



**December 4, 2023**

Comments regarding:

**October 3, 2023 Proposed Rule to List the Short-Tailed Snake as a Threatened Species with a Section 4(d) Rule under the Endangered Species Act**

Submitted by:

**Energy and Wildlife Action Coalition**

Filed electronically to the attention of:

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Docket No. FWS-R4-ES-2023-0158

The Energy and Wildlife Action Coalition (“EWAC”)<sup>1</sup> submits these comments in response to the United States Fish and Wildlife Service’s (“Service”) October 3, 2023 Notice of Proposed Rulemaking<sup>2</sup> to list the short-tailed snake (*Lampropeltis extenuata*) as threatened (“Proposed Listing Rule”) under the Endangered Species Act (“ESA”) with a rule issued under ESA section 4(d) (“Proposed 4(d) rule”) (together, the Proposed Listing Rule and Proposed 4(d) Rule are referred to as the “Proposed Rule”). EWAC provides these comments on the Proposed Rule and the Species Status Assessment Report for the short-tailed snake (“SSA”)<sup>3</sup> based on the knowledge and experience of its membership.

As EWAC previously has communicated to the Service,<sup>4</sup> new species listings under the ESA often disrupt project construction, operation, and maintenance, and create substantial compliance burdens on the regulated community. Specifically, 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. Whenever the Service considers listing species under the ESA, we encourage the agency to proactively employ 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 ensure the Biden-Harris Administration’s goals to reduce greenhouse gas emissions, bolster resilience to the impacts of climate change,<sup>5</sup> and deliver much-needed improvement of this nation’s electric and communication infrastructure,<sup>6</sup> particularly to ensure that the needs of historically underserved communities will be met.<sup>7</sup>

As described in greater detail below, in order to ensure efficient administration of the ESA and secure the production and transmission of clean, reliable, and affordable energy, EWAC provides the following comments: (1) the Service should reconsider whether it has sufficient data to support the species’ listing at this time; (2) the Service should reconsider whether the species is

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<sup>1</sup> 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.

<sup>2</sup> 88 Fed. Reg. 68,070 (Oct. 3, 2023) (“Proposed Rule”).

<sup>3</sup> U.S. Fish and Wildlife Service, Species Status Assessment for the Short-Tailed Snake, Version 1.0 (Dec. 2021) (“SSA”).

<sup>4</sup> 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), EWAC comments filed in connection with the Service’s proposed rule to list the Texas kangaroo rat as endangered under the ESA, Docket No. FWS-R2-ES-2021-0143. 88 Fed. Reg. 55,962 (Aug. 17, 2023).

<sup>5</sup> 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).

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

<sup>7</sup> 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).

adequately protected under existing state law; (3) EWAC generally supports Service use of a species specific ESA section 4(d) rule for the short-tailed snake; (4) the Service should revise the Proposed 4(d) Rule to exempt from the Section 9 take prohibition certain operations and maintenance activities associated with existing electric generation, transmission, and distribution infrastructure; (5) the Service should develop meaningful guidance on how the regulated community should conduct presence/absence surveys for the short-tailed snake; and (6) the Service should engage in early coordination with the regulated community to identify efficient ESA compliance pathways should the species ultimately be listed.

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 short-tailed snake.

## **I. The Service Should Reconsider Whether the Agency has Sufficient Data to Support a Species Listing at this Time.**

As is described in greater detail below, EWAC is concerned that neither the Proposed Rule nor SSA demonstrate that the Service has sufficient scientific or commercial information to support a listing decision. The ESA defines a threatened species as one that is “*likely* to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”<sup>8</sup> Pursuant to Service regulations implementing section 4 of the ESA, the agency’s foreseeable future determination extends “only so far as it can *reasonably determine* that both the future threats to the species and the species’ responses to those threats *are likely*.”<sup>9</sup> In addition, a recent decision from the U.S. Court of Appeals for the D.C. Circuit provides further guidance to the Service by explaining that the ESA does not permit the Service to exercise the precautionary principle<sup>10</sup> in favor of a species when making listing determinations.<sup>11</sup> Thus, any listing decisions should not be made based on speculation or worst-case scenario assumptions, but instead based on reasonable outcomes and the best available science.

The Proposed Listing Rule is based primarily on purported threats to the short-tailed snake from habitat loss and lack of habitat management.<sup>12</sup> However, given the Service lacks sufficient data regarding the species’ *current* condition, it does not follow that the Service would be able to make a reasonable determination as to the species’ status in the foreseeable future. The agency’s

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<sup>8</sup> 16 U.S.C. § 1532(20) (emphasis added).

<sup>9</sup> 50 C.F.R. § 424.11(d) (emphasis added).

<sup>10</sup> The often-cited definition of the precautionary principle is that “[w]here there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. 1), Annex I (Aug. 12, 1992), available at: [https://undocs.org/en/A/CONF.151/26/Rev.1\(vol.I\)](https://undocs.org/en/A/CONF.151/26/Rev.1(vol.I)).

<sup>11</sup> *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 merely presuming that unavailable data, if only they could be produced, would weigh against the agency action.” *Id.*

<sup>12</sup> Proposed Rule at 68,071.

lack of sufficient data regarding the status of the short-tailed snake is apparent throughout the Proposed Rule and SSA. Notably, the SSA states that “[t]here have been no systematic population surveys for the short-tailed snake” and “[e]ffective survey methods for th[e] cryptic, fossorial species have not been determined.”<sup>13</sup> Moreover, regarding the habitat preferences of the species, the SSA acknowledges that “limited information is available regarding the ecology and habitat preferences of the short-tailed snake.”<sup>14</sup> Nevertheless, the SSA indicates that, based on available surveys, the “current condition of the snake is thought [to] be Moderate.”<sup>15</sup> As a result of the insufficient data informing the species’ current condition and its habitat preferences, the Service recognizes that “[t]here are several data gaps” in its assessment and therefore concludes its species assessment with a number of important, and arguably critical, caveats, including:

- “A reliable survey method for the species is not known.”<sup>16</sup>
- “Not having reliable records for the species meant we could not meaningfully delineate biological populations.”<sup>17</sup>
- “The species may be rare or difficult to survey, or both, so there is limited information regarding its ecology and best management.”<sup>18</sup>
- “We lack key components of the species natural history.”<sup>19</sup>

Similar to the problems the Service faces with respect to short-tailed snake population and habitat needs, the agency also appears to have uncertainty in the data it needs to appropriately analyze threats facing the species. When analyzing a species’ future threats, Service regulations require the agency to make “reliable predictions” that are “sufficient to provide a *reasonable degree of confidence* in the prediction.”<sup>20</sup> EWAC is concerned that the data relating to the short-tailed snake’s future threats is ripe with uncertainty and inadequate to form the basis for a reliable prediction about the species’ foreseeable future. For example, in the SSA and Proposed Rule, the Service cites four conditions—urbanization, agriculture, silviculture, and mining—as the primary future threats affecting the species.<sup>21</sup> However, in discussing each of the identified conditions, the Service repeatedly concludes that it is either uncertain about the effect or that the data is lacking for any determination of the activity’s impact on the species. The following demonstrates the Service’s uncertainty for the impacts of each threat:

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<sup>13</sup> SSA at 7. The SSA even cautions that the species’ current condition may even be better than prior surveys indicated because “a failure to document the species in a given location and time period could be attributed to the low probability of detection . . . and may not represent true species absence.” *Id.*

<sup>14</sup> *Id.* at 30.

<sup>15</sup> *Id.* at v.

<sup>16</sup> SSA at 73.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Proposed Rule at 60,074 (emphasis added).

<sup>21</sup> *Id.* at 68,075-76; SSA at 21. As the Service states, “the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of ‘endangered species’ or ‘threatened species.’” Proposed Rule at 68,073.

- Urbanization - “[R]esearch is lacking to quantify the effects of urbanization on the short-tailed snake.”<sup>22</sup>
- Agriculture - The historical impacts of agricultural activities on the short-tailed snake are “uncertain.”<sup>23</sup>
- Mining - The impacts of mining on the short-tailed snake are “expected to be limited.” The Service states “it does not have information that mining practices have resulted in the extirpation of short-tailed snake occurrences.”<sup>24</sup>
- Silviculture - “[L]ittle is known about the impacts of silviculture on short-tailed snake” and “potential impacts to short-tailed snake populations from silviculture activities . . . are difficult to assess and currently unknown.”<sup>25</sup>

Despite, this admitted uncertainty, the Service simply concludes that “declining habitat conditions are expected to negatively affect the short-tailed snake,” and thus, the species is likely to become endangered within the foreseeable future throughout its range.<sup>26</sup> EWAC notes this finding seems to conflict directly with the Service’s further statement that it “*does not have information available to accurately project the demographic condition of the species in the future.*”<sup>27</sup> EWAC cautions the Service to heed the direction in the agency’s own regulations and that of the D.C. Circuit regarding uncertainty and reconsider whether it has data sufficient to support a listing decision on the short-tailed snake’s future at this time.

## II. The Service Should Reconsider Whether the Species is Adequately Protected under Existing State Law.

EWAC is concerned the Service is disregarding the existing protections and best management practices for the short-tailed snake implemented by the Florida Fish and Wildlife Conservation Commission (“FWC”). In the Proposed Rule, the Service recognizes the short-tailed snake’s status as a threatened species on Florida’s Endangered and Threatened Species List and that the FWC has “incorporated species’ conservation measures and developed permitting guidelines” to protect the species.<sup>28</sup> In addition, FWC has developed best management practices (“BMP”) for the short-tailed snake that are widely implemented and serve to “promote sound agricultural land use and natural resource conservation and to reduce the potential for incidental take of the State-imperiled species.”<sup>29</sup> Despite FWC’s efforts to protect the short-tailed snake, the Service simply concludes

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<sup>22</sup> Proposed Rule at 68,075.

<sup>23</sup> *Id.* at 68,076.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* (stating that “little is known about the impacts of silviculture . . . on the short-tailed snake”); SSA at 30 (“potential impacts to short-tailed snake populations from silviculture activities . . . are difficult to assess and currently unknown”).

<sup>26</sup> Proposed Rule at 68,086.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 68,077.

<sup>29</sup> *Id.* at 68,078.

that minimal data on the efforts results in an inability “to project the extent to which these [BMPs] will influence the short-tailed snake or its habitat.”<sup>30</sup>

Faced with a data gap between the BMPs on the short-tailed snake and its benefit to the species, the Service again engages the precautionary principle to resolve the data gap in favor of listing the species. As discussed above in Section I, these sort of worst-case scenario assumptions are improper bases for a species’ listing determination. Instead, EWAC cautions the Service to reconsider whether the existing state-level measures provide for adequate protection for the short-tailed snake. Giving short shrift to non-federal efforts at species conservation may serve to erode the collective will of the regulated community to utilize the available mechanisms to address at-risk species’ conservation needs. Thus, EWAC encourages the Service to reconsider the species’ existing protections under state law.

### **III. EWAC Supports the Use of a Carefully Tailored Species-Specific 4(d) Rule for the Short-Tailed Snake.**

EWAC supports the agency’s use of species-specific 4(d) rules to identify what activities would be subject to the “take” prohibition of Section 9 relative to threatened species. Use of species-specific 4(d) rules better reflects the distinction Congress made when it enacted the ESA and applied the Section 9 prohibitions on take only to species listed as endangered. Use of carefully tailored species-specific 4(d) rules that focus protection on the key threats faced by the species also conserves the Service and public’s limited resources by reducing the instances when project proponents are obliged to seek take authorization. This, in turn, reduces the Service’s workload and allows the Service to devote more attention and resources to other important matters, such as species of higher conservation need, completing Service review and processing of incidental take permit applications and engaging in formal and informal consultations under Section 7, completing species status reviews and responding to petitions to list and delist species, and designating or removing critical habitat.

If the Service ultimately determines that listing the short-tailed snake as threatened is supported by the best available scientific and commercial information, EWAC agrees that the use of a 4(d) rule for the species would be biologically and legally appropriate. Given the communities and regions that would be affected by a listing of the short-tailed snake, Service adoption of a well-tailored 4(d) rule would further the Biden Administration’s goals to reduce greenhouse gas emissions and bolster resilience to the impacts of climate change,<sup>31</sup> and deliver much needed

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<sup>30</sup> *Id.*

<sup>31</sup> See Executive Order 13990: Protecting Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan. 25, 2021); Executive Order 14008, 86 Fed. Reg. 48,745 (Aug. 31, 2021). A 4(d) rule that is not well-tailored could significantly impede development of renewable energy and the transmission necessary to deliver it and would be at cross-purposes with the Biden Administration’s goal of creating a carbon pollution-free power sector by 2035. See Fact Sheet: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.

improvement of this nation's electric and communications infrastructure,<sup>32</sup> particularly to historically underserved communities.<sup>33</sup> With this in mind, EWAC asks the Service to consider making changes to the provisions of the Proposed 4(d) Rule.

#### **IV. The Operation and Maintenance of Electric Transmission and Distribution Infrastructure Should be Exempt from the “Take” Prohibition.**

Given the Service has proposed to fully apply the take prohibition of Section 9 to the short-tailed snake (with very few potential exceptions), EWAC encourages the Service to adopt additional exemptions from the take prohibitions in any final 4(d) rule. Doing so would conserve Service resources by limiting the instances in which project proponents seek input regarding the potential need for incidental take coverage under Section 7 or ESA section 10 and would also inform project proponents in the earliest stages of project planning whether there may be a need to coordinate with the Service regarding potential impacts to the short-tailed snake. Specifically, EWAC recommends the following activities relating to operations and maintenance of existing electric transmission and distribution infrastructure rights-of-way be exempted from the take prohibition in any final 4(d) rule. We note this list is not exhaustive, and is intended to provide general guidance on the kinds of activities typically associated with operations and maintenance of electric transmission and generation infrastructure:<sup>34</sup>

- Replacement of critical structural components such as crossarms, insulators, and conductors;
- De minimis new disturbance of potential short-tailed snake habitat associated with accessing existing electric infrastructure and rights-of-way; and
- De minimis new disturbances associated with expansion of existing rights-of-way.

Providing an exemption under ESA section 4(d) is critical for the safety and reliability of the nation's electric grid. Companies with transmission and distribution lines are currently required by various state, federal, and local authorizations to manage the vegetation within its utility public rights-of-way.<sup>35</sup> The routine maintenance of utility corridors is critical to maintaining reliability and ensuring the effective and efficient restoration of power following unexpected

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<sup>32</sup> See the White House, *Fact Sheet: The American Jobs Plan*, (Mar. 31, 2021), available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/>.

<sup>33</sup> EWAC notes the Biden 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).

<sup>34</sup> 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 right-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.

<sup>35</sup> For example, the National Electric Safety Code section 218 states that utilities must clear their lines of vegetation and the Florida Public Service Commission has mandated that certain utility companies clear its distribution facilities every three years for backbone and every six years for lateral.

power interruptions. Considering the number of miles of transmission and distribution lines that must be maintained and the relative frequency of the maintenance activities, it is unreasonable to expect line operators to survey or seek incidental take permitting from the Service for the short-tailed snake in advance of these routine, recurring, and required activities.

Importantly, the operation and maintenance of electric transmission and distribution lines is unlikely to be a source of major threats to the short-tailed snake. While there may be some, undefinable, minor level of impact to the short-tailed snake or its habitat associated with operation and maintenance activities related to electric transmission and distribution lines, failure to conduct such activities would likely result in far greater impact to the species in the future. Because maintenance of electric transmission and distribution lines is prophylactic, providing an exemption for such maintenance can avoid much more damaging impacts should vegetation management not be undertaken. For example, tree trimming and vegetation maintenance are two routine maintenance activities conducted to reduce the chance of fire, power outages, and other human health and safety risks. Conducting these activities on an as-needed basis results in fewer soil disturbances than would result from rebuilding lines damaged by fallen and overgrown limbs or fire. Thus, impacts to the short-tailed snake would be minimized under a regime that fosters vegetation management for transmission and distribution lines.

Existing state regulations provide a good starting point for describing the types of activities that should be exempted from the take prohibition. As is recognized in the Proposed Rule and noted above, the short-tailed snake is currently listed as a threatened species on Florida's Endangered and Threatened Species List.<sup>36</sup> Pursuant to state law, it is unlawful for any person to "take" the short-tailed snake (including harming or harassing) without a permit issued by the FWC. Notably FWC includes a list of activities that are not expected to cause take of the species under state law.<sup>37</sup> Consistent with EWAC's recommendation, that list includes "[l]ow impact and temporary activities such as debris management, tree removal and planting, grazing, and other activities that do not result in permanent alteration of soils."<sup>38</sup>

Electric transmission and distribution line operators must be able to operate and maintain their lines quickly and efficiently to ensure the distribution of safe, reliable, and affordable energy—including distribution to historically underserved, rural communities. Given the short-tailed snake's range across numerous rural communities, ensuring the continued availability of safe, reliable, and affordable electricity is of paramount importance. Delayed timelines and unforeseen costs caused by new take prohibitions and the need to address the same could result in the commercial infeasibility of much-needed energy generation and transmission projects and run counter to the Biden Administration's objectives of grid modernization and environmental justice.<sup>39</sup> For these reasons, EWAC encourages the Service to exempt operation and maintenance activities of electric transmission and distribution lines in any final 4(d) rule.

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<sup>36</sup> Proposed Rule at 68,077.

<sup>37</sup> Florida Fish and Wildlife Conservation Commission, *Species Conservation Measures and Permitting Guidelines for the Short-Tailed Snake*, 5 (December 2019), available at: <https://myfwc.com/media/22867/shorttailedsnakeguidelines-2019.pdf>.

<sup>38</sup> *Id.*

<sup>39</sup> See 86 Fed. Reg. 7037 (Jan. 25, 2021).



## **V. The Service Should Develop Meaningful Survey Protocols for 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 short-tailed snake. In the Proposed Rule, the Service states that there is a “lack of established survey methods” for the short-tailed snake.<sup>40</sup> The SSA further states that “a reliable survey method for the species is not known” and “[i]t is difficult for surveyors to ascertain presence” of the species.<sup>41</sup> Given that the “defensive behavior and coloration of the short-tailed snake may mimic that of other snake species,” the lack of Service guidance makes it more likely that a project proponent will have difficulty ascertaining ESA compliance risk.<sup>42</sup> Now that the short-tailed snake 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 pre-construction notification pursuant to the General Condition 18 of the Nationwide Permitting Program)<sup>43</sup> 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 short-tailed snake, so that project proponents may more readily ascertain risk in the early planning stages.

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

In the event the Service finalizes its proposal to list the short-tailed snake, EWAC encourages early coordination with the regulated community to identify ESA compliance pathways. This coordination 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 renewable energy and electric transmission and distribution sectors. Early identification of potentially acceptable means to minimize and mitigate impacts to the short-tailed snake, research and monitoring needs, updated survey protocols, 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 species abundance and habitat needs.

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<sup>40</sup> Proposed Rule at 68,078.

<sup>41</sup> SSA at 41, 73.

<sup>42</sup> *Id.* at 6.

<sup>43</sup> See 86 Fed. Reg. 2744, 2844 (Jan. 13, 2021).

## VII. Conclusion.

EWAC appreciates the Service's consideration of these comments. By incorporating EWAC's comments, any 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.<sup>44</sup> EWAC would welcome the opportunity to discuss the comments in greater detail with the Service.

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<sup>44</sup> See Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," 86 Fed. Reg. 7037 (Jan. 25, 2021).