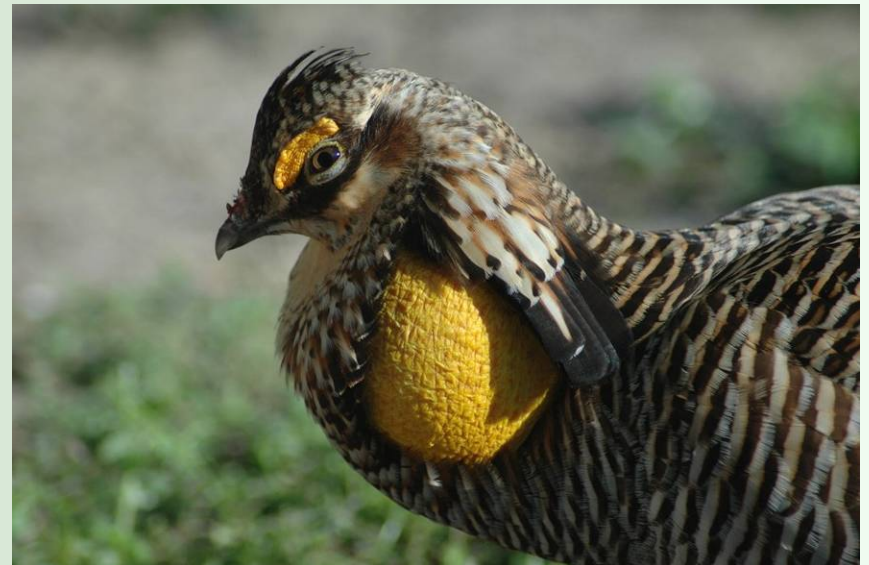


# Pennsylvania - Key Components

- Site access
- Potential fulfillment of local, township, or county requirements for wildlife resource consideration
- Standard deferral to USFWS concerning actions taken on federally listed species
- Limited liability for bird and bat mortality.

# Texas - Approach

- 2006 – Initiated discussion
- Voluntary guidelines
- Stakeholder groups
  - Wind Coalition
  - Non-governmental organizations
  - Landowner organizations
- Jan 2007 - Issued draft strawman
- Process will continue through 2008



# Texas – Purpose

- To establish best management practices
- To promote the continued responsible development of wind facilities across the state, and
- To enable Texas to develop its wind resources in a manner that minimizes adverse impacts to wildlife, habitats and natural resources of Texas

# Texas – Key Components



- BMPs for Siting, Operations and Decommissioning
- Pre and post construction surveys
- Data collection and sharing
- Voluntary monetary contribution
- Bat sensitivity Index

# New York - Approach

- August 2006 – stakeholder workshop
- NY State Energy Research and Development Authority, government agencies, academia, and NGOs
- DEC developed draft guidelines
- Guidelines are out for review



# New York – Purpose

- To outline the protocols for conducting bird and bat studies at wind energy projects to provide information necessary for DEC to:
  - assess ongoing or expected environmental impact; and
  - make a recommendation to the lead agency regarding the construction and operation of the project in order to avoid or minimize adverse environmental impact.

# New York – Content



- Site Characterization
  - Site description
  - Existing data
- Standardized pre- and post-construction studies
  - Standard
  - Expanded

# New York – Regulatory Framework



- Local permitting authority for wind development
- SEQRA requires review
- DEC has no jurisdiction unless the site requires a permit for wetlands or Indiana bat take



# Wisconsin - Approach

- Mid-90's - Assembled interested parties
- Developed sensitive area map
- 2004 - Draft developed by Wisconsin Department of Natural Resources (DNR)
- Reviewed and commented on by stakeholders
- August 2005 – Final guidelines



# Wisconsin – Purpose

- To guide screening and study decisions



# Wisconsin - Content

- Applicable to terrestrial sites
- Outlines specific habitat types and areas that need to be considered when siting wind farms.
- Site Characterization studies



# Wisconsin – Regulatory Framework

- State wildlife protection and T&E laws apply
- Public Service Commission (PSC) authority
  - smaller projects (<100 MW) by in-state utilities
  - larger projects (> 100 MW) by independent utilities
- DNR has a cooperative agreement with PSC to review energy projects
- Wisconsin Environmental Policy Act
  - Requires DNR review
  - Applies only to the actions of state agencies

# Common Factors in State Guidelines

- Voluntary
- Developed through a consultation with stakeholders
- Best Management Practices
- Standardized surveys and monitoring
- Data sharing
- Early Consultation
- Not for off-shore development

# Unique Features in State Guidelines

- Incentives
- Funding recommendations
- Discussion of Transmission lines
- Mitigation
- Regional Focus



# Hindsight is 20/20

- Everyone needs to be at the table
- Use independent outreach and support
- Use a more formalized comment-response process
- Compromised on quality and rigor of monitoring and impact assessment
- Need lots of interaction with other agencies and the public



Worm-eating Warbler in Ohio by Robert Royce

# Hindsight is 20/20

- Need a strong facilitator during guidance development
- Set up ground rules prior to first meeting
  - Include desired outcome
  - Timelines to submit new information to be discussed at meetings
- Meet with members prior
  - ability to adhere to ground rules
  - ability to negotiate/compromise
  - ability to take broad view





# For Consideration by the Advisory Committee

- Work together from the beginning
- Discuss opportunities/options for mitigation
- Consider bird, bat, and habitat issues
- State guidelines are not necessarily considered by industry
- Consider cumulative local and regional effects

# For Consideration by the Advisory Committee



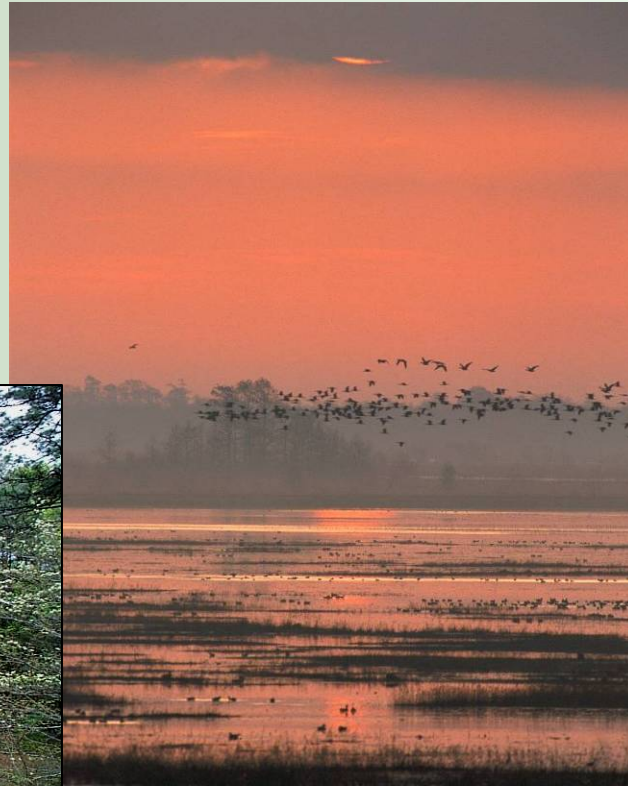
- Different amounts of authority within states
- How can states participate and be a partner in the national-level guidelines?
- Create an link between wind incentives and conservation

# For Consideration by the Advisory Committee

- Consider regulatory guidelines
- Discuss a funding source for research
- Consider how to deal with private lands.



# Thank you for your time



Waterfowl at Lacassine NWR,  
Louisiana, Photo by John and  
Karen Hollingsworth

