



July 1, 2015

VIA ELECTRONIC FILING

Public Comments Processing
Attn: FWS-R5-ES-2011-0024
U.S. Fish and Wildlife Service
Twin Cities Ecological Services Office
4101 American Blvd East
Bloomington, MN 55425
(612) 725-3548

Re: Docket No. FWS-R5-ES-2011-0024; Final Rule and Interim Rule on Endangered and Threatened Wildlife and Plants; Listing the Northern Long-Eared Bat With a Rule Under Section 4 (d) of the Act; Federal Register Vol. 80, No. 63 (Thursday, April 2, 2015); RIN 1018-AY98

Dear Sir/Madam:

The Gas Processors Association (GPA) has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA is composed of 122 corporate members of all sizes that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as “midstream activities.” Such processing includes the removal of impurities from the raw gas stream produced at the wellhead, as well as the extraction for sale of natural gas liquid products (NGLs) such as ethane, propane, butane and natural gasoline. GPA members account for more than 90 percent of the NGLs produced in the United States from natural gas processing. Our members also operate hundreds of thousands of miles of domestic gas gathering lines and are involved with storing, transporting, and marketing natural gas and NGLs.

The United States Fish and Wildlife Service (USFWS) has issued a threatened species status for the Northern Long-Eared Bat (NLEB) and published an Interim 4(d) Rule for public comment. GPA appreciates this opportunity to submit comments on the Interim 4(d) Rule, “Endangered and Threatened Wildlife and

Plants; Threatened Species Status for the Northern Long-Eared Bat with 4(d) Rule” published at 80 Fed. Reg. 17974 (April 2, 2015).

GPA members have extensive natural gas and NGL operations in the NLEB habitat area and will be directly impacted from the USFWS listing decision and the Final 4(d) Rule. GPA is encouraged that the USFWS listed the NLEB as threatened with an Interim 4(d) Rule. However, GPA would like to restate concerns that were expressed in our prior comments on this matter on March 17, 2015. GPA believes that the Interim 4(d) Rule’s scope is unnecessarily narrow and requests that the USFWS extend the exemptions being provided for the timber industry to other industries with similar clearing activities. GPA urges USFWS to adjust the rule to focus on categories of activities instead of categories of industries. This would ensure that the final rule will not draw arbitrary lines among different industries engaged in similar types of low-impact activities, will account for all such activities that provide possible conservation benefits to the species, and will avoid severely disrupting crucial economic activities that do not have population-level effects on the NLEB.

I. USFWS Should Cover Re-vegetated Linear Projects Under the Final 4(d) Rule

USFWS in the Interim 4(d) Rule identifies several categories of tree clearing activities conducted by certain industries that would be excluded from the ESA’s Section 9 take prohibition since allowing those activities to occur would have no adverse or very little effect on conservation of the NLEB. USFWS should expand the rule to cover activities associated with the development of re-vegetated linear projects.

Re-vegetated linear projects involve the development of defined rights-of-way (ROW) to install utilities such as pipelines and then the reclamation of the site with native vegetation once the site is completed. Most of these projects are conducted in a short period of time and are buried and then replanted with native vegetation. These projects have negligible effects on forests and the NLEB habitat.

Once these re-vegetated linear projects are complete they provide an area that is fully vegetated with native species that the NLEB can use for feeding. USFWS should exempt re-vegetated linear projects under the Final 4(d) Rule.

II. Clarify the Term Expansion

In the Interim 4(d) Rule, the USFWS provides an exemption for activities associated with *Routine Maintenance and Limited Expansion of Existing ROW and Transmission Corridors*. The exemption provides for expansion of a corridor or ROW

by up to 100 feet from the edge of an existing corridor; however, this exemption needs additional clarity to avoid confusion.

As written, the term “expansion” is vague and could result in inconsistent application of the rule across USFWS Regions. If interpreted as a one-time exemption along a right of way, this could also dissuade operators from co-locating facilities within ROWs. GPA also suggests that USFWS clarify that the 100-foot expansion may occur on both sides of the ROW.

III. White Nose Syndrome Buffer Zone

GPA suggests that USFWS recognize the difference between the occurrence of a fungus associated with white nose syndrome (WNS) and bats/hibernacula where an outbreak of WNS has actually occurred. The current 150 mile buffer being used captures an extremely large land area and requires NLEB consultation and/or consideration in a number of counties and areas where neither WNS nor the fungus associated with WNS have ever been detected.

Further, the buffer is established based on counties where the fungus that is responsible for WNS has been detected, regardless of whether NLEB symptomatic for WNS have actually been identified.

IV. Provide an Exclusion for Activities that Result in No Net Loss of NLEB Habitat

USFWS should revise the “minimal tree removal” exclusion to cover all tree removal activities that have minimal effects on the NLEB or create a corresponding exclusion for “minimal habitat conversion” for activities that result in “no net loss” of NLEB habitat.

This exclusion should apply to all activities that result in “minimal *net* tree removal” after taking into consideration site reclamation/restoration and any other mitigation activities associated with an activity.

Instead of basing eligibility on the number of trees that initially will be removed for a project, as the proposed “minimal tree removal” exclusion would, the “minimal habitat conversion” exclusion would focus on an activity’s *net tree removal* and, therefore, its net impact on NLEB habitat. An exclusion of this nature would view activities and their impacts more holistically by utilizing a “no net loss” standard that takes into account any site restoration and mitigation measures employed. That would allow the exclusion to consider the totality of a project’s impacts while incentivizing project developers to minimize the scope of initial disturbance, maximize efforts to restore temporary impacts at project sites to natural conditions, and mitigate any unavoidable long-term habitat impacts.

Conclusion

GPA believes the Interim 4(d) Rule is unnecessarily biased towards exempting one specific industry type rather than being focused on exempting certain activities that are common among many industries. The USFWS should provide exemptions for activities associated with the development of re-vegetated linear projects and for activities that result in no net habitat loss. GPA strongly encourages the USFWS to incorporate the exclusions and revisions detailed above into the Final 4(d) Rule. If you have any questions please contact me at mhite@gpaglobal.org or (202)279-1664.

Sincerely,

Matthew Hite
Vice President of Government Affairs
Gas Processors Association