Wind Farms Get Pass on Eagle Deaths

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CONVERSE COUNTY, Wyo. (AP) — It happens about once a month here, on the barren foothills of one of America's green-energy boomtowns: A soaring golden eagle slams into a wind farm's spinning turbine and falls, mangled and lifeless, to the ground.

Killing these iconic birds is not just an irreplaceable loss for a vulnerable species. It's also a federal crime, a charge that the Obama administration has used to prosecute oil companies when birds drown in their waste pits, and power companies when birds are electrocuted by their power lines.

But the administration has never fined or prosecuted a wind-energy company, even those that flout the law repeatedly. Instead, the government is shielding the industry from liability and helping keep the scope of the deaths secret.

Wind power, a pollution-free energy intended to ease global warming, is a cornerstone of President Barack Obama's energy plan. His administration has championed a $1 billion-a-year tax break to the industry that has nearly doubled the amount of wind power in his first term.

But like the oil industry under President George W. Bush, lobbyists and executives have used their favored status to help steer U.S. energy policy.

The result is a green industry that's allowed to do not-so-green things. It kills protected species with impunity and conceals the environmental consequences of sprawling wind farms.

More than 573,000 birds are killed by the country's wind farms each year, including 83,000 hunting birds such as hawks, falcons and eagles, according to an estimate published in March in the peer-reviewed Wildlife Society Bulletin.

Getting precise figures is impossible because many companies aren't required to disclose how many birds they kill. And when they do, experts say, the data can be unreliable.

When companies voluntarily report deaths, the Obama administration in many cases refuses to make the information public, saying it belongs to the energy companies or that revealing it would expose trade secrets or implicate ongoing enforcement investigations.

Nearly all the birds being killed are protected under federal environmental laws, which prosecutors have used to generate tens of millions of dollars in fines and settlements from businesses, including oil and gas companies, over the past five

years.

"We are all responsible for protecting our wildlife, even the largest of corporations," Colorado U.S. Attorney David M. Gaouette said in 2009 when announcing Exxon Mobil had pleaded guilty and would pay $600,000 for killing 85 birds in five states, including Wyoming.

The large death toll at wind farms shows how the renewable energy rush comes with its own environmental consequences, trade-offs the Obama administration is willing to make in the name of cleaner energy.

"It is the rationale that we have to get off of carbon, we have to get off of fossil fuels, that allows them to justify this," said Tom Dougherty, a long-time environmentalist who worked for nearly 20 years for the National Wildlife Federation in the West, until his retirement in 2008. "But at what cost? In this case, the cost is too high."

The Obama administration has refused to accept that cost when the fossil-fuel industry is to blame. The BP oil company was fined $100 million for killing and harming migratory birds during the 2010 Gulf oil spill. And PacifiCorp, which operates coal plants in Wyoming, paid more than $10.5 million in 2009 for electrocuting 232 eagles along power lines and at its substations.

But PacifiCorp also operates wind farms in the state, where at least 20 eagles have been found dead in recent years, according to corporate surveys submitted to the federal government and obtained by The Associated Press. They've neither been fined nor prosecuted. A spokesman for PacifiCorp, which is a subsidiary of MidAmerican Energy Holdings Co. of Des Moines, Iowa, said that's because its turbines may not be to blame.

"What it boils down to is this: If you electrocute an eagle, that is bad, but if you chop it to pieces, that is OK," said Tim Eicher, a former U.S. Fish and Wildlife Service enforcement agent based in Cody, who helped prosecute the PacifiCorp power line case.

By not enforcing the law, the administration provides little incentive for companies to build wind farms where there are fewer birds. And while companies already operating turbines are supposed to avoid killing birds, in reality there's little they can do once the windmills are spinning.

Wind farms are clusters of turbines as tall as 30-story buildings, with spinning rotors the size of jetliners. Though the blades appear to move slowly, they can reach speeds up to 170 mph at the tips, creating tornado-like vortexes.

Flying eagles behave like drivers texting on their cellphones; they don't look up. As they scan for food, they don't notice the industrial turbine blades until it's too late.

The rehabilitation coordinator for the Rocky Mountain Raptor Program, Michael Tincher, said he euthanized two golden eagles found starving and near death near

wind farms. Both had injuries he'd never seen before: One of their wings appeared to be twisted off.

"There is nothing in the evolution of eagles that would come near to describing a wind turbine. There has never been an opportunity to adapt to that sort of threat," said Grainger Hunt, an eagle expert who researches the U.S. wind-power industry's deadliest location, a northern California area known as Altamont Pass. Wind farms built there decades ago kill more than 60 per year.

Eagle deaths have forced the Obama administration into a difficult choice between its unbridled support for wind energy and enforcing environmental laws that could slow the industry's growth.

Former Interior Secretary Ken Salazar, in an interview with the AP before his departure, denied any preferential treatment for wind. Interior Department officials said that criminal prosecution, regardless of the industry, is always a "last resort."

"There's still additional work to be done with eagles and other avian species, but we are working on it very hard," Salazar said. "We will get to the right balance."

Meanwhile, the Obama administration has proposed a rule that would give wind-energy companies potentially decades of shelter from prosecution for killing eagles. The regulation is currently under review at the White House.

The proposal, made at the urging of the wind-energy industry, would allow companies to apply for 30-year permits to kill a set number of bald or golden eagles. Previously, companies were only eligible for five-year permits.

In exchange for the longer timetable, companies agree that if they kill more eagles than allowed, the government could require them to make changes. But the administration recently said it would cap how much a company could be forced to spend on finding ways to reduce the number of eagles its facility is killing.

The Obama administration said the longer permit was needed to "facilitate responsible development of renewable energy" while "continuing to protect eagles."

That's because without a long-term authorization to kill eagles, investors are less likely to finance an industry that's violating the law.

Typically, the government would be forced to study the environmental effects of such a regulation before implementing it. In this case, though, the Obama administration avoided a full review, saying the policy was nothing more than an "administrative change."

"It's basically guaranteeing a black box for 30 years, and they're saying 'trust us for oversight.' This is not the path forward," said Katie Umekubo, a renewable energy attorney with the Natural Resources Defense Council and a former lawyer for the Fish and Wildlife Service. In private meetings with industry and government leaders in recent months, environmental groups have argued that the 30-year permit

needed an in-depth environmental review.

The tactics have created an unexpected rift between the administration and major environmental groups favoring green energy that, until the eagle rule, had often been on the same side as the wind industry.

Those conservation groups that have been critical of the administration's stance from the start, such as the American Bird Conservancy, have often been cut out of the behind-the-scenes discussions and struggled to obtain information on bird deaths at wind farms.

"There are no seats at the exclusive decision-making table for groups that want the wind industry to be held accountable for the birds it kills," said Kelly Fuller, who works on wind issues for the group.

The eagle rule is not the first time the administration has made concessions for the wind-energy industry.

Last year, over objections from some of its own wildlife investigators and biologists, the Interior Department updated its guidelines and provided more cover for wind companies that violate the law.

The administration and some environmentalists say that was the only way to exact some oversight over an industry that operates almost exclusively on private land and generates no pollution, and therefore is exposed to little environmental regulation.

Under both the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act, the death of a single bird without a permit is illegal.

But under the Obama administration's new guidelines, wind-energy companies — and only wind-energy companies — are held to a different standard. Their facilities don't face additional scrutiny until they have a "significant adverse impact" on wildlife or habitat. But under both bird protection laws, any impact has to be addressed.

The rare exception for one industry substantially weakened the government's ability to enforce the law and ignited controversy inside the Interior Department.

"U.S. Fish and Wildlife Service does not do this for the electric utility industry or other industries," Kevin Kritz, a government wildlife biologist in the Rocky Mountain region wrote in government records in September 2011. "Other industries will want to be judged on a similar standard."

Experts working for the agency in California and Nevada wrote in government records in June 2011 that the new federal guidelines should be considered as though they were put together by corporations, since they "accommodate the renewable energy industry's proposals, without due accountability."

The Obama administration, however, repeatedly overruled its experts at the Fish and Wildlife Service. In the end, the wind-energy industry, which was part of the committee that drafted and edited the guidelines, got almost everything it wanted.

"Clearly, there was a bias to wind energy in their favor because they are a renewable source of energy, and justifiably so," said Rob Manes, who runs the Kansas office for The Nature Conservancy and who served on the committee. "We need renewable energy in this country."

The government also declared that senior officials in Washington, many of whom are political appointees, must approve any wind-farm prosecution. Normally, law-enforcement agents in the field have the authority to file charges with federal attorneys.

While all big cases are typically cleared through headquarters, such a blanket policy has never been applied to an entire industry, former officials said.

"It's over," Eicher said. "You'll never see a prosecution now."

Not so, says the Fish and Wildlife Service. It said it is investigating 18 bird-death cases involving wind-power facilities, and seven have been referred to the Justice Department. A spokesman for the Justice Department declined to discuss the status of those cases.

Dan Ashe, the Fish and Wildlife Service's director, in an interview Monday with The Associated Press said his agency always made it clear to wind companies that if they kill birds they would still be liable.

"We are not allowing them to do it. They do it," he said of the bird deaths. "And we will successfully prosecute wind companies if they are in significant noncompliance."

But officials acknowledge that their priority is cooperating with companies before wind farms are built to encourage them to be put where they won't harm birds. Once they are built, there is little companies can do except shut down turbines or remove them — and that means reducing the amount of electricity they generate and violating deals struck with companies purchasing their electricity.

By contrast, there are easy fixes for oil companies and companies operating power lines to stop killing birds. The government often requests companies take such steps before it decides to prosecute.

"We just can't be bringing a criminal case against a company that is up and running if there is not a solution," said Jill Birchell, head of the Fish and Wildlife Service law enforcement office in California and Nevada. "We can fine them, but that doesn't help eagles."

In the meantime, birds continue to die. The golden eagle population in the West, prior to the wind energy boom, was declining so much that the government's

conservation goal in 2009 was not to allow the eagle population to decrease by a single bird.

The reason boils down to biology. Eagles take five years to reach the age when they can reproduce, and often they only produce one chick a year.

In its defense, the wind-energy industry points out that more eagles are killed each year by cars, electrocutions and poisoning than by turbines.

Ashe noted that the government doesn't require other industrial facilities to disclose the numbers of birds they kill.

Documents and emails obtained by the AP offer glimpses of the problem: 14 deaths at seven facilities in California, five each in New Mexico and Oregon, one in Washington state and another in Nevada, where an eagle was found with a hole in its neck, exposing the bone.

Unlike the estimates, these are hard numbers, proof of deaths, the beginnings of a mosaic revealing the problem.

One of the deadliest places in the country for golden eagles is Wyoming, where federal officials said wind farms have killed more than four dozen golden eagles since 2009, predominantly in the southeastern part of the state. The officials spoke on condition of anonymity because they were not authorized to disclose the figures.

The Interior Department recently approved construction of the nation's largest wind farm in Wyoming, with what would be 1,000 turbines. The federal government predicts that project, which was analyzed because it was on federal land, would kill 46 to 64 eagles each year.

At a different facility, Duke Energy's Top of the World wind farm, a 17,000-acre site with 110 turbines located about 35 miles east of Casper, 10 eagles have been killed in the first two years of operation. It is the deadliest of Duke's 15 wind power plants for eagles.

The company's environmental director for renewable energy, Tim Hayes, said Duke is doing all it can, not only because it wants to fix the problem but because it could reduce the company's liability. Two of the company's wind farms in Wyoming — Top of the World and Campbell Hill — are under investigation by the federal government for the deaths of golden eagles and other birds, according to a report the company filed with the Securities and Exchange Commission last week. The report was filed after the AP visited a Duke facility in Wyoming and asked senior executives about the deaths.

Duke encourages workers to drive slower so as not to scare eagles from their roosts. They remove dead animals that eagles eat. And they've removed rock piles where the bird's prey lives. They also keep internal data on every dead bird in order to determine whether these efforts are working. The company is also testing radar technology to detect eagles and is considering blaring loud noises to prevent the

birds from flying into danger.

The only other option is shutting off the turbines when eagles approach. And even that method hasn't been scientifically proven to work.

At Top of the World, Duke shut down 13 turbines for a week in March, often the deadliest time for eagles. The experiment, the company says, paid off. Not a single eagle was killed that month.

Hayes says the company has repeatedly sought a permit from the federal government to kill eagles legally, but was told it was killing too many to qualify.

When an eagle is killed, Duke employees are also prohibited by law from removing the carcass.

Each death is a tiny crime scene. So workers walk out underneath the spinning rotors and cover the dead bird with a tarp. It lies there, protected from scavengers but decaying underneath its shroud, until someone from the government comes to get it.

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