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TODD YOUNG  
CHIEF OF STAFF

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

May 16, 2013

EDWARD J. MARKEY, MA  
RANKING DEMOCRATIC MEMBER  
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ALAN LOWENTHAL, CA  
JOE GARCIA, FL  
MATTHEW CARTWRIGHT, PA

JEFFREY DUNCAN  
DEMOCRATIC STAFF DIRECTOR

The Honorable Daniel M. Ashe  
Director  
U.S. Fish & Wildlife Service  
1849 C Street, NW  
Washington, DC 20240

Dear Director Ashe:

The Committee on Natural Resources (“Committee”) has broad jurisdiction over matters involving the Department of the Interior, energy development on federal lands, wildlife, and migratory birds.

In order to better understand the Obama Administration’s enforcement of the Migratory Bird Treaty Act (“MBTA”) and the Bald and Golden Eagle Protection Act (“BGEPA”), it is requested that complete and unredacted copies of the following information and documents be provided no later than the close of business on May 30, 2013:

- 1) All Fish & Wildlife Service (“FWS”) reports of investigation, referrals to the U.S. Department of Justice, or declinations of prosecution under the MBTA and/or BGEPA issued between January 1, 2009 and the present date, including any supporting documentation or attachments thereto, concerning bird fatalities associated with the development and/or operation of any energy facilities.
- 2) The FWS issued final Wind Energy Guidelines in March 2012 and Eagle Conservation Plan Guidance in May 2013. Both encourage coordination and communication between the FWS and wind energy project developers on the formulation and implementation of studies to assess and mitigate the impacts on protected birds and the siting of wind turbines. Please provide copies of all communications between the FWS and representatives from wind energy projects concerning reports of bird fatalities, compliance with the MBTA and/or the BGEPA, the development of eagle conservation plans, and incidental take permit applications under the BGEPA.

- 3) All policies, guidance, memoranda, legal analysis, emails, or other documents concerning discretion to not take enforcement action under the MBTA and/or the BGEPA for bird fatalities associated with energy facilities.
- 4) All e-mails, memoranda, or other documents between FWS and the American Wind Wildlife Institute concerning development and operation of a database of avian mortality data, including any documents related to access to the database by FWS personnel or the public.
- 5) The FWS has proposed changing the eagle take regulations at 50 C.F.R. Parts 13 and 22, 77 Fed. Reg. 22267 (April 13, 2012). Please provide an update on when FWS anticipates issuing the final rule. Also, please provide copies of all agendas, minutes, presentations, briefing materials, notes, or other documents related to any meetings concerning Department or FWS personnel and representatives from the wind industry or other stakeholders concerning the proposed rule.

Enclosed with this letter are instructions and definitions for responding to this request. Please have your staff contact Byron Brown or Andrew Vecera of the Office of Oversight and Investigations at 225-2761 with any questions.

Sincerely,



Doc Hastings  
Chairman

Enclosure

## Responding to Committee Document Requests

### A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), instant message, notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

### B. Instructions

1. In complying with this document request, you are required to produce all responsive documents, materials, or items that are in your possession, custody, or control, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization, or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses documents that are non-identical or identical copies of the same document.
6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.
7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author, and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at the discretion of the Committee.
9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

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12. Production materials should be delivered to:

Committee on Natural Resources  
U.S. House of Representatives  
1324 Longworth House Office Building  
Washington D.C. 20515

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CHAIRMAN  
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TODD YOUNG  
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**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**

May 16, 2013

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MATTHEW CARTWRIGHT, PA

JEFFREY DUNCAN  
DEMOCRATIC STAFF DIRECTOR

The Honorable Ignacia S. Moreno  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044

Dear Assistant Attorney General Moreno:

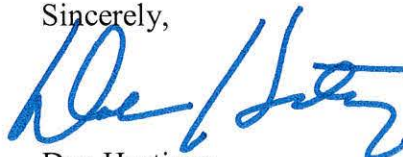
The Committee on Natural Resources (“Committee”) has broad jurisdiction over matters involving energy development on federal lands, wildlife, and migratory birds, including enforcement of the Migratory Bird Treaty Act (“MBTA”) and the Bald and Golden Eagle Protection Act (“BGEPA”).

In order to better understand the Obama Administration’s enforcement of the MBTA and the BGEPA, it is requested that complete and unredacted copies of the following information and documents be provided no later than the close of business on May 30, 2013:

- 1) Any referrals received by DOJ and/or any declinations of prosecution issued by DOJ between January 1, 2009 and the present date, including any supporting documentation or attachments thereto, under the MBTA and/or BGEPA concerning bird fatalities associated with wind and conventional energy facilities.
- 2) All policies, guidance, memoranda, legal analysis, emails, or other documents concerning discretion to not take enforcement action under the MBTA and/or the BGEPA for bird fatalities associated with the development and/or operation of wind and conventional energy facilities.

Enclosed with this letter are instructions and definitions for responding to this request. Please have your staff contact Byron Brown or Andrew Vecera of the Office of Oversight and Investigations at 225-2761 with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings", written in a cursive style.

Doc Hastings  
Chairman

Enclosure

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12. Production materials should be delivered to:

Committee on Natural Resources  
U.S. House of Representatives  
1324 Longworth House Office Building  
Washington D.C. 20515



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240



SEP 18 2013

The Honorable Doc Hastings, Chairman  
Natural Resources Committee  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Hastings:

Thank you for your letter of May 16, 2013, to the U.S. Fish and Wildlife Service (Service), regarding the Administration's enforcement of the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Your letter requested a variety of documents related to the Service's implementation and enforcement of both statutes.

Collection and review of the requested documents is a significant undertaking, requiring significant staff time in our headquarters, regional and field offices. Enclosed with this cover letter is a portion of our total response. As agreed upon with your staff, we will send additional documents under separate cover as they become available.

Thank you for your interest in fish and wildlife conservation. If you have any questions or concerns about this matter, please contact me at (202) 208-4545.

Sincerely,



DIRECTOR

RECEIVED  
COMMITTEE ON RESOURCES  
2013 SEP 19 AM 9:46

DOC HASTINGS, WA  
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JASON SMITH, MO

TODD YOUNG  
CHIEF OF STAFF

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

November 4, 2013

PETER A. DeFAZIO, OR  
RANKING DEMOCRATIC MEMBER  
ENI F.H. FALCOMAEGA, AS  
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PENNY DODGE  
DEMOCRATIC STAFF DIRECTOR

The Honorable Daniel M. Ashe  
Director  
U.S. Fish & Wildlife Service  
1849 C Street, NW  
Washington, DC 20240

Dear Director Ashe:

The Committee on Natural Resources (“Committee”) sent a letter on May 16, 2013 to the Fish and Wildlife Service (“Service”) requesting information and documents regarding enforcement of the Migratory Bird Treaty Act (“MBTA”) and the Bald and Golden Eagle Protection Act (“BGEPA”). The Committee requested a response by May 30, 2013.

The Committee is seeking five categories of documents, communications, and information pertaining to the enforcement of the MBTA and BGEPA against energy companies: (1) copies of documents related to Service investigations, as well as referrals to the Department of Justice, created between January 2009 and the present; (2) copies of communications between the Service and representatives from wind energy companies; (3) copies of policies, legal analysis, and emails related to enforcement discretion under the MBTA and BGEPA; (4) communications between the Service and the American Wind Wildlife Institute; and (5) documents related to meetings concerning proposed revisions to the eagle take regulations.

In the more than five months since the request was first sent, the Department of the Interior (“Department”) has provided only 66 pages of documents, consisting solely of documents related to the American Wind Wildlife Institute (category 4). These documents were provided on September 18, 2013. The lack of responsiveness to date has frustrated the Committee’s ability to understand how the Obama Administration has been enforcing these laws.

On numerous occasions, Secretary Jewell has requested that the Committee seek information wherever possible through briefings and interviews with relevant Department officials, not just through formal document request letters. Given the ongoing questions about the enforcement of the MBTA and the BGEPA, it is requested that a meeting with William C. Woody, Chief of the Service’s Office of Law Enforcement, also be scheduled with Committee majority oversight staff the week of November 11, 2013. It is expected that Mr. Woody, given

his role overseeing the Service's enforcement of the MBTA and the BGEPA, would be the best person to answer questions on these topics.

The lack of a timely response to the Committee's request for information is unacceptable and limits Congress's ability to conduct oversight of this important matter. It is expected that the Service will promptly and voluntarily comply in full with the original May 16, 2013 request and agree to schedule this meeting without any further delay.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings", written in a cursive style.

Doc Hastings  
Chairman

DOC HASTINGS, WA  
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TODD YOUNG  
CHIEF OF STAFF

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

November 4, 2013

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MATTHEW CARTWRIGHT, PA

PENNY DODGE  
DEMOCRATIC STAFF DIRECTOR

Robert G. Dreher  
Acting Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044

Dear Acting Assistant Attorney General Dreher:

On May 16, 2013, the Committee on Natural Resources (“Committee”) sent a letter to the Department of Justice (“DOJ”) requesting information about the enforcement of the Migratory Bird Treaty Act (“MBTA”) and the Bald and Golden Eagle Protection Act (“BGEPA”). To date, DOJ has failed to provide any formal response and none of the requested information.

The original letter sought two categories of information and documents: (1) any referrals or declinations of prosecution by DOJ between January 1, 2009 to the present date under the MBTA or BGEPA concerning bird fatalities associated with wind and conventional energy companies; and (2) any policies, guidance, memoranda, legal analysis, emails or other documents concerning prosecutorial discretion to not enforce the MBTA or BGEPA concerning bird fatalities associated with wind and conventional energy companies. The May 30, 2013 deadline for response passed five months ago. Despite repeated requests for updates, Committee staff have not been told when a response will be sent and whether it will be complete.

Given the ongoing questions about the enforcement of the MBTA and the BGEPA, it is requested that a meeting with Jean E. Williams, the Deputy Assistant Attorney General who oversees the Environmental Crimes Section, also be scheduled with Committee majority oversight staff the week of November 11, 2013.

DOJ's lack of a timely response is unacceptable and frustrates Congress's ability to conduct oversight of this important matter. It is expected that DOJ will promptly and voluntarily comply in full with the original May 16, 2013 request and agree to schedule this meeting without any further delay.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings", written in a cursive style.

Doc Hastings  
Chairman



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 22, 2013

The Honorable Doc Hastings  
Chairman  
Committee on Natural Resources  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter of May 16, 2013, to the Assistant Attorney General of the Environment and Natural Resources Division regarding enforcement of the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA). We apologize for our delay in responding to your letter.

Your letter requests information and documents relating to the Department of Justice's (the "Department") enforcement of the MBTA and BGEPA.<sup>1</sup> The Department filed MBTA charges in North Dakota against seven oil and gas companies in 2011.<sup>2</sup> In addition to those

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<sup>1</sup> The case information we are providing is based on a review of cases identified in searches of the case management systems maintained by the Environment and Natural Resources Division and the Executive Office for United States Attorneys as MBTA or BGEPA cases against business entities that were referred, filed, or declined between January 1, 2009, and June 25, 2013 (the "relevant time period"). Please note that these case management systems are designed to manage case information for internal purposes. Because information is entered manually on a periodic basis, these systems may not have complete information and may contain occasional data entry errors or other flaws. We reviewed all cases that the systems identified to determine which involved conventional or wind energy companies.

<sup>2</sup> The U.S. Fish and Wildlife Service ("FWS") notified all the companies involved in those cases that their facilities were killing migratory birds in violation of the MBTA, as it does before referring any such matter to the Department. The Department prosecuted only those companies that failed to adopt available remedial measures to fix known problems and continued to violate the law. Charges in those cases were ultimately dismissed based on the district court's decision in *United States v. Brigham Oil and Gas*, 840 F. Supp.2d 1202 (D.N.D. 2012). Other courts, however, have upheld convictions under the MBTA for take under similar circumstances, that is, take incidental to industrial or agricultural activities, in many jurisdictions. See, e.g., *United States v. Apollo Energies, Inc.*, 611 F.3d 679 (10th Cir. 2010); *United States v. Moon Lake Electric Ass'n*, 45 F. Supp. 2d 1070 (D. Colo. 1999); *United States v. Van Fossan*, 899 F.2d 636 (7th Cir. 1990); *United States v. FMC Corp.*, 572 F.2d 902 (2d Cir. 1978); *United States v. Corbin Farm Servs.*, 444 F. Supp. 510 (E.D. Cal.), *aff'd on other grounds*, 578 F.2d 259 (9th Cir. 1978).



cases, the Department has completed prosecutions against six oil and gas companies and two electrical utilities in the relevant time period. We are currently evaluating referrals that we have received from the Fish and Wildlife Service (FWS) against wind energy companies for violations of the MBTA and BGEPA and are pursuing further investigation and prosecution in the appropriate matters. Over the relevant time period, the Department has declined to pursue MBTA charges against several oil and gas companies and electrical utilities; the Department also declined to pursue BGEPA charges that had been referred against one of those companies. The Department has not filed any charges under BGEPA against energy facilities in the relevant time period. Additionally, today in the District of Wyoming, Duke Energy Renewables, Inc., pleaded guilty to violations of the MBTA and was sentenced pursuant to an agreement stemming from its unauthorized takings of protected birds, including golden eagles, at two wind power projects.

The Department has no policies, directives, or other guidance that distinguishes between conventional energy facilities and wind energy facilities or otherwise addresses the use of enforcement discretion with respect to MBTA or BGEPA charges associated with wind or conventional energy facilities. The Department believes that fair and consistent application of federal enforcement authority is fundamental to equal justice under the law. Please be assured that the Department neither targets energy businesses for enforcement nor excuses them from enforcement because of the type of energy they produce. The Department and the FWS fully recognize that wind energy operations, like conventional energy operations, pose significant risks for migratory birds.

In fulfilling our responsibilities under the MBTA and BGEPA, we address each case based on the particular facts presented. When a case against a corporate entity is referred to the Department, prosecutors are guided by the Principles of Federal Prosecution of Business Organizations in deciding whether to bring charges and what charges to bring. U.S. Attorneys' Manual 9-28.000. Under these principles, prosecutors may consider, among other things, the corporation's history of similar conduct and its adoption of meaningful remedial measures in order to ensure that violations of the law do not recur. *Id.* at 9-28.600, 9-28.900. Consistent with these principles, prosecution for MBTA violations typically is reserved for cases in which companies are aware that their conduct will take migratory birds but nonetheless fail to implement reasonable and effective measures known to avoid, minimize, or mitigate the harms proximately caused by their activities. Failure to prosecute companies that deliberately flout the law would undermine the deterrent effects of the law and could lead others to view compliance with the law as optional.

The decision to decline or pursue criminal charges in any particular referred investigation is guided by the quantum of admissible evidence and by the Principles of Federal Prosecution of Business Organizations, as discussed above. Based on these considerations, the Department may decline criminal prosecution in favor of civil or administrative remedies, as appropriate. We follow the facts wherever they lead and decide whether enforcement action is appropriate based upon those facts, the law, and the Principles of Federal Prosecution.

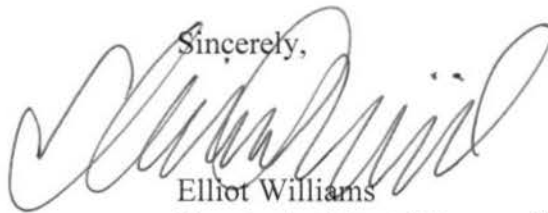
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We can advise you that our search did not identify any publicly filed, closed cases in which we received written MBTA or BGEPA referrals against conventional or wind energy facilities in the relevant time period. We do wish to note that we receive referrals through various means and not all of these are captured in our case management systems. For example, FWS personnel sometimes communicate information about potential cases informally to our prosecutors either through phone calls or emails. As to pending matters or matters closed without publicly filed law enforcement action, it is the Department's policy generally not to provide referrals or other non-public documents, in order to protect the integrity of our law enforcement efforts and the due process and individual privacy interests of those involved.

We also have substantial confidentiality interests in documents relating to declination decisions because they reflect our internal deliberations regarding the merits of law enforcement matters. We believe that disclosure of such materials could have a significant chilling effect on the robust and candid exchanges of views among prosecutors about the strengths and weaknesses of potential cases, which are important to sound decision-making. We also are concerned that the prospect of disclosure and the potential perception of political pressure might influence prosecutors in a manner that would be inconsistent with their independent analysis of the facts and the law, which is essential to the integrity of the criminal justice process.

We hope the information provided in this response is helpful. We have been in touch with your office to set up a briefing to further discuss MBTA and BGEPA enforcement and look forward to discussing these issues at that time.

Sincerely,

A handwritten signature in black ink, appearing to read "Elliot Williams", written in a cursive style.

Elliot Williams

Deputy Assistant Attorney General

cc: The Honorable Peter DeFazio  
Ranking Member



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240



DEC 02 2013

The Honorable Doc Hastings, Chairman  
Natural Resources Committee  
U.S. House of Representatives  
Washington, DC 20515

RECEIVED  
COMMITTEE ON RESOURCES  
2013 DEC -2 PM 4:25

Dear Chairman Hastings:

This letter transmits documents regarding the Administration's enforcement of the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. This letter accompanies the Fish and Wildlife Services' second document production on this topic.

Enclosed is a CD titled "20130516\_001" that contains 1,039 pages of material. These documents are being produced to the Committee pursuant to a staff request to provide documents responsive to related Freedom of Information Act (FOIA) requests. Accordingly, we are providing these documents in the form that they are being released to the FOIA requester. Please note that these FOIA documents have been redacted to protect personally identifiable information and, in some cases, deliberative information.

We will continue to work with the Committee to provide information responsive to your request. If you have any questions or concerns about this matter, please contact me at (202) 208-6541. Thank you for your interest in fish and wildlife conservation.

Sincerely,

Betsy Hildebrandt  
Assistant Director  
for External Affairs

Enclosure

cc: The Honorable Peter DeFazio



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240



COMMITTEE ON NATURAL RESOURCES  
2013 DEC 13 PM 2:25

DEC 13 2013

The Honorable Doc Hastings, Chairman  
Natural Resources Committee  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Hastings:

This letter transmits documents regarding the Administration's enforcement of the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. This letter accompanies the Fish and Wildlife Services' third document production on this topic.

Enclosed is a CD titled "20130516\_002" that contains the Chief's Directive on the enforcement of the Migratory Bird Treaty Act as it relates to Industry and Agriculture. This document is being produced to the House Natural Resources Committee in anticipation of a meeting next week between Office of Law Enforcement Chief William Woody and Committee staff, in which Chief Woody may have reason to refer to the attached document.

We will continue to work with the Committee to provide information responsive to your request. If you have any questions or concerns about this matter, please do not hesitate to contact me at (202) 208-4545. Thank you for your interest in fish and wildlife conservation.

Sincerely,

Betsy Hildebrandt  
Assistant Director  
for External Affairs

Enclosure

cc: The Honorable Peter DeFazio



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240



DEC 23 2013

The Honorable Doc Hastings, Chairman  
Natural Resources Committee  
House of Representatives  
Washington, D.C. 20515

RECEIVED  
COMMITTEE ON RESOURCES  
2014 JAN 10 PM 1:37

Dear Chairman Hastings:

Thank you for your letter of November 4, 2013, requesting information and documents regarding enforcement of the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA).

The Service and the Department of the Interior are working expeditiously to provide you with the information requested in the two letters. As you noted, we provided our initial document production on September 18, 2013. On December 2, 2013, we followed with a second document production to your office.

We will continue to work with the Committee to provide information responsive to your request. If you have any questions or concerns about this matter, please contact me personally or have your staff contact Ms. Betsy Hildebrandt, the Service's Assistant Director for External Affairs, at (202) 208-6541.

Sincerely,

DIRECTOR

cc: The Honorable Peter DeFazio

DOC HASTINGS, WA  
CHAIRMAN  
DON YOUNG, AK  
LOUIE GOHMERT, TX  
ROB BISHOP, UT  
DOUG LAMBORN, CO  
ROBERT J. WITTMAN, VA  
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JASON SMITH, MO  
VANCE McALLISTER, LA  
BRADLEY BYRNE, AL

TODD YOUNG  
CHIEF OF STAFF

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

February 14, 2014

PETER A. DeFAZIO, OR  
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KATHERINE CLARK, MA

PENNY DODGE  
DEMOCRATIC STAFF DIRECTOR

The Honorable Daniel M. Ashe  
Director  
U.S. Fish & Wildlife Service  
1849 C St., NW  
Washington, DC 20240

Dear Director Ashe:

The Committee on Natural Resources (“Committee”) sent a letter to the U.S. Fish & Wildlife Service (“FWS”) on May 16, 2013 requesting information concerning enforcement and regulatory actions pertaining to the Migratory Bird Treaty Act (“MBTA”) and the Bald and Golden Eagle Protection Act (“BGEPA”).

The initial letter sought five categories of information and documents, including investigations and prosecution referrals to the U.S. Department of Justice (“DOJ”) under the MBTA and BGEPA, the development of Wind Energy Guidelines and Eagle Conservation Plan Guidance, the FWS’ use of enforcement discretion under the MBTA and BGEPA, the development of an avian mortality database, and the development of the eagle take regulations.

Although a May 30, 2013, deadline was established in the initial request, the first response – which consisted of only 66 pages of documents related to the development of an avian mortality database – was not received until September 18, 2013.

A follow-up letter was sent on November 4, 2013 stating that the “lack of a timely response” was “unacceptable” and that it was expected FWS would “promptly and voluntarily comply in full . . . without any further delay.” The letter also requested a meeting with the Chief of the FWS Office of Law Enforcement, William Woody. The meeting had originally been scheduled for November 22, 2013, but the Department of the Interior cancelled the meeting the night before. On November 22<sup>nd</sup>, DOJ announced that Duke Energy Renewables, Inc., had pled guilty and was sentenced in U.S. District Court for the District of Wyoming for the unauthorized taking of protected birds at two wind power projects.

The meeting with Chief Woody was rescheduled for December 17, 2013. Prior to the meeting, the FWS provided a copy of a two-page memorandum dated November 10, 2012 describing the Office of Law Enforcement's ("OLE") policy for enforcing the MBTA and BGEPA as it relates to industry and agriculture. It is unacceptable that it took the FWS almost six months to provide a copy of this memorandum. FWS separately provided copies of 1,048 pages, many of which were redacted, that were prepared in response to a Freedom of Information Act ("FOIA") request. The Committee understands these redacted FOIA documents were provided as a courtesy and not in lieu of a response to the Committee's oversight request. To date, FWS has not provided any additional documents specifically in response to the Committee's oversight request and has not provided unredacted copies of the FOIA documents.

At the December 17<sup>th</sup> meeting with Committee Majority staff, Chief Woody agreed to follow up on a request to provide a breakdown of OLE's caseload for MBTA and BGEPA by industry, search for and review emails he sent or received that involved revisions to the eagle guidance and take regulations, and whether the number of bird deaths reported by the wind industry were being aggregated in any fashion. Over a month has passed since this meeting occurred, and no further documents have been provided to the Committee.

As discussed at the December 17<sup>th</sup> meeting, the following items remain outstanding from the Committee's May 16<sup>th</sup> request: 1) reports of investigations by FWS and referrals to the DOJ concerning violations of the MBTA and BGEPA by the energy industry; 2) all communications between the FWS and wind energy developers concerning reports of bird fatalities, compliance in general with the MBTA and BGEPA, and the development of eagle conservation plans; 3) all documents and communications concerning enforcement discretion under the MBTA and BGEPA; 4) communications with the wind energy industry concerning the development of an avian mortality database; 5) any documents and communications concerning meetings with the wind energy industry about the development of the eagle take regulations; as well as unredacted copies of the FOIA documents provided on December 2, 2013.

Patience on this matter has been nearly exhausted. This letter allows the FWS a final opportunity to comply voluntarily with the Committee's May 16<sup>th</sup> oversight letter by providing the items detailed above. Should the information not be provided by February 25, 2014, its production may be compelled.

Sincerely,



Doc Hastings  
Chairman

DOC HASTINGS, WA  
CHAIRMAN  
DON YOUNG, AK  
LOUIE GOHMERT, TX  
ROB BISHOP, UT  
DOUG LAMBORN, CO  
ROBERT J. WITTMAN, VA  
PAUL C. BROUN, GA  
JOHN FLEMING, LA  
TOM McCLINTOCK, CA  
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CYNTHIA LUMMIS, WY  
DAN BENISHEK, MI  
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PAUL A. GOSAR, AZ  
RAUL R. LABRADOR, ID  
STEVE SOUTHERLAND II, FL  
BILL FLORES, TX  
JON RUNYAN, NJ  
MARKWAYNE MULLIN, OK  
STEVE DAINES, MT  
KEVIN CRAMER, ND  
DOUG LAMALFA, CA  
JASON SMITH, MO  
VANCE McALLISTER, LA  
BRADLEY BYRNE, AL

TODD YOUNG  
CHIEF OF STAFF

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

February 14, 2014

PETER A. DeFAZIO, OR  
RANKING DEMOCRATIC MEMBER  
ENI F.H. FALOMAVAEGA, AS  
FRANK PALLONE, JR., NJ  
GRACE F. NAPOLITANO, CA  
RUSH HOLT, NJ  
RAUL M. GRIJALVA, AZ  
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ALAN LOWENTHAL, CA  
JOE GARCIA, FL  
MATTHEW CARTWRIGHT, PA  
KATHERINE CLARK, MA

PENNY DODGE  
DEMOCRATIC STAFF DIRECTOR

Robert G. Dreher  
Acting Assistant Attorney General  
U.S. Department of Justice  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044

Dear Acting Assistant Attorney General Dreher:

The Committee on Natural Resources (“Committee”) sent a letter to the Department of Justice (“DOJ”) on May 16, 2013 requesting information concerning DOJ’s enforcement of the Migratory Bird Treaty Act (“MBTA”) and the Bald and Golden Eagle Protection Act (“BGEPA”). That letter requested documents and communications related to referrals or declinations of prosecution for violations of the MBTA or BGEPA, and DOJ’s discretion to enforce the MBTA or BGEPA. The letter established a May 30<sup>th</sup> deadline for a response.

After receiving no formal response and none of the requested information for almost six months, a follow-up letter was sent on November 4, 2013. The follow-up letter stated that the “lack of a timely response” was “unacceptable” and that it was expected DOJ would “promptly and voluntarily comply in full . . . without any further delay.” The letter also requested a meeting be scheduled with Deputy Assistant Attorney General Jean E. Williams to discuss enforcement under the MBTA and BGEPA.

On November 22, 2013, DOJ announced that Duke Energy Renewables, Inc., had pled guilty and was sentenced in U.S. District Court for the District of Wyoming for the unauthorized taking of protected birds at two wind power projects. Also on November 22<sup>nd</sup>, DOJ provided a narrative response to the Committee’s May 16<sup>th</sup> request, explaining that it does not have enforcement policies specific to wind or conventional energy facilities and that enforcement decisions are based on the specific facts of each case. However, DOJ’s response did not include any of the requested documents, citing a confidentiality interest in documents reflecting decisions not to prosecute.



The meeting between Ms. Williams and Committee Majority oversight staff occurred December 20, 2013, during which DOJ staff expressed for the first time confusion about the scope of the Committee's May 16<sup>th</sup> request. Specifically, DOJ staff admitted they had not even searched for emails and other communications with the U.S. Fish & Wildlife Service ("FWS") or internal documents commenting on draft FWS policies, guidance documents, and regulations related to enforcement under the MBTA and the BGEPA. Committee staff also expressed concern about DOJ's unwillingness to provide information about closed cases or even aggregate information about the number of investigations initiated or closed, given that such information would not raise the same confidentiality interests as information about ongoing investigations. Over a month has passed since that meeting, and the Committee has not been provided any more information.

As discussed at the December 20<sup>th</sup> meeting, the following items remain outstanding from the Committee's May 16<sup>th</sup> request: 1) information about referrals to and declinations of prosecution by DOJ for violations of the MBTA and BGEPA by energy facilities since January 1, 2009; and 2) all policies, guidance, memoranda, legal analysis, emails, or other documents concerning enforcement discretion expressed by the DOJ for MBTA and BGEPA violations by energy facilities, including emails discussing or commenting on draft FWS policies, guidance documents, and regulations.

Patience on this matter has been nearly exhausted. This letter allows DOJ a final opportunity to comply voluntarily with the Committee's May 16<sup>th</sup> oversight letter by providing the items detailed above. Should the information not be provided by February 25, 2014, its production may be compelled.

Sincerely,



Doc Hastings  
Chairman



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240



**FEB 26 2014**

The Honorable Doc Hastings  
Chairman, Committee on Natural Resources  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter to the U.S. Fish and Wildlife Service (Service) dated February 14, 2014, requesting additional information concerning enforcement and regulatory actions pertaining to the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA).

The Department of the Interior (Department) and the Service are continuing to cooperate with the Committee to provide information that is responsive to your concerns about this issue. Since receiving your original letter on May 16, 2013, the Department has provided 1,105 pages of documents to the Committee on September 18, 2013, December 2, 2013, and December 13, 2013, including the Chief's Directive on "Enforcement of the Migratory Bird Treaty Act as it Relates to Industry and Agriculture." Additionally, on December 17, 2013, the Committee met with Mr. William Woody, Chief of the Fish and Wildlife Service's Office of Law Enforcement (OLE), who was made available to present information and answer questions related to enforcement of the MBTA and the BGEPA.

As explained in the Chief's Directive, the Service has long employed a policy of encouraging industry and agriculture to utilize best practices aimed at minimizing and avoiding the unpermitted take of protected birds. To promote compliance with the law and protect migratory birds from "take," the OLE will look for opportunities to foster relationships with, and provide guidance to, individuals, companies, and industries during the development and maintenance of their operational plans. We recognize that the take of some migratory birds may occur even when the individuals and companies consult with the Service, comply with best management practices, and follow the Service's recommendations. Our goal is to focus OLE investigative efforts on bird take that is foreseeable, avoidable, and proximately caused by industry or agriculture.

The OLE pursues potential violations of the MBTA and the BGEPA regardless of the type of industry at issue. We do not believe there is differential or preferential application of the statutes to the wind energy industry compared to traditional energy development. However, the wind energy industry is relatively young, and the Service is currently working with the wind energy

industry to develop guidelines and best management practices on siting and operations. This effort will include education and communication components to ensure these guidelines are broadly implemented across the wind energy industry so that companies are aware of the potential law enforcement consequences of not following these guidelines and taking eagles and migratory birds.

Additionally, the first prosecution under a law sets a precedent for future cases and is a cautionary example for other potential violators of the law. In order to strike a balance between energy production, conservation of migratory birds, and the effective use of limited law enforcement resources, it is important to work with industry to develop and communicate guidelines broadly and promote best management practices that minimize the accidental take of migratory birds and also avoid the necessity for law enforcement action. The Service took a similar approach several decades ago with other industries, including the oil and gas industries, and anticipates a similar future for the wind energy industry in which most entities are following the guidelines and those that will not are subject to increased likelihood of prosecution if and when take occurs.

Currently, there are 18 wind farm facilities that are under investigation by the Service. Seven of those cases have been referred to the Department of Justice for potential prosecution for violating either the Endangered Species Act or the MBTA. In one recent example, the Service pursued an investigation of Duke Energy's "Campbell Hill" and "Top of the World" wind facilities in Wyoming. Despite prior warnings from the Service, Duke Energy failed to make all reasonable efforts to build its Top of the World wind facilities in a way that would avoid the risk of avian deaths by collision with turbine blades. On November 22, 2013, Duke Energy pleaded guilty to violating the MBTA in connection with the deaths of protected birds, including golden eagles, at the two Wyoming projects.

We will continue to work with the Committee to provide information responsive to your request. If you have any questions or concerns about this matter, please do not hesitate to contact me personally or have your staff contact Ms. Betsy Hildebrandt, the Service's Assistant Director for External Affairs, at (202) 208-6541.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. M. A.", is written over a light blue horizontal line.

DIRECTOR

cc: The Honorable Peter DeFazio



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240



MAR 10 2014

The Honorable Doc Hastings  
Chairman, Committee on Natural Resources  
House of Representatives  
Washington, DC 20515

RECEIVED  
COMMITTEE ON RESOURCES  
2014 MAR 10 PM 4:15

Dear Mr. Chairman:

This letter transmits documents regarding the Administration's enforcement of the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. This letter accompanies the Fish and Wildlife Service's (Service) fifth response to this request.

Enclosed is a CD labeled "20130516\_003" that contains 49 documents and 1,090 pages. This production includes avian mortality reports voluntarily provided by industry to the Service that in some cases may include confidential business information. Although these documents may contain confidential business information, they are being provided as an accommodation to the Committee. We request that the Committee exercise discretion in handling these documents and keep confidential any mortality reports. Since this information is voluntarily provided by industry, public release of these documents could undermine the Service's ability to collect this vital information in the future.

Since the Committee initiated this inquiry, the Service has worked diligently to respond to the Committee's various document and information requests, including providing a staff briefing by Mr. William Woody, Chief of the Service's Office of Law Enforcement, on December 17, 2013; a written narrative on February 26, 2014; and responsive documents on September 18, 2013, December 2, 2013, and December 13, 2013.

We will continue to work with the Committee to provide information responsive to your request. If you have any questions or concerns about this matter, please do not hesitate to contact me at (202) 208-4545. Thank you for your interest in fish and wildlife conservation.

Sincerely,

Betsy Hildebrandt  
Assistant Director  
for External Affairs

Enclosure

cc: The Honorable Peter DeFazio