July 1, 2011

Via Facsimile: (409) 766-6301 and U.S. First Class Mail
Mr. Jayson M. Hudson
Regulatory Branch, CESWG-PE-RE U.S. Army Corp of Engineers
P. O. Box 1229
Galveston, Texas 77553-1229

Re: Permit Application No. SWG-2011-00511, Baryonyx Corporation, Inc.

Dear Mr. Hudson:

This letter is being written on behalf of Houston Audubon Society (HAS), 440 Wilchester Blvd., Houston, Texas 77079, in opposition to the application by Baryonyx Corporation for a 500 turbine wind farm in the Gulf of Mexico state waters. The mission of HAS is promoting the conservation and appreciation of birds and wildlife habitat. HAS has over 3000 acres in sanctuaries to this end, and in accordance with the mission, HAS monitors issues and proposed projects that may impact birds or wildlife habitat. In this regard we are extremely concerned about the potential impacts from the above referenced project on birds and bird migration in the project area. HAS strongly urges that an Environmental Impact Statement (EIS) be prepared for this project in order to provide sufficient information for an informed permitting decision. Further we strongly urge that public meetings be held to allow the public to voice their concerns and/or comments regarding this project. It is clear that the public notice is woefully inadequate to provide information for either the public or the decision makers.

I. PUBLIC NOTICE INADEQUATE

According to the Corps of Engineers regulations, the public notice

"is the primary method of advising all interested parties of the proposed activity for which a permit is sought and of soliciting comments and information necessary to evaluate the probable impact on the public interest. The notice must, therefore, include sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comment...." 33 C.F.R. § 325.3(a)

A. Locations Left Undetermined

According to the public notice issued June 15, 2011, the project will be located in Gulf of Mexico state waters offshore in Nueces, Kleberg, Kenedy, Willacy and Cameron counties, and the applicant proposes to construct a 500 turbine wind farm in three areas referred to as the Mustang Lease, North Rio Grande Lease and Rio Grande Lease. However, an alternate lease site is also being evaluated for the Mustang lease. In other words, the public notice doesn't give all the actual locations of the proposed wind farm. According to the Corps' regulations, the location of the proposed activity should be included in the Public Notice. 33 C.F.R. § 325.3(a)(4).

B. Number of Turbines Left Undetermined

Additionally, the public notice states each lease site will be comprised of 120-200 wind turbine generators. The final locations will be determined in consultation with state and federal agencies. Again this does not give the public the number and location of the wind turbine generators within two leases and certainly not within the third.

C. Foundation Type Undetermined

Additionally, there is no information about the foundation type and design which will be constructed other than "typical" or "representative" drawings. These are to be determined based on soils profiles, depth and site conditions. The Public Notice requires "a description of the type of structures ... to be erected on fills or pile or float-supported platforms, and a description of the type, composition, and quantity of materials to be discharged or disposed of in the ocean". 33 C.F.R. § 325.3(a)(5).

The Public Notice also requires "a plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area." 33 C.F.R § 325.3(a)(6).

II. NATURAL RESOURCES

A. Studies

The applicant Baryonyx proposes to perform surveys and studies to describe and quantify natural resources after the permit is issued. These studies, including aquatic habitats and natural and cultural resources should be identified and analyzed before the permit is issued. Specifically these resources should be included in an EIS to provide information to the public and to decision makers. An EIS means a detailed written statement as required by §102.2(c) of the National Environmental Policy Act. 40 C.F.R. § 1508.11.

B. Mitigation

Assuming a permit is to be granted, these studies and the EIS may demonstrate the need for compensatory mitigation, which the applicant has dismissed as unnecessary.

C. Birds

Most shocking of all to HAS is that there is not a single mention of bird impacts in the entire public notice, except, barely discernible, but noted on Figure 14, are areas subject to Endangered Species Act review which hasn't taken place.

Ever since the high number of birds deaths at the Altamont wind farm in California, the issue of risk to wildlife (including birds and bats) from collisions with wind turbine blades has been of concern to federal regulators and environmental groups. The potential harm from unwise siting decisions are likely to last for the lifetime of the wind farm, and are rarely solved by anything less than shutdowns. The Texas Gulf coast is singularly unsuitable for wind development due to the biannual migrations of millions of birds across the coastline, the largely

undeveloped character of large areas of the coast, and the array of unique habitats and species that are found there. A further problem exists during the spring migration as the birds fly across the Gulf and reach the Texas coast. If the migration flocks encounter a front and strong headwinds as they reach the coast, instead of continuing further inland, the higher-flying flocks will simply "fall-out". This phenomena has been observed to happen, and could result in tens of thousands of birds, that normally would pass high above, flying into the wind farms, and colliding with the turbines. Thousands of individuals of one migratory species could be taken in a single "fall-out" event. (Petition for Rulemaking to FAA by CHA, December 3, 2008)

For centuries if not eons, millions of birds that nest throughout eastern North America have migrated along and across the Gulf of Mexico as they fly south for the winter in Mexico, Central and South America and back again. In a study commissioned by the Coastal Habitat Alliance (CHA) in another case, Dr. Sidney Gauthreaux, Jr., one of the foremost bird experts in the United States, identifies the following:

> In summary, the Lower Texas Coast is one of the most important migration corridors in all of North America. Bird migration takes place during the day and at night over land and offshore. During the day an assortment of large species uses thermals to migrate throughout this corridor while tremendous numbers of swallows move along the coast at lower altitudes, and in spring, trans-Gulf migrants move northward offshore. After dark, dense migrations from eastern and coastal Mexico move through the corridor. There is no other area of the U.S. where dense bird migration occurs with such regularity...

It is absolutely essential that this migration corridor be discussed in an EIS relating to this proposed project.

In a 2008 case, *American Bird Conservancy, Inc. and Forest Conservation Council, v. Federal Communications Committee*,[1] the Petitioners sought protection from the F.C.C. for migratory birds from collisions with communication towers in the Gulf Coast region. The petitioners formally requested the FCC to prepare an EIS under NEPA analyzing the effects of all past, present, and reasonably foreseeable tower registrations on migratory birds in the Gulf Coast region, initiate formal consultation with the U.S. Fish & Wildlife Service pursuant to the Endangered Species Act regarding the Gulf Coast towers impact on various bird species, and take steps in accordance with the Migratory Bird Act to reduce bird mortality at the Gulf Coast tower sites. The petitioners requested that a programmatic EIS be prepared, and the court held that the commission may commence such an analysis through the preparation of an Environmental Assessment (EA).

An Environmental Assessment

(a) Means a concise public document for which a federal agency is responsible that serves to:

(1). Briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or a finding of No Significant Impact.

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[1] *American Bird Conservancy, Inc. and Forest Conservation Council, v. Federal Communications Committee;* 516 F. 3d 1027 (D.C. Cir. 2008)

(2). Aid an agency's compliance with the Act when no EIS is necessary.

(3). Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by §102.2(e) of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

40 C.F.R. § 1508.9

III. CONCLUSION

"According to the Public Notice, the decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain value, land use navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people." Public Notice p.4

All of this information should be included in an Environmental Impact Statement for this proposed project. Without such information, the public is provided a "hollow opportunity" to provide meaningful comments on this project, and in this case a programmatic EIS as requested in the *American Bird Conservancy* case would be the appropriate environmental document to provide the public with necessary information.

Included with the letter, but mailed separately, are several studies related to potential impacts to birds from wind turbines. A list of the studies is attached to this letter. We ask that these studies be included in the record for the Baryonyx application.

Sincerely,

HOUSTON AUDUBON SOCIETY

by Mary W. Carter
Mary W. Carter, President

by Gina Donovan
Gina Donovan, Executive Director

Attachment

STUDIES

No.	Study:
1.	"Assessing Impacts of Wind-Energy Development on Nocturnally Active Birds and Bats: A Guidance Document"
2.	"Fall 2006 Raptor Migration Study Near Corpus Christi, Texas", HawkWatch International, Inc., Salt Lake City, Utah, February 2007
3.	"Synthesis and Comparison of Baseline Avian and Bat Use, Raptor Nesting and Mortality Information from Proposed and Existing Wind Developments", prepared for Bonneville Power Administration by Wally Erickson, et al, December 2002
4.	"Atmospheric trajectories and spring bird migration across the Gulf of Mexico", by S. Gauthreaux, Jr., C. Belser and C. Welch (2006)
5.	"Radar Ornithology and the Conservation of Migratory Birds", by S. Gauthreaux and C. Belser (2005)
6.	"Seasonal Timing, Geographic Distribution, and Flight Behavior of Broad-Winged Hawks During Spring Migration in South Texas: A Radar and Visual Study", by Kerlinger and Gauthreaux, Jr. (October 1985)
7.	"Bird Strikes and Electrocutions at Power Lines, Communication Towers, and Wind Turbines: State of the Art and State of the Science – Next Steps Toward Mitigation", by Albert M. Manville, II
8.	National Wind Coordinating Collaborative, "MITIGATION TOOLBOX", compiled by: NWCC Mitigation Subgroup & Jennie Rectenwald, Consultant (May 2007)
9.	"Bird Movements and Behaviors in the Gulf Coast Region: Relation to Potential Wind Energy Developments", November 22, 2000 – October 31, 2005, by M.L. Morrison, Department of Wildlife and Fisheries Sciences Texas A&M University, College Station, Texas
10.	Biology Letters - "Avian collision risk at an offshore wind farm", by Mark Desholm and Johnny Kahlert (2005)
11.	"Remote techniques for counting and estimating the number of bird-wind turbine collisions at sea: a review", by Desholm, et al. (2006)
12.	"Assessing the impacts of wind farms on birds", by Drewitt & Langston (2006)
13.	"A Review of the Literature and Observations on Bird Migration Patterns Along the Lower Texas Coast", by Sidney A. Gauthreaux, Jr. (Expert Report June 30,2008)

14.	"Offshore and Nearshore Wind Development, and Impacts to Sea Ducks and Other Waterbirds", by Special Panel and Workshop, November 9, 2005
15.	Abstract: "Risk Assessment, Pre-, During- and Post-construction Monitoring, Siting Guidelines, and Issues Related to Minimizing Impacts to Wildlife" and Abstract: "Understanding and Applying the U.S. Fish and Wildlife Service 'Interim Guidelines on Avoiding and Minimizing Wildlife Impacts from Wind Turbines'."
16.	"Wind and Offshore Wind Energy Factoids" (November 7, 2005)
17.	"Avian Issues at Altamont Pass Wind Resource Area", by Al Manville (August 18, 2006)
18.	"Bird Respondent Panel Observations", by Al Manville, USFWS, (November 14, 2006)
19.	"Wind Power Development and Bird Conservation: a National Perspective; Ensuring that Sound Science Is a Driving Force in Commercial Wind Development", by Albert Manville (August 24, 2007)
20.	"*Why it is important to pay attention to avian/wind interaction: Legal vs. ecological implications*", by Albert Manville, (October 16, 2002)
21.	"U.S. Fish and Wildlife Service Involvement in Wind Development – Current Efforts to Reduce Mortality and Address Habitat Impacts", by Albert Manville, (March 21, 2006)
22.	*American Bird Conservancy, Inc. and Forest Conservation Council v. Federal Communications Commission*; 516 F. 3d 1027 (D.C. 2008)