



EWAC[®]

Energy and Wildlife
Action Coalition

October 16, 2023

Comments regarding:

August 17, 2023 Proposed Rule to List the Texas Kangaroo Rat as Endangered under the Endangered Species Act and to Designate Critical Habitat

Submitted by:

Energy and Wildlife Action Coalition

Filed electronically to the attention of:

Public Comments Processing
Attn: FWS-R2-ES-2021-0143
U.S. Fish and Wildlife Service
MS:PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Docket No. FWS-R2-ES-2021-0143

The Energy and Wildlife Action Coalition (“EWAC”)¹ submits these comments in response to the United States Fish and Wildlife Service’s (“Service”) August 17, 2023 Notice of Proposed Rulemaking (“Proposed Rule”)² to list the Texas kangaroo rat (*Dipodomys elator*) (“TKR”) as endangered and designate critical habitat under the Endangered Species Act (“ESA”). We also provide comments on the 2021 Species Status Assessment Report for the Texas Kangaroo Rat (*Dipodomys elator*) (“SSA”) that accompanied the Proposed Rule.³ EWAC provides these comments on the Proposed Rule based on the knowledge and experience of its membership.

As EWAC has represented consistently,⁴ new species listings under the ESA often disrupt project construction, operation, and maintenance, and create substantial compliance burdens on the regulated community. The “take” prohibition of ESA section 9 (“Section 9”) and interagency consultation requirements of ESA section 7 (“Section 7”) often delay project delivery, interrupt project operations, and inject uncertainty into the project planning process. The existence of critical habitat in a project area can exacerbate these issues. Whenever the Service considers listing species or designating critical habitat under the ESA, the agency should take proactive steps, using existing Service policy and guidance, to ensure that maintenance and deployment of critical infrastructure and essential services, such as renewable energy and electric transmission and distribution, can continue in an efficient manner. These proactive steps are critical to achieve the Biden-Harris Administration’s goals to reduce greenhouse gas emissions, bolster resilience to the impacts of climate change,⁵ and deliver much-needed improvement of this nation’s electric and communication infrastructure,⁶ particularly to ensure that the needs of communities that are historically underserved will be met.⁷

As described in greater detail below, EWAC encourages the Service to: (1) reconsider whether it has sufficient information to support a listing decision; (2) clarify in any final rule that operations and maintenance activities associated with existing electric generation, transmission, and distribution facilities are not likely to result in take of the TKR; (3) reconsider both the extent of the proposed critical habitat designation and the likely impacts to the regulated community

¹ EWAC is a national coalition formed in 2014 whose members consist of electric utilities, electric transmission providers, and renewable energy entities operating throughout the United States, and related trade associations. The fundamental goals of EWAC are to evaluate, develop, and promote sound environmental policies for federally protected wildlife and closely related natural resources while ensuring the continued generation and transmission of reliable and affordable electricity. EWAC supports public policies, based on sound science, that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner. EWAC is a majority-rules organization and therefore specific decisions made by the EWAC Policy Committee may not always reflect the positions of every member.

² 88 Fed. Reg. 55,962 (August 17, 2023) (“Proposed Rule”).

³ U.S. Fish & Wildlife Serv., Species Status Assessment for the Texas Kangaroo Rat (*Dipodomys elator*) (Jan. 2021).

⁴ See, e.g., EWAC comments filed in connection with the Service’s proposed rule to list the dunes sagebrush lizard as endangered under the ESA, Docket No. FWS-R2-ES-2022-0162. 88 Fed. Reg. 40,764 (June 22, 2023).

⁵ See Executive Order 13,990: Protecting Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan. 25, 2021).

⁶ See The White House, *Fact Sheet: The American Jobs Plan* (Mar. 31, 2021) <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/>.

⁷ EWAC notes the Biden-Harris Administration’s focus on advancing environmental justice when addressing the climate crisis. See Executive Order 13,990: Protecting Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan. 25, 2021).

associated with the same; and (4) engage in early coordination with the regulated community to identify efficient ESA compliance pathways should the TKR ultimately be listed and critical habitat be designated.

EWAC welcomes additional discussion with the Service on solutions that result in greater regulatory clarity and effective conservation for listed and sensitive species, including the TKR.

I. The Service Should Reconsider Whether the Agency has Sufficient Data to Support a Species Listing.

Listing decisions should not be made based on speculation or worst-case scenario assumptions, and, as a recent decision from the U.S. Court of Appeals for the D.C. Circuit makes clear, the ESA does not permit the Service to exercise the precautionary principle in favor of a species when making listing determinations.⁸ Both the Proposed Rule and SSA indicate that the Service lacks the data to support a listing decision regarding the TKR. EWAC encourages the Service to reconsider listing the TKR at this time, as there appears to be insufficient data regarding the status of the species across its current and historical range. For example, in the preamble to the Proposed Rule, the Service states that “specific needs [of the TKR], especially those related to the species’ demographics, are unknown.”⁹ Moreover, the Service acknowledges that “no rangewide estimate” of the species exists, that “few studies” have been published that include “statistics on local abundance,” and that the species exhibits a “particular dynamic distributions, with only a few locations known to be continuously occupied through time.”¹⁰ As described in greater detail below, the lack of meaningful information on species demographics and trends has dissuaded the Service from taking concrete steps toward listing the TKR in the past, and it does not appear that this circumstance has changed. Without sufficient information about species demographics, it is challenging to determine whether the TKR truly meets the definition of an endangered or threatened species, including the degree to which extinction of the species may (or may not be) imminent.¹¹

In December 1982, the Service identified the TKR as a candidate for listing under the ESA, and indicated the species was possibly appropriate for listing, but that conclusive data on its biological vulnerability was lacking.¹² The TKR remained a candidate for nearly 15 years, at

⁸ *Nat’l Lobstermen’s Ass’n v. Nat’l Marine Fisheries Servs.* (“*National Lobstermen’s*”), 70 F.4th 582, 597-98 (D.C. Cir. 2023) (stating that “when the Congress wants an agency to apply a precautionary principle, it says so” and finding that the ESA does not ordain the application of the precautionary principle.) In *National Lobstermen’s*, the court further stated that the ESA “requires the Service to use the best available scientific data, not the most pessimistic. The word “available” rings hollow if the Service may hold up an agency action by merely presuming that unavailable data, if only they could be produced, would weigh against the agency action.” *Id.*

⁹ Proposed Rule at 55,967.

¹⁰ *Id.*

¹¹ *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, No. 21-791, slip op. at 37 (D.D.C. Sept. 30, 2023) (holding that, given the information available, the Service’s determination that the species at issue was not in imminent danger of extinction was “reasonable and consistent with the [ESA].”).

¹² 47 Fed. Reg. 58,454 (Dec. 30, 1982).

which point, it was removed from consideration as a candidate species.¹³ In the Federal Register notice announcing the discontinuation of the TKR as a candidate species, the Service stated:

[certain candidate species, including the TKR] shared one trait—sufficient information to justify issuance of a proposed rule was lacking...To reduce...confusion, and to clarify that the Service does not regard these species as candidates for listing, the Service is discontinuing the designation of [these] species as candidates...The Service remains concerned about these species, but further biological research and field study are needed to resolve the conservation status.¹⁴

Sufficient information to justify issuance of a listing rule remains lacking. The SSA notes that “early reports on TKR abundance are largely unquantifiable” and that “no [current] rangewide estimate of TKR abundance exists.”¹⁵ Recent survey efforts cited in the SSA appear to be limited to spotlighting and use of motion detecting cameras from unpaved roads within the species’ range¹⁶ largely because of a lack of access to private lands.¹⁷ Indeed, the SSA emphasizes that “the majority of these survey efforts occurred from public roadsides across the historical range” and that “a large landholding (approximately 500,000 acres) within a portion of the historical range has limited public road area and has not been surveyed in decades.”¹⁸ Finally, the SSA recognizes that TKR surveys demonstrate that detecting TKR in any given year may not lead to detections in the same areas in subsequent years. This fluctuation in detections, according to the SSA, could be due to low detection rates of roadside surveys or be a consequence of the temporal nature of the TKR’s preferred burrowing habitat. As a result, the SSA acknowledges that “[this] dynamic distribution makes any rangewide population estimates based on detection data potentially misleading when compared to other small mammals.”¹⁹ The SSA also acknowledges limitations in its habitat distribution model due to lack of access to private lands within the TKR range.²⁰

EWAC notes that several studies on TKR abundance and distribution are underway or have been completed since the Service last updated the SSA. For example, in 2021, the Service awarded more than \$270,000 to Texas Tech University’s Department of Natural Resources Management to study the connectivity and management, and development of monitoring strategies for the TKR.²¹ The results of the 2021 study, conducted by Stuhler et al. (“Stuhler Study”), were published only earlier this year²²—two years after the Service finalized the most recent TKR SSA. Other relevant studies have been published since the finalization of the SSA, including a 2022 study on TKR

¹³ 61 Fed. Reg. 7596 (Feb. 28, 1996).

¹⁴ *Id.* at 7597.

¹⁵ SSA at 9.

¹⁶ *Id.* at 13.

¹⁷ *Id.* at 25.

¹⁸ *Id.* at 13.

¹⁹ *Id.* at 45.

²⁰ *Id.* at 48.

²¹ See George Watson, *Researcher Awarded Grant to Study Texas Kangaroo Rat Habitat Connectivity Management*, Texas Tech Today (Aug. 13, 2021) <https://today.ttu.edu/posts/2021/08/Stories/researcher-awarded-grant-to-study-texas-kangaroo-rat-habitat-connectivity-management>.

²² Stuhler, J.D., and R.D. Stevens. 2023. Spatial Ecology of the Texas kangaroo rat (*Dipodomys elator*). Annual report generated for Texas Comptroller’s Office.

genetics funded by the Texas Comptroller (“Halsey Study”),²³ and a separate study to estimate size and density of TKR roadside populations by Veech et al. (“Veech Study”).²⁴ Neither the SSA nor the Proposed Rule refer to the Halsey Study. While the Service mentions the Stuhler Study and Veech Study in passing and indicates the results “do not contradict or conflict with the information that was used” in the SSA and “would not significantly alter the results” of the agency’s analysis,²⁵ EWAC believes it would behoove the Service and regulated community for the agency to take additional time to determine whether the best available scientific and commercial information—including studies published after the publication of the SSR—in fact support a listing decision for the TKR. Best available scientific and commercial information should include, to the degree practicable, efforts to study the persistence of the TKR on lands not limited to those accessible via public roadways.

With the above in mind, EWAC urges the Service not to hastily publish a final rule listing the TKR and, instead, work to establish a greater repository of data from which to determine whether the TKR, in fact, meets the definition of an endangered or threatened species under the ESA.

II. Service Should Apply Its Policy for Evaluation of Conservation Efforts When Making Listing Decisions in Connection with the Texas Kangaroo Rat Candidate Conservation Agreement with Assurances

In the Proposed Rule, the Service makes a passing reference to the existence of a Candidate Conservation Agreement with Assurances for the Texas Kangaroo Rat (“CCAA”) and asks the public to provide comment on whether any areas proposed for designation as critical habitat should be excluded from critical habitat pursuant to ESA section 4(b)(2), on the basis that such areas are covered by the CCAA.²⁶ The CCAA was developed cooperatively between the Texas Parks and Wildlife Department (“TPWD”) and the Service, and was finalized on June 24, 2022.²⁷ According to the CCAA, the conservation measures set forth therein will provide a net conservation benefit to the species by “reducing fragmentation, increasing connectivity of habitats, maintaining or increasing populations, and enhancing and restoring habitats.” These conservation measures, taken together, are expected by the Service and TPWD to “help maintain and enhance existing

²³ Halsey, et al. 2022. Comparison of genetic variation between rare and common congeners of *Dipodomys* with estimates of contemporary and historical effective population size. PLoS ONE 17(9): e0274554.

<https://doi.org/10.1371/journal.pone0274554>. Stuhler, J.D., M. K. Halsey, C. Portillo-Quintero, D. A. Ray, R.D. Bradley, R.D. Stevens. 2019. Endangered Species Research: Texas Kangaroo Rat (*Dipodomys elator*), Texas Tech University. <https://comptroller.texas.gov/programs/natural-resources/docs/reports/FinalReport-EndangeredSpeciesResearchTexasKangarooRat.pdf>.

²⁴ Veech, J.A., D.A. Guerra, I. Castro-Arellano, and J.L. Plappert. 2022. Estimating size and density of roadside populations of the Texas kangaroo rat. Grant Number F20AC11497-00. Prepared for the Service.

²⁵ Proposed Rule at 55,967.

²⁶ *Id.* at 55,964.

²⁷ See the executed version of the CCAA, available at

https://www.fws.gov/sites/default/files/documents/076982%20TKR%20CCAA%20FINAL%2020220516%20signed_508.pdf.

populations of TKR and support the establishment of additional populations through natural dispersal, translocation of wild individuals, or release of captive-reared individuals.”²⁸

As a general matter, EWAC supports excluding from critical habitat any area enrolled in the CCAA, as such areas would benefit from the application of conservation measures that provide a net conservation benefit²⁹ to the TKR—a standard that surpasses that of Section 7, which requires a federal agency ensure against destruction or adverse modification of critical habitat.³⁰ However, while EWAC appreciates the Service’s consideration of the CCAA in connection with a potential critical habitat designation, we are concerned that the Proposed Rule appears to ignore the requirements of the Service’s own Policy for Evaluation of Conservation Efforts When Making Listing Decisions (“PECE Policy”).³¹ The PECE Policy expressly recognizes that the ESA imposes a statutory obligation on the Service to consider “formalized conservation efforts” undertaken by “State and . . . Federal agencies, Tribal governments, businesses, organizations, or individuals that positively affect the species’ status.”³² The PECE Policy describes formalized conservation efforts as those “identified in a conservation agreement, conservation plan, management plan, or similar document,”³³ including formalized conservation efforts that “have not yet been implemented or have been implemented, but have not yet demonstrated whether they are effective at the time of a listing decision.”³⁴ When evaluating whether formalized conservation efforts adequately protect the species at issue, the PECE Policy requires the Service to implement a two-part analysis. First, for those efforts yet to be implemented, the Service will evaluate the certainty that the conservation effort will be implemented. Second, for those efforts that have not yet demonstrated effectiveness, the Service will evaluate the certainty that the conservation effort will be effective.³⁵

Given that the CCAA was finalized more than one year before the Service issued the Proposed Rule, it is disconcerting that no PECE Policy analysis appears to have been undertaken by the Service and that the Service is not seeking comment on whether and how the PECE Policy should be applied relative to the CCAA. Indeed, EWAC is concerned generally that the agency increasingly appears to be ignoring or minimizing formalized efforts of the regulated community to engage in private and creative solutions for species conservation. This is particularly the case here, where a state agency has undertaken substantial effort to address species within its own borders and provide a clear and efficient pathway for both conservation and project certainty. By minimizing the efforts of public and private stakeholders to address threats faced by various species, the Service communicates to the regulated community that taking pre-listing conservation actions has little value, decreases the likelihood that the regulated community will work with the

²⁸ CCAA at 4.

²⁹ 50 C.F.R. § 17.22(c)(2)(ii).

³⁰ 16 U.S.C. § 1536(a)(2).

³¹ 68 Fed. Reg. 15,100 (Mar. 28, 2003).

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 15,113.

³⁵ *Id.* at 15,114-15. The PECE Policy lists fifteen total criteria for the Services’ analysis: nine to direct its determination of the certainty that a given conservation effort will be implemented, and six for the certainty of whether the effort will be effective. *Id.*

Service toward species conservation, and places additional and unnecessary burdens on both the regulated community and the agency itself.

EWAC encourages the Service to conduct a fulsome PECE Policy analysis of the CCAA and to publish that analysis for public review and comment prior to any listing decision. EWAC further encourages the Service, generally, not to ignore important conservation efforts undertaken by the regulated community, in partnership with the Service when the agency is considering species listings in the future.

III. No Take Guidance for the TKR Should Include De Minimis Ground Disturbance for Activities Relating to Operations and Maintenance of Electric Generation, Transmission and Distribution Facilities.

EWAC appreciates that the Service has included in the Proposed Rule guidance on the types of activities that would and would not be considered “take” under Section 9,³⁶ in compliance with its *Interagency Policy for Endangered Species Act Section 9 Prohibitions*.³⁷ The preamble to the Proposed Rule indicates that, among other things, maintenance activities associated with existing roads, including resurfacing, repair, and mowing, will “not be considered likely to result in violation of [Section 9].”³⁸ EWAC encourages the Service to expand this language in the preamble to any final rule to recognize that operations and maintenance activities, including emergency operations and maintenance activities associated with existing electric generation, transmission, and distribution are not likely to result in take of the TKR. Specific examples of the types of activities the Service should recognize as not likely to result in take of the TKR include, but are not limited to:

- Operations and maintenance of existing electric infrastructure and rights-of-way within the range of the TKR;³⁹
- De minimis new disturbance of potential TKR habitat associated with accessing existing electric infrastructure and rights-of-way; and
- De minimis new disturbances associated with expansion of existing rights-of-way.

EWAC notes that while the SSA acknowledges there are no published records of TKR using or avoiding solar facilities and posits that construction and maintenance of the same may result in some benefit to the species, the SSA also states that “vast areas shaded by solar arrays

³⁶ Proposed Rule at 55,976-77.

³⁷ 59 Fed. Reg. 34,272 (July 1, 1994).

³⁸ Proposed Rule at 55,977.

³⁹ Operations and maintenance of existing infrastructure includes, but is not limited to, trimming vegetation that overhangs or encroaches into rights-of-way and easement areas, removing vegetation within rights-of-way and easement areas that could interfere with the safety and reliability of relevant infrastructure, mowing and clearing rights-of-way and easement areas to the width established by agreements with landowners, bulldozing under transmission and distribution lines to maintain ground clearances in accordance with relevant statutes and regulations, rebuilding existing infrastructure, and repairing and replacing equipment.

suggest conditions possibly analogous to woody cover and may impair the area’s potential suitability for the TKR.”⁴⁰ We encourage the Service to clarify in the preamble to any final rule that projects will not be penalized for theoretical negative impacts to TKR without data demonstrating a sufficient causal connection.

It is critical for the safety and reliability of the nation’s electric grid that operation and maintenance of renewable energy and electric transmission and distribution infrastructure can continue with minimal disruption.⁴¹ The activities described above are unlikely to have a negative impact on TKR as the activities would occur in previously disturbed areas and would not result in alteration of significant areas of potential TKR habitat.

IV. The Lack of Meaningful Survey Protocols Complicates ESA Compliance.

EWAC is concerned that the Service has, to date, not provided meaningful guidance on how the regulated community should conduct presence/absence surveys for the TKR. Given there are several species that bear a close resemblance to the species proposed for listing, the lack of Service guidance makes it more likely that a project proponent will obtain one or more false positive identifications and, thus, have difficulty ascertaining ESA compliance risk. Further, now that the TKR has been formally proposed to be listed under the ESA, its status as a proposed species means project proponents will be left in the difficult position of deciding whether a given activity with a federal nexus (e.g., provision of a pre-construction notification pursuant to General Condition 18 of the Nationwide Permitting Program)⁴² may trigger the need to consult with the Service under Section 7(a)(4). EWAC, therefore, encourages the Service to expeditiously publish guidance to the regulated community on conducting presence/absence surveys for the TKR, so that project proponents may more readily ascertain risk in the early planning stages.

V. The Service Should Reconsider Its Approach to Future Consultations Concerning Impacts to Critical Habitat.

Throughout the preamble to the Proposed Rule, the Service indicates it will designate only areas occupied by the TKR as critical habitat.⁴³ These areas total approximately 597,000 acres of land across five counties in Texas. EWAC appreciates the Service’s clarification that currently “developed areas” within areas proposed as critical habitat, including areas “covered by buildings, pavement, and other structures,” are excluded by text in the Proposed Rule and are not proposed for designation as critical habitat.⁴⁴ However, EWAC is concerned that the Service has failed to recognize the impact the proposed critical habitat designation will have on the regulated community.

⁴⁰ SSA at 39.

⁴¹ See Executive Order 14,057: Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, 86 Fed. Reg. 70,943 (Dec. 13, 2021) (declaring it a priority to achieve a nationwide energy transition toward a carbon pollution-free electricity sector, which will, out of necessity, require deployment of renewable energy and associated transmission and distribution lines).

⁴² See 86 Fed. Reg. 2744, 2844 (Jan. 13, 2021).

⁴³ Proposed Rule at 55,979.

⁴⁴ *Id.*

Specifically, the Service rationalizes that because it is designating only occupied areas as critical habitat,⁴⁵ there will be “little if any incremental impacts above and beyond the impacts of listing the species.”⁴⁶ However, the agency also states that it anticipates conducting Section 7 consultations for projects “where the species is locally absent (e.g., due to lack of habitat at the site-specific scale) but critical habitat is present. . . .”⁴⁷ This latter statement reveals there is almost certain to be a significant incremental impact on the regulated community by designating critical habitat: where a project proponent determines that the TKR is absent from a project site, but that site is within the broader area of critical habitat, the project can expect to experience delays, increased costs, and a potential adverse modification call should there be a need for federal permitting, funding, or other authorization. While the Service estimates that the cost to private entities in the energy and infrastructure sectors associated with Section 7 consultations over critical habitat will be “relatively minor (administrative costs of less than \$10,000 per consultation effort),” the reality is that project delays and provision of voluntary conservation to avoid an adverse modification frequently result in millions of dollars of additional project costs. EWAC encourages the Service to rethink both the extent and effect of critical habitat designation in any final rule, and recognize that there likely will be substantial incremental costs to the regulated community associated with the designation, as proposed.

EWAC also has some concern with the Service’s assumption that because the agency proposes to designate as critical habitat only those areas that are occupied by the TKR, any actions that would result in jeopardy to the species would necessarily result in destruction or adverse modification of critical habitat. Service determinations concerning jeopardy to the species and destruction or adverse modification of critical habitat are intended to be separate, as stated plainly by the Service’s *Endangered Species Consultation Handbook*: “[i]ndependent analyses are made for jeopardy when the species is present or potentially present, and for adverse modification when designated critical habitat is affected.”⁴⁸ We encourage the Service to clarify in the preamble to any final rule that the Service will conduct independent analyses of whether a given activity subject to consultation is likely to result in jeopardy to the TKR or destruction or adverse modification of designated critical habitat.

VI. The Service Should Begin Working with the Energy Generation and the Electric Transmission and Distribution Sectors to Identify Efficient ESA Compliance Mechanisms.

In the event the Service lists the TKR under the ESA, EWAC encourages early coordination with the regulated community to identify ESA compliance pathways that will ensure the goals of the Biden-Harris Administration for addressing climate change, modernizing the power grid and ensuring its safety and reliability, and pursuing environmental justice are met, and that these compliance pathways consider operational, financial, and other constraints faced by the

⁴⁵ Given most of the presence data described by the Proposed Rule and in the SSA was limited to information gathered from publicly accessible roadways, EWAC questions the Service’s presumption that the proposed critical habitat designation is limited only to occupied areas.

⁴⁶ Proposed Rule at 55,979.

⁴⁷ *Id.* at 55,983.

⁴⁸ U.S. Fish & Wildlife Serv., *Endangered Species Consultation Handbook, Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act* (March 1998) at 4-35.

renewable energy and electric transmission and distribution sectors. For example, early identification of potentially acceptable means to minimize and mitigate impacts to TKR, research and monitoring needs, and whether the Service will consider allowing research as a potential conservation measure could assist project proponents in planning for future needs and assist the Service in obtaining the data it lacks regarding the species' persistence and distribution within the landscape.

VII. Conclusion.

EWAC appreciates the Service's consideration of these comments. By incorporating EWAC's comments, the final rule will be more consistent with the Biden-Harris Administration's stated goals relating to climate change, cleaner energy, grid modernization, and environmental justice.⁴⁹ EWAC would welcome the opportunity to discuss the comments in greater detail with the Service.

Please feel free to contact the following EWAC representatives:

Jennifer A. McIvor, EWAC Policy Chair, jennifer.mcivor@brkenergy.com, 712-352-5434

John M. Anderson, EWAC Executive Director, janderson@energyandwildlife.org,
202-508-5093

Brooke Marcus, Nossaman LLP, bmarcus@nossaman.com, 512-813-7941

⁴⁹ See Executive Order 13,990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," 86 Fed. Reg. 7037 (Jan. 25, 2021).