



November 14, 2022

Via Regulations.gov Portal

U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, Virginia 22041-3803

Re: Comments of the American Petroleum Institute, American Exploration and Production Council and Western Energy Alliance on the U.S. Fish and Wildlife Service’s Proposed Rule on Endangered and Threatened Wildlife and Plants; Endangered Species; Status for Tricolored Bat. Docket No. FWS–R5–ES–2021–0163.

Dear U.S. Fish and Wildlife Service:

The American Petroleum Institute (“API”), American Exploration and Production Council (AXPC) and Western Energy Alliance (collectively “Industry Trades” or “We”) submit these comments in response to the U.S. Fish and Wildlife Service’s (“FWS’s” or “the Service’s”) request for public comment on the proposed designation of the tricolored bat (*Perimyotis subflavus*) (“TCB”) as an endangered species under the Endangered Species Act (“ESA” or “the Act”). We appreciate and respectfully request the Service’s full consideration of the comments set forth below.

API, AXPC, Western Energy Alliance and our members are dedicated to safely and responsibly developing and supplying critical energy resources and are committed to doing so in a manner that protects species and their habitat. Our members, particularly those in the upstream and midstream industry sectors, are frequently subject to the ESA and FWS regulations thereunder because of the proximity of their operations to threatened/endangered species or critical habitat.

INDUSTRY TRADES’ INTERESTS

Our industry trade members represent a broad range of oil and natural gas development interests within the 39-state range of the species who work to be good stewards of the environment, are



concerned about the impact of white-nose syndrome on the tricolored bat and have engaged in tricolored bat conservation efforts.

API represents all segments of America’s natural gas and oil industry, which supports more than 11 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. Our nearly 600 members produce, process and distribute the majority of the nation’s energy, and participate in API Energy Excellence®, which is accelerating environmental and safety progress by fostering new technologies and transparent reporting. API was formed in 1919 as a standards-setting organization and has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability.

AXPC is a national trade association representing 30 of the leading independent oil and natural gas exploration and production companies in the United States. AXPC companies are among leaders across the world in the cleanest and safest onshore production of oil and natural gas, while supporting millions of Americans in high-paying jobs and investing a wealth of resources in our communities. Dedicated to safety, science, and technological advancement, our members strive to deliver affordable, reliable energy while positively impacting the economy and the communities in which we live and operate. As part of this mission, AXPC members understand the importance of ensuring positive environmental and public-welfare outcomes and responsible stewardship of the nation’s natural resources. It is important that regulatory policy enables us to support continued progress on both fronts through innovation and collaboration.

Western Energy Alliance represents 200 member companies engaged in all aspects of environmentally responsible exploration and production (“E&P”) of oil and natural gas in the West. The Alliance represents independent oil and gas producers, the majority of which are small businesses with an average of fourteen employees.

GENERAL COMMENTS

Congress enacted the ESA to protect and recover imperiled species and the ecosystems on which they depend. Our members support the ESA’s purpose of protecting species threatened with extinction and recognize the need for science-based, data-driven actions that conserve those species and the habitat on which they depend.

However, we are concerned about the collateral consequences of this listing on oil and natural gas development of all sizes throughout the range of the tricolored bat if the proposed listing is not accompanied by carefully crafted, creative solutions to appropriately target protections for the species without creating an unworkable regulatory regime. Thus, we urge the Service to commit the time, effort, and resources to identify practical, efficient ESA compliance pathways that allow for conservation of the species in a manner that addresses the primary threat to the species—white-nose syndrome (“WNS”)—and does not put an undue burden on oil and natural gas development.

In general, we do not possess specific scientific and commercial data and other information to respond to the requests in the referenced notice. However, a review of information about the species available to us indicates the following: in the case of TCB, the major threat to the species is WNS, not habitat loss and destruction. While oil and natural gas development may result in temporary habitat loss or augmentation, FWS recognizes that “[a]lthough there have been losses of tricolored bat habitat and impacts could be high in the future, we find the current impact of habitat loss to be ‘Low’ because the severity of population-level declines is slight”.¹

As indicated in the FWS Species Status Assessment (SSA) Report, the TCB is a wide-ranging bat species found in the U.S. within 39 States and the District of Columbia. Among the strongest predictors of the threat of extinction in terrestrial species is small geographical range size.^{2,3} The Associations do not discount the impact WNS has had on the TCB. However, we do not agree that the TCB is likely to become extinct in the near future and believe that a status of endangered is not warranted.

While WNS has certainly had population level impacts, the data used to suggest declining trends in TCB as noted in the SSA (Table A-3B4, Figure 5.7) as collected from 2010-2019 lacks correlative ability. Populations of bats are difficult to monitor.⁴ Surveys for bat species during the 2010-2019 timeframe were bolstered by an uptick in wind energy projects which required bat surveys for project permitting, with disparate approaches employed for data collection as the wind energy industry, consultants, regulatory bodies, etc. worked to standardize and adapt their technology and practices for surveys over this time horizon. From approximately 2008 to 2012 installed U.S. wind capacity surged, followed by a precipitous drop in 2013 and a generally declining trend over the years leading up to 2019.⁵ In 2011, FWS developed a multi-agency team to review mist net protocols for bats, publishing draft guidelines in 2012 with revised guidance issued in 2014. Since then, revisions to the guidelines have occurred each year. It was not until the winter of 2014-2015 that the U.S. Geological Survey (USGS) conducted initial independent testing of automated acoustic software programs⁶ relied upon for detection of many bat species associated with wind energy projects.

¹ 87 Fed. Reg. 56385

² Gaston, K. J., & Fuller, R. A. (2009). The sizes of species' geographic ranges. *Journal of Applied Ecology*, 46, 1–9. <https://doi.org/10.1111/j.1365-2664.2008.01596.x>

³ Manne, L. L., Brooks, T. M., & Pimm, S. L. (1999). Relative risk of extinction of passerine birds on continents and islands. *Nature*, 399, 258–261. <https://doi.org/10.1038/20436>

⁴ O'Shea, T.J., Bogan, M.A., and Ellison, L.E., 2003, Monitoring trends in bat populations of the United States and territories— Status of the science and recommendations for the future: *Wildlife Society Bulletin*, v. 31, p. 16–29

⁵ Annual U.S. Operating and Planned Wind Turbine Capacity Additions (2006-2020). U.S. Energy Information Administration. Accessed November 8, 2022. <https://www.eiu.gov/todayinenergy/detail.php?id=45856>

⁶ Range-Wide Indiana Bat and Northern Long-Eared Bat Survey Guidelines. March 2022. Accessed November 8, 2022. <https://ipac.ecosphere.fws.gov/guideline/survey/population/1/office/31440.pdf>

“Although there are other stressors affecting tricolored bat, the primary factor influencing its viability is WNS, a disease of bats caused by a fungal pathogen.”⁷ The proposed listing does indicate that “[s]ome of the other factors that influence tricolored bat’s viability include wind energy-related mortality, habitat loss, and effects from climate change” but concludes that these bats are killed at wind energy projects primarily through collisions with moving blades, the current impacts of habitat loss are “low”, and the overall impact of climate change for such a wide-ranging species is challenging to describe. No assertion is made in the petition that establishes a relationship between oil and natural gas exploration and production activities and TCB populations.

Our members support the objectives of the ESA and are also committed to implementing voluntary conservation measures to protect at-risk species and, where possible, avoid the need to list species under the Act. Indeed, our members have undertaken significant conservation efforts to protect a myriad of species across millions of acres of habitat. Although companies have not needed to mitigate impacts to this particular bat species yet, when it comes to other bat species, our members have taken steps like necking down right-of-way widths to limit tree clearing, conducting seasonal clearing so that trees are not cut when bats are present, conducting presence absence surveys, conducting surveys for roost trees and implementing avoidance measures, and limiting the number of light stands used or prohibiting work during the night that would require artificial light.

Moreover, through technological advancements like horizontal and directional drilling, our industry has taken significant steps to minimize its impacts on wildlife and the environment while still providing a much needed resource to the American public. The shift to horizontal drilling has changed the disturbance, fragmentation and activity profiles associated with modern oil and gas development and provides for a 70 percent reduction in the surface footprint associated with our members operations.⁸

We appreciate the Service’s intentions to protect the TCB; however, we do not support the proposal to classify the bat as endangered.

CONCLUSION

In summary, the TCB is a wide-ranging species which has been impacted by WNS. No assertion is made in the petition or elsewhere that establishes a causal relationship between oil and natural gas exploration and production activities and declining TCB populations. If at the conclusion of this review the species is listed, we believe a status of threatened could be supported by the data and would respectfully request that a 4(d) rule be written to exempt or exclude the activities of the oil and natural gas industry from unnecessary mitigation measures that may be identified to

⁷ 87 Fed. Reg. 56385.

⁸ Applegate, Dave H. and Owens, Nick L. (2014) "Oil and Gas Impacts on Wyoming’s Sagegrouse: Summarizing the Past and Predicting the Foreseeable Future," *Human-Wildlife Interactions*: Vol. 8: Iss. 2, Article 15.



protect or conserve the species given such activities are not a significant cause of concern relating to the recovery of the species.

Given how wide-ranging this species is, companies with operations in multiple Service regions may encounter inconsistent guidance regarding the TCB between and even within regions. Without clear, consistent guidance and a streamlined approach to ESA compliance, the companies and individuals undertaking these activities would face significant regulatory uncertainty and, potentially, an unduly lengthy and complex incidental take permitting process.

Thank you for considering this letter in your review of comments to the proposed action. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

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