

Allegheny Highlands Alliance is deeply concerned with documented attempts to circumvent existing Federal and state laws through governmental mandates, failures to enforce those laws that protect...and blatant disregard of those laws by energy production. This includes mountaintop removal mining, hydraulic fracturing and industrial wind energy facilities.

As a result of our research AHA has concluded that compliance with major Federal and State laws established for the protection of our "Commons" are circumvented, blatantly ignored and consciously broken by this industry and the federal and state agencies charged with enforcement thereof are ignoring their responsibilities. The energy production industries, project developers and operators are relying on lack of staff and funding at federal and state agencies to provide adequate monitoring of their projects.

In 1973 Congress passed the Endangered Species Act to "provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, and to provide a program for the conservation of these species." The United States Department of the Interior, Fish and Wildlife Service is responsible for protection of terrestrial species, which form the majority of listed species. The Endangered Species Act prohibits both government agencies and private citizens from "taking" listed species, whether on public or private land. A "take" is any activity that kills or harms listed species or that destroys their habitat. In 1983 Congress adopted Section 10 of the Endangered Species Act as a way to promote "creative partnerships between the public and private sectors and among governmental agencies in the interest of species and habitat conservation." Section 10 authorizes states, local governments, and private landowners to apply for an Incidental Take Permit for otherwise lawful activities that may harm listed species or their habitats. To obtain a permit, an applicant must submit a Habitat Conservation Plan outlining what he or she will do to "minimize and mitigate" the impact of the permitted take on the listed species. The principle underlying the Section 10 exemption from the ESA is that some individuals of a species or portions of their habitat may be expendable over the short term, as long as enough protection is provided to ensure the long term recovery of the species.

Congress enacted the National Environmental Protection Act in December 1969 and it was signed into law on January 1, 1970. The National Environmental Protection Act was the first major environmental law enacted in the United States and is often called the "Magna Carta" of environmental laws. Most importantly, the National Environmental Protection Act established our national environmental policies. Because the impact of the proposed location of industrial wind energy projects in the forests is likely to be significant, the National Environmental Protection Act will require the preparation and evaluation of an environmental impact statement to assess the impact and allows for public involvement in the process. Three government agencies are charged with overseeing the National Environmental Protection Act, the Council for Environmental Quality, the Environmental Protection Agency and the United States Institute for Environmental Conflict Resolution.

In 1782 the Continental Congress adopted the bald eagle as a national symbol. In 1940, to prevent the species from becoming extinct, Congress passed the Bald Eagle Protection Act. The Act was extremely comprehensive, prohibiting the take, possession, sale, purchase, barter, or offer to sell, purchase, or barter, export or import of the bald eagle at any time or in any manner. In 1962, Congress amended the Bald Eagle Protection Act to cover golden eagles, a move that was partially an attempt to strengthen protection of bald eagles, since the latter were often killed by people mistaking them for golden eagles. The golden eagle, however, is accorded somewhat lighter protection under the Act than the bald eagle.

The Migratory Bird Treaty Act, originally passed in 1918, implements the United States' commitment to four bilateral treaties, or conventions, for the protection of a shared migratory bird resource. The MBTA provides that it is unlawful to pursue, hunt, take, capture, kill, possess, sell, purchase, barter, import, export, or transport any migratory bird, or any part, nest, or egg or any such bird, unless authorized under a permit issued by the Secretary of the Interior. Some regulatory exceptions apply. Take is defined in regulations as: "pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect." The Migratory Bird Treaty Act protects over 800 species of birds that occur in the United States.

Federal and state decision makers must also consider the provisions and requirements of the National Forest Management Act, the Federal Land Policy and Management Act and the National Historic Preservation Act to assess the impact of industrial wind energy projects.

Numerous government agencies have spent enormous amounts of time and money developing ways to protect, preserve, or rehabilitate watershed areas on a regional scale and must be taken into consideration by the Federal and state decision makers in any consideration to allow the siting of industrial wind energy projects in “The Commons”. Following is a list of projects to protect our environment.

One provision of the Watershed Protection and Flood Prevention Act, enacted in 1954 as Public Law 83-566 (<http://www.nrcs.usda.gov/programs/watershed/pl56631705.pdf>), was for conservation and proper utilization of land. This act encompasses over 1,500 active or completed watershed projects. In 1992, the Natural Water Resources Council of the U.S.D.A. published a National Watershed Manual (<http://www.nrcs.usda.gov/programs/watershed/NWSM.html>). The Flood Prevention Act of 1944 (Public Law 78-534; <http://www.nrcs.usda.gov/programs/watershed/pl534.html>) was also developed for the conservation and proper utilization of land, including the Potomac River Basin.

In 1997, the U.S. Environmental Protection Agency published the approximately 200-page “Volunteer Stream Monitoring: A Methods Manual” (<http://www.epa.gov/volunteer/stream/>), which emphasizes that watersheds are important because if natural land becomes impervious:

- “Less precipitation is evaporated back to the atmosphere. (Water is transported rapidly away via storm drains and is not allowed to stand in pools.)
- Less precipitation is transpired back to the atmosphere from plants. (Natural vegetation is replaced by buildings, pavement, etc.)
- Less precipitation percolates through the soil to become ground water. (This can result in a lower water table and can affect base flow.)
- More surface runoff is generated and transported to streams. (Stream flow becomes more intense during and immediately after storms.)”

The U.S. Forest Service, in its publication “Wildland Waters”, repeatedly emphasizes the importance of watershed protection of headwaters for sustaining water supply and water quality (http://www.fs.fed.us/wildlandwaters/newsletters/wildlandwaters_sp02.txt).

Section 305(b) of the Clean Water Act requires states to report to the U.S. Environmental Protection Agency on the designated uses of their waters, the extent of the impairment of those uses, and the causes and sources of impairment.

Deforestation of ridges where wind turbines are placed results in storm water drainage not only to streams but also to interconnecting underground conduits, especially caves in karst areas where the bedrock consists of limestone. Where storm water is drained away from the headwater areas on ridges, there is a decrease in groundwater recharge. Increased storm water flow to streams causes greater flooding potential. Both the decrease in groundwater recharge and the increase in storm water flow to caves changes the cave environment.

The Government Accountability Office (GAO) found, at the request of Congress, that “no one is considering the impacts of wind power on a regional or ‘ecosystem’ scale” and that state and local officials have no guidelines for considering the negative environmental impacts caused by huge wind turbines (The Inter-Mountain, Elkins, WV September 20, 2005; see also www.gao.gov/hew.items/d05906.pdf). The GAO learned that the wind turbine farm at Altamont Pass in California kills an estimated 1,700 to 4,700 birds a year, including between 880 and 1,300 federally protected raptors such as burrowing owls, red-tailed hawks, and golden eagles. The GAO has urged the U.S. Fish and Wildlife Service to work with state and local officials to provide expertise. A study by Bat Conservation International at the Mountaineer wind turbine farm in Tucker

County, West Virginia, found that an estimated 1364 – 1980 bat were killed by the wind turbines during 6 weeks (www.batcon.org/wind/BWEC2004Reportsummar.pdf).

Our State and Commonwealth Laws must also be strictly enforced, requiring all energy production industries to abide by the law to protect our natural resources.