

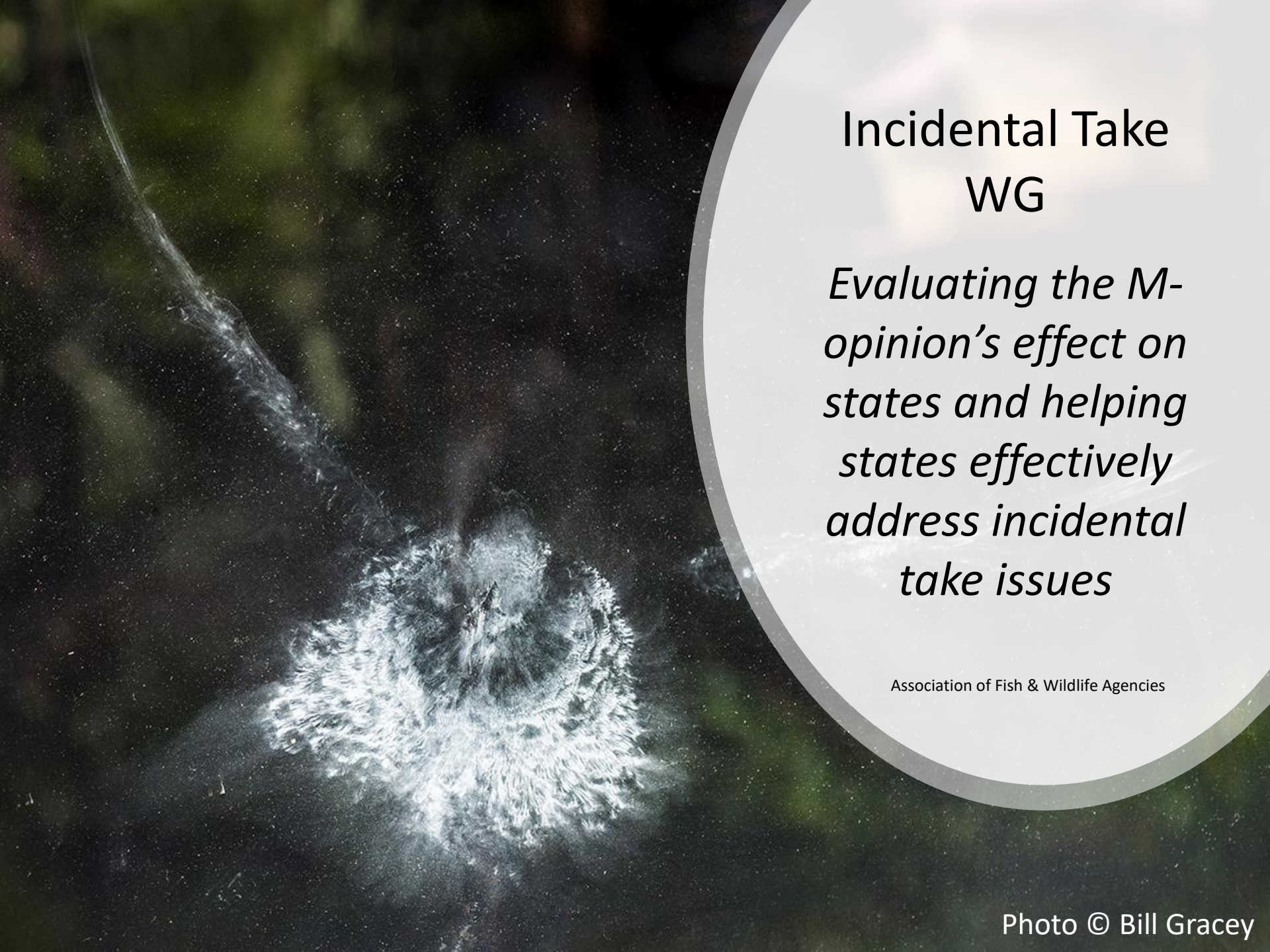


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Incidental Take Working Group Final Report

Dr. Judith Scarl
Bird Conservation Program Manager
Association of Fish and Wildlife Agencies



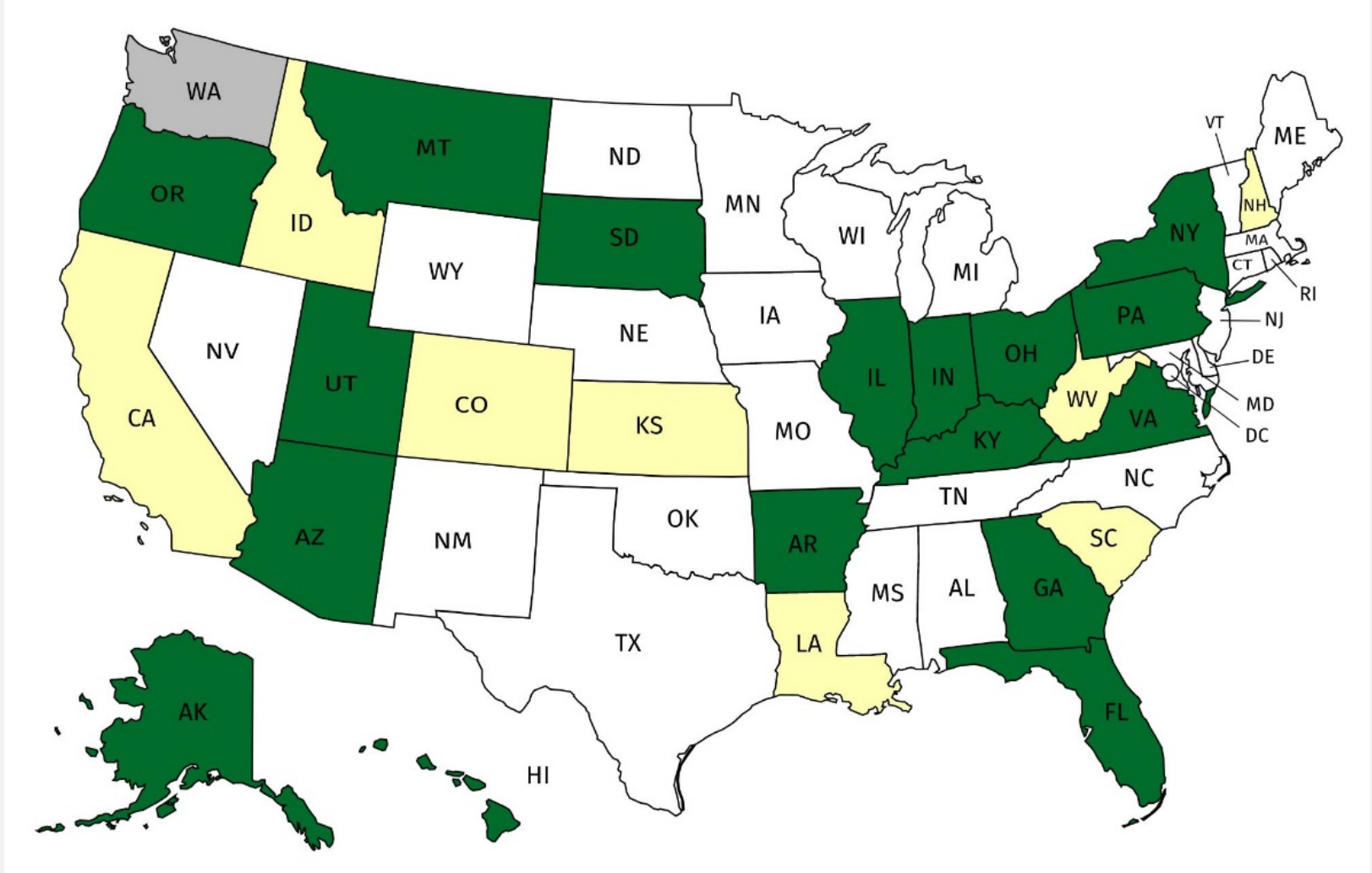


Incidental Take WG

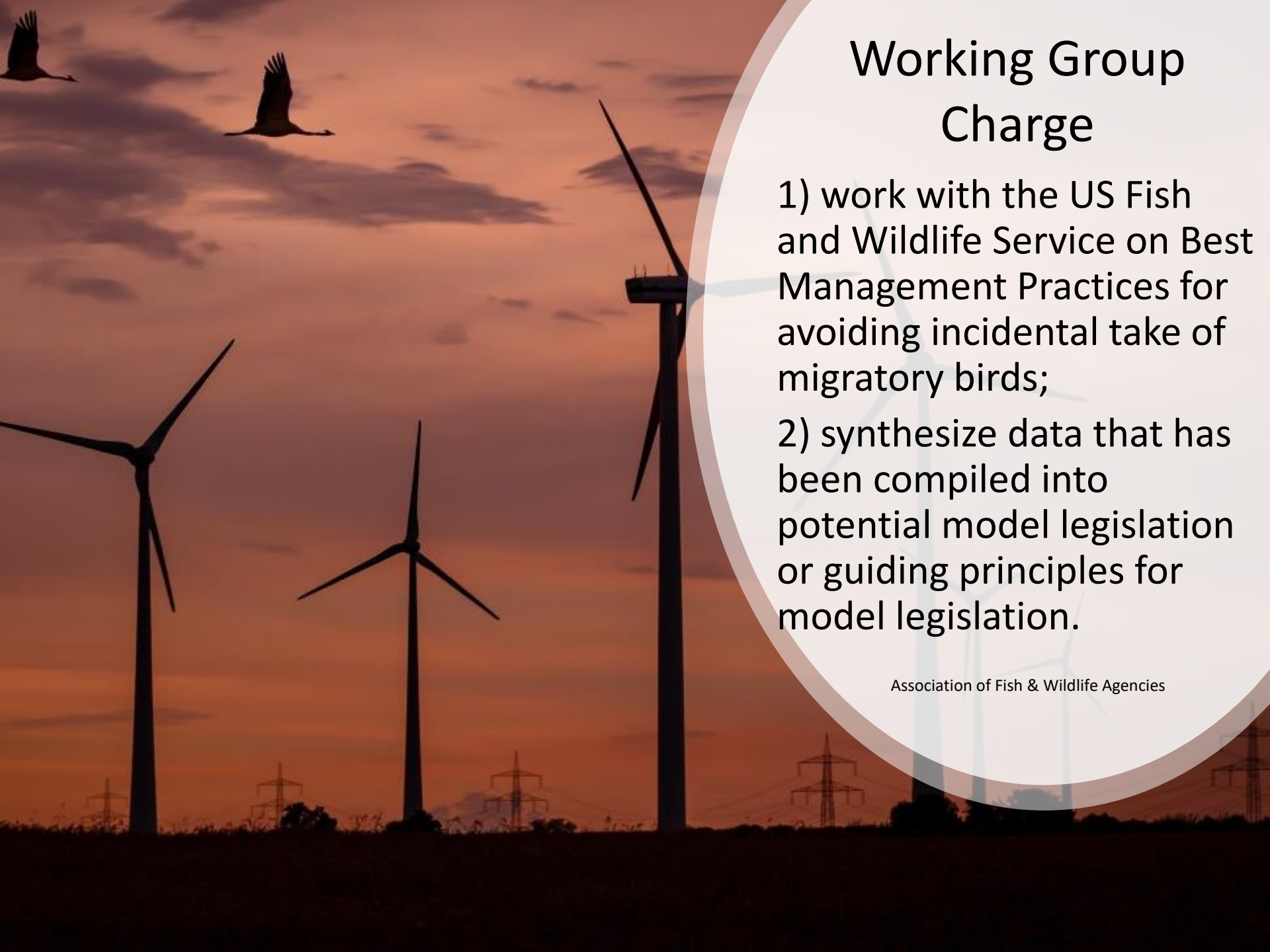
*Evaluating the M-
opinion's effect on
states and helping
states effectively
address incidental
take issues*

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Photo © Bill Gracey



Green (17 states): Some bird incidental take coverage
White (25 states): No bird incidental take coverage
Yellow (8 states): Indeterminate due to M-opinion
Gray: Otherwise indeterminate

The background of the slide features a silhouette of three wind turbines against a warm, orange-hued sunset sky. Two birds are captured in flight, their wings spread, adding a sense of movement and nature to the scene. In the distance, the silhouettes of power line towers are visible on the horizon.

Working Group Charge

- 1) work with the US Fish and Wildlife Service on Best Management Practices for avoiding incidental take of migratory birds;
- 2) synthesize data that has been compiled into potential model legislation or guiding principles for model legislation.

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Working Group Chair

Judith Scarl, AFWA

Best Management Practices Team

Hubert Askanas, NB Department of Energy and Resource Development; **Ruth Boettcher**, VA DGIF; **Jennifer Cipolletti**, ABC; **Steve Holmer**, ABC; **Eric Kershner**, US FWS; **Lesley Kordella**, US FWS; **Sara Schweitzer**, NC Wildlife Resources Commission; **Dean Smith**, AFWA; **Laura Zebehazy**, TX PWD; **Ryan Zimmerling**, Canadian Wildlife Service

Legal/Model Language Team

Lane Kisonak, AFWA; **Erik Schneider**, Audubon





*Work with the US Fish
and Wildlife Service on
Best Management
Practices for avoiding
incidental take of
migratory birds*

<https://www.fishwildlife.org/afwa-acts/afwa-committees/incidental-take-best-management-practices-compilation>

Photo copyright Anguskirk via Flickr

**Compile and
Distribute Existing
BMPs**

**Live on AFWA's
website**

BIRD INCIDENTAL TAKE BEST MANAGEMENT PRACTICES COMPILATION/CONSOLIDATION- BETA VERSION AUGUST 2019

The resources below are organized into tiers using the following criteria:

- Tier 1:** Either the guidance document/BMP/BP has been developed in collaboration with subject matter experts, OR the science behind the document has been peer-reviewed, OR subject matter experts/users have provided feedback on the effectiveness of the guidance.
- Tier 2:** Document is from a reputable source (for example, a federal government agency, or an NGO with subject matter experts on the topic) but reflects emerging guidance or policies to be considered, and may not yet be peer-reviewed or incorporate measures of effectiveness
- Tier 3:** Our subject matter experts are unfamiliar with the document or its source; peer review status or effectiveness matters are unknown. Document is provided for information purposes only; partners are encouraged to further evaluate source and potential validity before use.

- ▶ Power Lines
- ▶ Wind Energy
- ▶ Building and Glass
- ▶ Communication Towers
- ▶ Oil and Gas Operations
- ▶ Solar Energy
- ▶ Open Pipes
- ▶ Longline Fisheries and Marine Debris
- ▶ Vehicles





► Power Lines

▼ Wind Energy

TIER 1

USFWS Land Based Energy Guidelines

Source: U.S. Fish and Wildlife Service

Publication Year: 2012

Worldwide Wind Guidelines. Metrics and methods – tools for assessing impacts to birds and

Source: U.S. Fish and Wildlife Service

Publication Year: 2011

Wind power siting, incentives, and wildlife guidelines in the United States. Jodi Stemler Co

Source: U.S. Fish and Wildlife Service

Publication Year: 2007

*Work with the US Fish and Wildlife Service
on Best Management Practices for
avoiding incidental take of migratory birds*

Evaluate State/Provincial Needs for BMPs

December 2018 survey
with responses from 35
states, 2 provinces



What are the *most significant* causes of incidental take that your organization has to address?

Top 5 Responses

- Transmission line electrocution or collision (n=28; 74%)
- Wind energy collisions (n=24; 63%)
- Building collisions (n=19; 50%)
- Communication and instrumentation tower collision (n=19; 50%)
- Lead shot or ammunition in the environment (n=15; 39%)

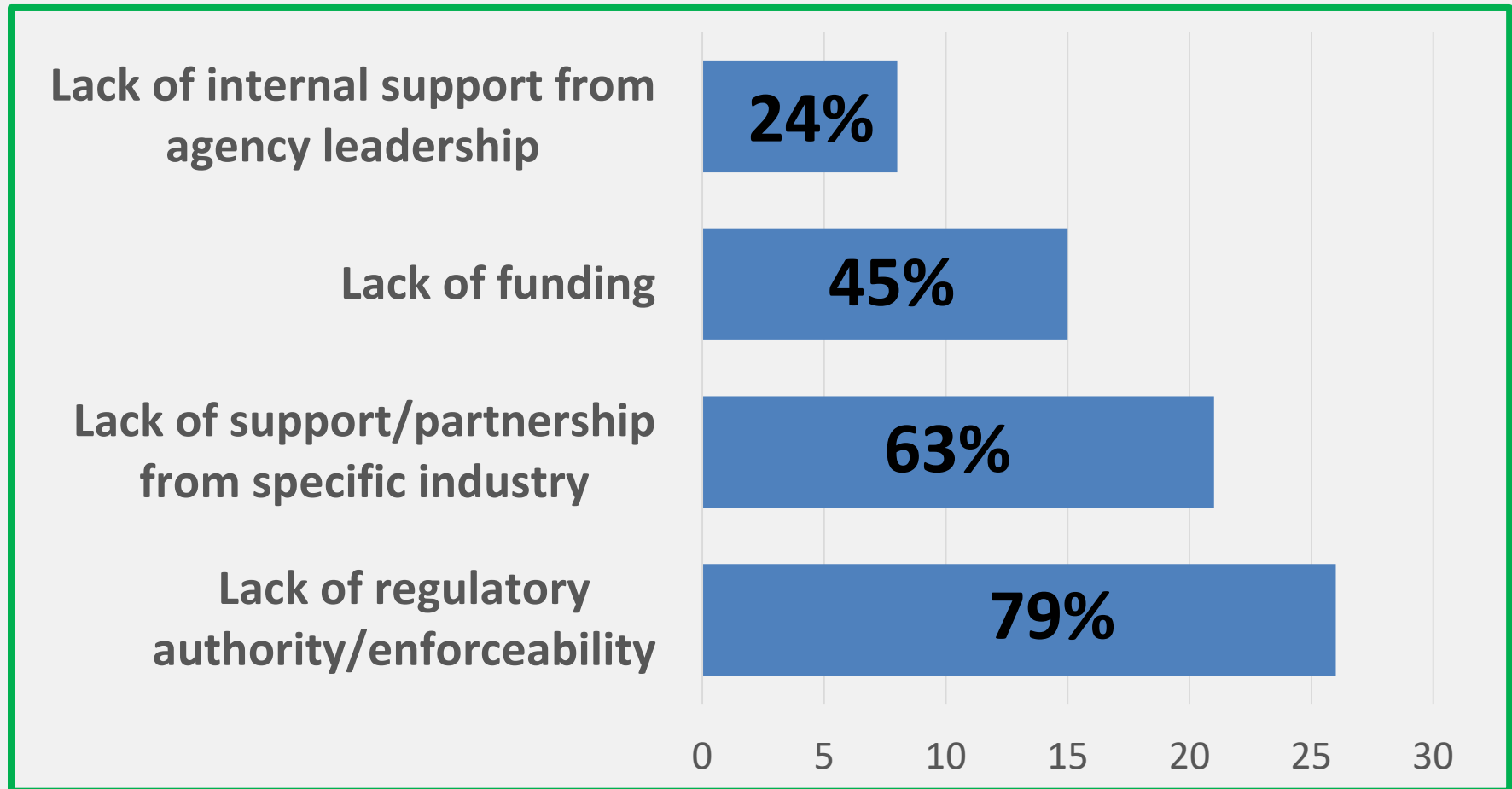


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What barriers do you perceive to implementation of existing BMPs, if any?



Number of respondents





Options for State Regulations: Model Language

- Executive Actions
(Advisory Opinion,
Agency Rulemaking)
- Legislative Actions

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*Draft/provide model language
or guiding principles for model
legislation.*

A tall, illuminated radio tower stands against a dark night sky filled with stars. The tower is a lattice structure, primarily lit with red lights, with some yellow lights near the base. It has several horizontal antennas or sensors attached to its side. The tower is positioned on the right side of the frame, extending from the bottom towards the top.

Report

Details survey results,
discusses survey
follow-up, includes
recommendations

Additional Considerations: Threats

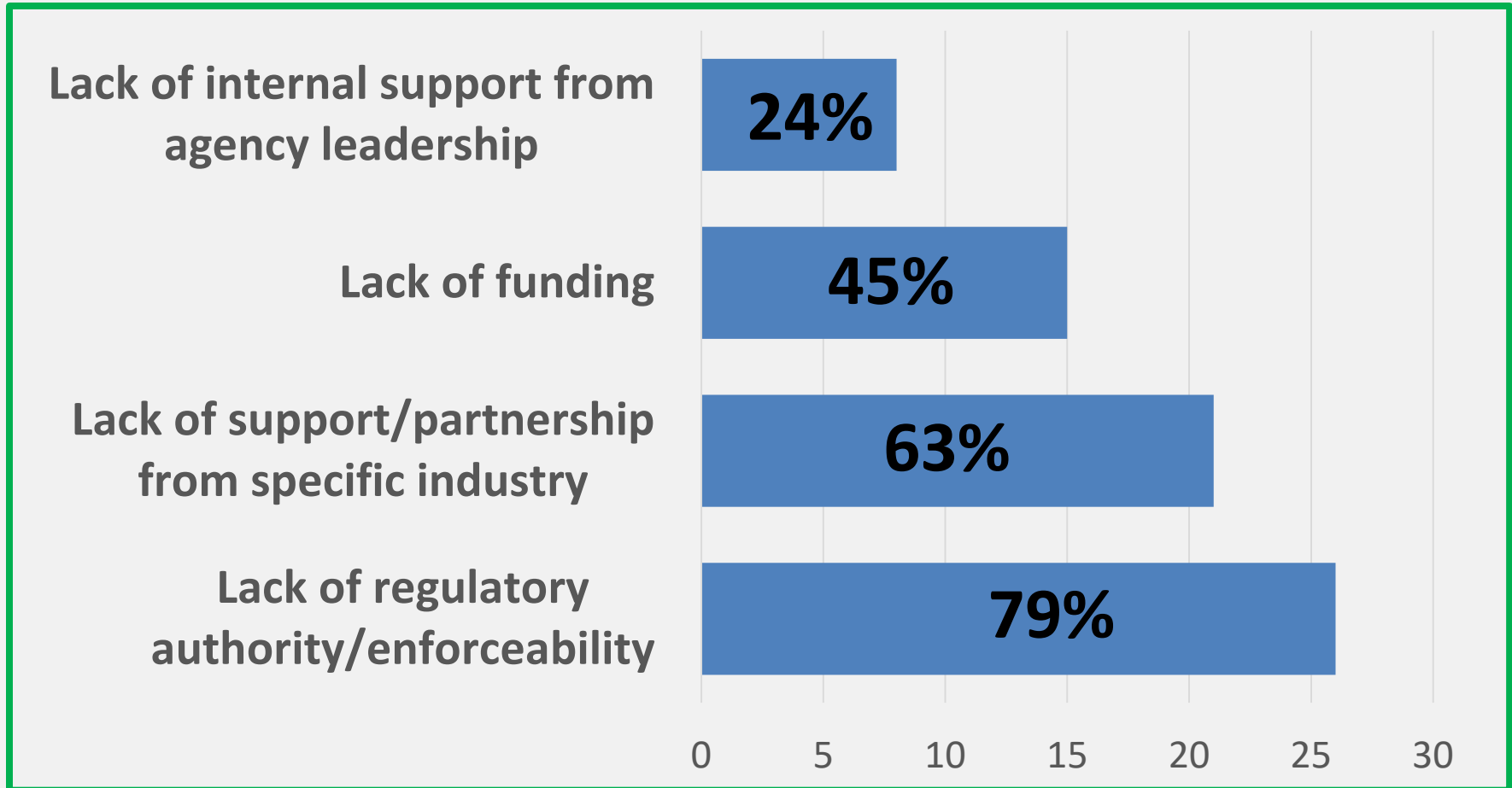
- Other anthropogenic threats impact birds; not all are unequivocally considered incidental take
 - BCC's Feral and Free-Ranging Cat WG is developing BMPs for cat issues
- Additional incidental threats identified in survey may require follow-up





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What barriers do you perceive to implementation of existing BMPs, if any?



Number of respondents



Additional Considerations: Partnerships

- Opportunity and need for states to form strong partnerships with industry
 - Can help states understand industry needs and limitations
 - Critical to communicate the benefits of BMPs to industry, not just birds
- Explore other non-punitive approaches to encourage industry to comply with BMPs (e.g. tax credits?)



Additional Considerations: Legal

- State feedback suggests clear need to combine legal and voluntary approaches
- State legislative approaches can present challenges
 - Piecemeal approach to bird conservation
 - Implementing state permitting systems requires careful consideration
- AFWA will continue to monitor USFWS rulemaking and other federal legislative elements



Questions and Discussion

What questions or comments do you have?

- What are the next steps for helping states address incidental take issues?
 - Who (what groups) is most appropriate to follow up on these next steps?



Report Adoption

Will the Bird Conservation Committee approve this report and advance it to the Directors for their approval and adoption at the AFWA Business Meeting?



Questions?

Contacts

General : Judith Scarl
jscarl@fishwildlife.org

Legal: Lane Kisonak
lkisonak@fishwildlife.org



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What BMPs would you like to see developed or improved, that would help you to address your most pressing incidental take issues?

Top 5 Responses

- Wind energy collisions (n=20; 56%)
- Building collisions (n=18; 50%)
- Transmission line electrocution or collision (n=17; 47%)
- Lead shot or ammunition in the environment (n=16, 44%)
- Communication and instrumentation tower collision (n=13, 36%)
- Pesticide/chemical incidents (n=13, 36%)

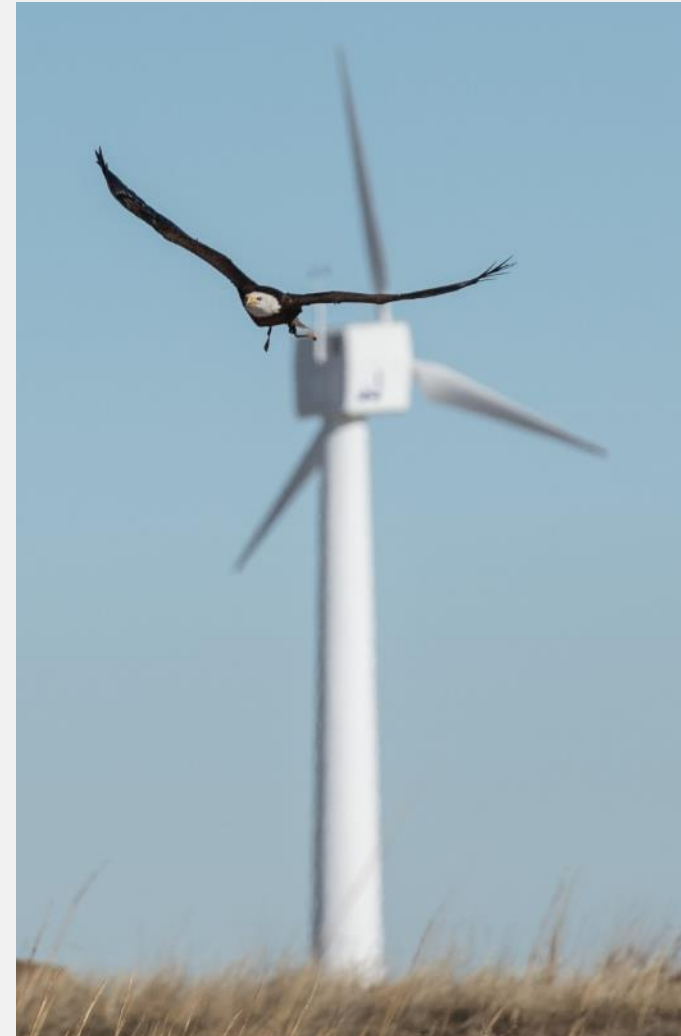


Photo © National Renewable Energy Lab

The background of the slide features a silhouette of three wind turbines against a warm, orange-hued sunset sky. Two birds are captured in flight in the upper left corner. In the distance, several high-voltage power lines are visible on the horizon. A large, semi-transparent white circle on the right side of the image contains the text.

USFWS Proposed Rule

“This rule would codify the legal opinion in the Department of the Interior Solicitor’s Opinion M-37050 that incidental take resulting from an otherwise lawful activity is not prohibited under the MBTA”

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8 State Lawsuit

- *Challenges M-opinion and asserts that action should have gone through notice and comment rulemaking*
- *July 31, 2019: District court allowed lawsuit to proceed*

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