U.S. House of Representatives
Committee on Resources
Washington, DC 20515

June 22, 2004

The Honorable David M. Walker
Comptroller General of the United States
United States General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Walker:

We are writing to request that the General Accounting Office undertake a study on the interim guidance issued by the U.S. Fish and Wildlife Service concerning the development of wind turbine facilities to determine if such guidance ensures protection of migratory birds on Federal and non-federal lands in several mid-Atlantic states, particularly our State of West Virginia. A focused GAO analysis will contribute substantively to the development of regulatory policy for wind energy that is consistent with our treaty and statutory obligations under the Migratory Bird Treaty Act (16 U.S.C. §§ 703-712) and the Bald Eagle Protection Act (16 U.S.C. §§ 668-668d).

Development of wind energy as a renewable energy alternative in the United States has experienced tremendous recent growth and is only expected to accelerate in the near term. In practical terms this has meant the siting and erection of numerous fields of very large towers and turbine rotors, ranging from 275 to 445 feet in height, to capture a consistent prevailing breeze. Nowhere has this development been pursued more aggressively than along the ridge tops of the Allegheny Front region of the Appalachian Plateau in the States of West Virginia, Virginia, Maryland and Pennsylvania. Of great significance, the region is a major avian flyway for hundreds of migrant bird species, including bald and golden eagles. Ornithologists, in fact, estimate that approximately 1.7 million birds per night migrate over the Allegheny Front during the migration season. It would appear then that continued growth of wind energy along the Allegheny Front represents an imminent threat to literally hundreds of different migratory bird species.

The U.S. Fish and Wildlife Service, in recognition of the cumulative effects that an expanding domestic wind industry is likely to inflict on migratory birds and other wildlife (e.g., bats), issued on May 13, 2003 interim guidance to avoid and minimize wildlife impacts from wind turbines. Developed to be consistent with Secretary of the Interior Gale Norton's Renewable Energy on Public Lands Initiative, these voluntary guidelines are intended to provide technical assistance to the wind industry to avoid or minimize impacts to birds and wildlife through the following: 1) proper evaluation of potential wind energy sites; 2) proper location and design of wind turbines; and 3) pre- and post-construction mortality research and monitoring. This guidance will be evaluated over a two-year period concluding on July 7, 2005, and may be subsequently modified based upon new scientific information, technological discoveries and field performance.

Despite the stated intent of the interim guidance, it is extremely doubtful that these voluntary measures comply with the strict liability provisions found under both the Migratory Bird Treaty Act (MBTA) or the Bald Eagle Protection Act. The MBTA articulates that is unlawful at <u>any</u> time, by <u>any</u> means or in <u>any</u> manner, to pursue, hunt, take, capture or sell migratory birds unless expressly permitted by the Secretary of the Interior. Comparable strict liability holds for bald and golden eagles. However, considering the voluntary nature of these guidelines, the pace and economic incentives of wind energy development, the potential for significant and widespread bird mortality, and limited Federal budget for migratory bird oversight, it appears certain that wind turbine proposals will receive inadequate scrutiny by the U.S. Fish and Wildlife Service pursuant to the MBTA's strict liability standard.

Additionally, there is no assurance that relevant State wildlife agencies will provide the necessary level of regulatory oversight to prevent harm to migratory bird resources for wind projects proposed at locations on non-federal lands. Since the interim guidance is not compulsory, there is little to compel States to adopt these guidelines when evaluating industry proposals. And, if anything, it appears that State wildlife agencies are even less equipped administratively and budget-wise to handle this important responsibility.

As a result of these concerns, we are requesting that GAO initiate a study of the interim guidelines within the context of wind industry development along the Allegheny Front, especially areas in West Virginia. Among areas of inquiry, the GAO should examine the following questions:

- **Considering the escalation of wind turbine development along the Allegheny Front, how serious a threat to migratory bird populations does this growing industry present? Can bird mortality be reasonably mitigated or prevented?**
- **How and by what agencies are wind turbines regulated by the Federal Government, and to what extent are migratory bird impacts considered?**

- **Does the administrative record of project applications indicate that the interim guidance has positively altered projects to protect migratory birds?**
- **What are the responsibilities of State wildlife agencies to protect migratory birds from impacts caused by wind energy projects located on non-federal lands? Do they have a regulatory or strictly consultative role?**

Thank you for your consideration of this request. We would be pleased to meet with you to discuss further this request and to refine the scope of this analysis. To facilitate such a discussion, please ask a member of your staff to contact Mr. David Jansen at the Committee on Resources (226-2311) or Angela Ohm in Congressman Mollohan's office (225-4172).

With warm regards, we are

Sincerely,

NICK J. RAHALL, II
Ranking Democratic Member
Committee on Resources

ALAN B. MOLLOHAN
Ranking Democratic Member
Appropriations Subcommittee on
VA, HUD and Independent Agencies

NJR/jz/dsj