



**MIDSTREAM'S GREATEST RESOURCE**

March 17, 2015

**VIA ELECTRONIC FILING**

Public Comments Processing  
Attn: FWS-R5-ES-2011-0024  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service, MS: BPHC  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

**Re: Docket No. FWS-R5-ES-2011-0024; Proposed 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. 11 (Friday, January 16, 2015); RIN 1018-AY98**

Dear Sir/Madam:

GPA has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA is composed of 130 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 Gas Processors Association (GPA) appreciates this opportunity to submit comments on the proposed rulemaking “Listing the Northern Long-Eared Bat With a Rule Under Section 4 (d) of the Act” published at 80 Fed. Reg. 2371 (Jan. 16, 2015). The United States Fish and Wildlife Service (USFWS) is proposing to create a species-specific rule under authority of section 4(d) of the Endangered Species Act.

GPA members have extensive natural gas and natural gas liquids (NGL) operations in the Northern Long-Eared Bat (NLEB) habitat area and will be directly impacted from this proposed rule. If USFWS decides to list the NLEB as threatened, then GPA supports a 4(d) rule for the NLEB. GPA believes that the current 4(d) proposed rule’s scope is unnecessarily narrow and the proposal’s focus on specific industries instead of specific activities causes it to be artificially constrained. GPA urges USFWS to adjust the rule to focus on categories of activities instead of categories of industries. This would ensure that the proposed 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 4(d) Rule**

USFWS in the proposed 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 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 cover re-vegetated linear projects under the 4(d) rule.

**II. FWS should revise and finalize the 4(d) rule if it decides to list the NLEB as threatened.**

A 4(d) rule is particularly appropriate for this species because the administrative record shows that there is no causal nexus between human activities and the reported declines of the NLEB. As FWS has repeatedly recognized, white-nose syndrome ("WNS") poses the only population-level threat to the species.

Further, NLEB habitat is plentiful throughout its broad range and has been increasing over the past several decades. As a result, subjecting some of the activities of major industries that drive this country's economy to unnecessary restrictions would serve little conservation purpose. A 4(d) rule would minimize unnecessary and unproductive restrictions on these important activities and put the Service in the best position to conserve the NLEB.

FWS should exclude re-vegetated linear projects under the final 4(d) rule because such projects have negligible impacts on NLEBs and their habitat, provide important new foraging, commuting, and roosting habitat for the species.

**III. 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.

**IV. USFWS May Incorporate the Additional Exclusion Requested in These Comments Directly into the Final 4(d) Rule**

USFWS may incorporate the additional exclusions requested in these comments directly into the final 4(d) rule without re-noticing the proposal because they are a logical outgrowth of the measures presented in the proposed rule and, in any event, the Service made clear that it was contemplating covering additional exclusions when it solicited public comment on other possible activities to cover under the rule.

The exclusions and revisions that we ask USFWS to incorporate into the 4(d) rule here fall well within that standard. The proposed 4(d) rule identifies distinct criteria upon which the USFWS based the forest management and minimal tree clearing exclusions and the additional exclusions and revisions we request above fall within those criteria. So each of the requested changes would be a logical outgrowth of the proposed rule and USFWS could incorporate them directly in the final 4(d) rule in full compliance with the Administrative Procedures Act.

**Conclusion**

USFWS should incorporate the exclusions and revisions detailed above directly into the final proposed 4(d) rule if USFWS determines that the NLEB warrants a threatened listing.

Sincerely,

Matthew Hite  
Vice President of Government Affairs  
Gas Processors Association