



EWAC[®]

Energy and Wildlife
Action Coalition

March 12, 2025

Comments regarding:

**December 12, 2024 Proposed Rule to List the Monarch Butterfly as a Threatened Species
With a Section 4(d) Rule and Designation of Critical Habitat**

Submitted by:

Energy and Wildlife Action Coalition

Filed electronically to the attention of:

Public Comments Processing
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Docket No. FWS-R3-ES-2024-0137

The Energy and Wildlife Action Coalition (“EWAC”)¹ submits these comments in response to the United States Fish and Wildlife Service’s (“Service”) December 12, 2024 notice of its proposed rules to list the monarch butterfly (*Danaus plexippus*) (“Monarch”) as a threatened species (“Proposed Listing Rule”), to issue a section 4(d) rule (“Proposed 4(d) Rule”), and to designate critical habitat for the species (“Proposed Critical Habitat Rule”) under the Endangered Species Act (“ESA”) (the Proposed Listing Rule, Proposed 4(d) Rule, and Proposed Critical Habitat Rule are collectively referred to herein as the “Proposed Rule”).² EWAC provides these comments on the Proposed Rule based on the knowledge and experience of its membership. EWAC’s members develop and maintain energy generation facilities and transmission and distribution infrastructure throughout the United States, including a substantial number of assets within the range of the Monarch.

EWAC has taken note that multiple administrations have prioritized increasing domestic power generation and/or improvements to grid stability and reliability,³ and recognizes that achieving these goals will necessitate not only the deployment of new energy facilities and associated transmission and distribution infrastructure nationwide, but also the maintenance and operation of existing infrastructure in order to ensure our electric grid is operated safely, reliably, and affordably.

The general purposes of this letter are to: (1) encourage the Service to fully consider ongoing voluntary conservation efforts benefitting the Monarch in any final listing decision; (2) recommend adjustments to the Proposed Critical Habitat Rule; and (3) offer suggestions for additional, tailored exceptions from the take prohibition to avoid unnecessarily draining the Service’s resources and hindering the development and deployment of energy resources, operation and maintenance of the electric grid, and achievement of the nation’s energy infrastructure goals.

a. Ongoing Conservation Efforts should be Given Full Consideration in Making any Final Listing Determination for the Monarch.

The Proposed Listing Rule and related “Monarch (*Danaus plexippus*) Species Status Assessment Report version 2.1” (“SSA”) identify loss of breeding, migratory, and overwintering habitat; exposure to insecticides; and climate change as the “primary drivers” affecting the status

¹ EWAC is a national 501(c)(6) trade association formed in 2014 whose members consist of electric utilities, electric transmission providers, and independent power producers, 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 U.S. Fish & Wildlife Service, *Threatened Species Status With Section 4(d) Rule for Monarch Butterfly and Designation of Critical Habitat*, 89 Fed. Reg. 100,662 (Dec. 12, 2024) (“Proposed Rule”), available at: <https://www.federalregister.gov/documents/2024/12/12/2024-28855/endangered-and-threatened-wildlife-and-plants-threatened-species-status-with-section-4d-rule-for> (hereinafter, “Federal Register Notice”).

³ See, e.g., Executive Order, “Declaring a National Energy Emergency,” 90 Fed. Reg. 8433 (Jan. 29, 2025); Executive Order, “Unleashing American Energy,” 90 Fed. Reg. 8353 (Jan. 29, 2025); Executive Order, “Implementation of the Energy and Infrastructure Inflation Reduction Act of 2022,” 87 Fed. Reg. 56,861 (Sept. 16, 2022); Executive Order, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use,” 66 Fed. Reg. 28,355 (May 22, 2001).

of the Monarch.⁴ The preamble to the Proposed Rule (“Preamble”) explains that habitat loss is the threat that can “most easily” be addressed through conservation efforts, and acknowledges several landscape-scale conservation efforts that have been established for the benefit of the Monarch:⁵ (1) the Mid-America Monarch Conservation Strategy, originally developed by the Midwest Association of Fish and Wildlife Agencies in 2018 and last updated in 2023;⁶ (2) the Western Monarch Butterfly Conservation Plan, developed by the Western Association of Fish and Wildlife Agencies in 2019;⁷ and (3) the Nationwide Candidate Conservation Agreement with Assurances for the Monarch Butterfly on Energy and Transportation Lands with an integrated Candidate Conservation Agreement, authorized by the Service in April 2020 (“Monarch CCAA”).⁸ These initiatives are a result of tremendous effort undertaken by the Service and dozens of collaborating entities—including specifically entities who manage lands associated with electric power generation, transmission, and distribution—to produce a framework for conserving the Monarch and its habitat while promoting construction, operation, and maintenance of critical infrastructure projects nationwide.

EWAC and many of its members engaged directly with the University of Illinois-Chicago (“UIC”), the Service, and others to develop the Monarch CCAA, which includes conservation measures—such as planting native vegetation and implementing Integrated Vegetation Management practices—in order to provide a net conservation benefit to the Monarch. Pursuant to the Monarch CCAA, companies enrolling in the program agree to carry out conservation measures on energy and transportation lands to reduce or remove threats to the Monarch and to create and maintain habitat. A press release issued by the Service on April 8, 2020 quoted then-Service Director Aurelia Skipwith as remarking that “[c]ompleting this agreement is a huge boost for the conservation of [the Monarch] and other pollinators on a landscape scale” and that the agreement demonstrates how the Service “is working proactively with our partners in the energy, transportation and agriculture industries to provide regulatory certainty for industry while addressing the conservation needs of our most at-risk species.”⁹ The program manager of UIC’s Energy Resources Center said at the time that the Monarch CCAA “[n]ot only is...the largest CCAA in history...but represents a extraordinary collaboration between industry leaders and the [Service] that can serve as a model for addressing challenges to other at-risk species.”¹⁰

⁴ Proposed Rule at 100,671; SSA at 34.

⁵ *Id.* at 100,674-100,675.

⁶ Midwest Association of Fish and Wildlife Agencies, *2023 Update to the Mid-America Monarch Conservation Strategy, 2018-2038* (2023), available here: <http://www.mafwa.org/wp-content/uploads/2023/07/2023UpdateToTheMidAmericaMonarchConservationStrategy.pdf>.

⁷ Western Association of Fish and Wildlife Agencies, *Western Monarch Butterfly Conservation Plan (2019-2069)* (July 1, 2019), available here: https://wafwa.org/wpdm-package/western-monarch-butterfly-conservation-plan-2019-2069/?ind=1602171186650&filename=WAFWA_Monarch_Conservation_Plan.pdf&wpdmdl=13048&refresh=67a144f97b3041738622201.

⁸ U.S. Fish & Wildlife Serv., *Nationwide Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportation Lands* (Mar. 2020), available at: https://www.fws.gov/sites/default/files/documents/Final_CCAA_040720_Fully%20Executed.pdf.

⁹ Press Release: “Historic agreement will conserve millions of acres for monarch butterflies and other pollinators across the United States”; found at: <https://www.fws.gov/press-release/2020-04/agreement-will-conserve-millions-acres-pollinators>.

¹⁰ *Id.*

The Monarch CCAA includes a goal of enrolling 26 million acres of land.¹¹ As of February 2025, 61 companies had entered into certificates of inclusion with approximately 7,265,533 acres of land enrolled¹² in the Monarch CCAA and 1,187,008 adopted acres¹³ committed. Under the Monarch CCAA, enrollees are required to carry out conservation measures on their enrolled lands to reduce or remove threats to the Monarch and to create and maintain habitat annually.¹⁴ Based on these metrics, it is clear that the Monarch CCAA has been and will continue to be successful—providing substantial benefits to the species and regulatory certainty for enrollees.

In making any final listing decision, EWAC encourages the Service to carefully consider the benefits the Monarch has and will continue to receive from the Monarch CCAA and other landscape-scale conservation efforts, and, in part based on these efforts, whether listing the species is appropriate at this time. In recent years, the Service has on several occasions listed species as endangered or threatened under the ESA despite the existence of significant conservation efforts undertaken by the public and private sectors and supported or approved by the Service.¹⁵ When the Service fails to fully consider in its listing decisions substantial investment by private and public entities to conserve sensitive species undertaken before those species are listed, it has a chilling effect that is likely to stymie voluntary conservation efforts in the future. The Service's failure to give appropriate weight to these efforts signals that these efforts are futile and do not move the needle in terms of preventing listing decisions which, in turn, is likely to result in a reduction in private investment in such efforts and less conservation for species overall. The Service highlights in the Preamble the importance of comprehensive conservation plans developed by or in coordination with state agencies and those developed by federal agencies by indicating that such activities will result in low levels of take of individuals or will aid in the conservation and recovery of the Monarch.¹⁶ Therefore, any final rule to list the Monarch should be carefully crafted to avoid disincentivizing participation in voluntary conservation efforts—whether undertaken by public or private entities.

II. Comments on the Proposed Critical Habitat Designation.

With respect to the Proposed Critical Habitat Rule, EWAC recommends that any final rule exclude from the critical habitat designation all areas enrolled in the Monarch CCAA. Section 3 of the ESA defines “critical habitat” in relevant part as:

the specific areas within the geographical area occupied by the species, at the time it is listed...on which are found those physical or biological features (I) essential to

¹¹ Proposed Rule at 100,675.

¹² “Enrolled lands” are lands within the covered area that have been identified by a signed certificate of inclusion on which conservation measures or covered activities may occur, and on which assurances provided under the CCAA would apply. Monarch CCAA at xi.

¹³ “Adopted acres” are lands within the enrolled lands where conservation measures will be used to create, enhance, restore, sustain, or maintain habitat supporting the Monarch’s breeding and/or foraging requirements. Monarch CCAA at ix.

¹⁴ Proposed Rule at 100,674.

¹⁵ For example, the Service listed the lesser prairie-chicken and the dunes sagebrush lizard under the ESA despite significant voluntary conservation efforts, including those made by federal, state, and local governments through a variety of government-funded programs, Service-approved conservation approaches, and partnerships with the environmental and regulated community.

¹⁶ Proposed Rule at 100,689.

the conservation of the species and (II) which may require special management considerations or protection.¹⁷

According to the definition of critical habitat under ESA section 3, any critical habitat designated for the Monarch should include areas essential to Monarch conservation that also require special management considerations or protection.

In the Preamble, the Service explains that “the areas occupied by the [Monarch] during the winter are the subset of habitat across the range needed for recovery that are essential to the conservation of the species” and, as such, the agency proposes “only designating overwintering habitat in the United States” as critical habitat.¹⁸ Specifically, the Service has proposed designating as critical habitat certain overwintering sites in California that demonstrated high occupancy rates over various periods of time.¹⁹

Documented overwintering sites may not be enrolled in the Monarch CCAA.²⁰ While the CCAA recognizes these areas as important, the document addresses “early successional grassland habitat” supporting “blooming nectaring plants and milkweed species” rather than forest habitats necessary for overwintering.²¹ Recognizing the importance of the overwintering sites, however, the Monarch CCAA “requires specific conservation measures within half-mile buffers” of known aggregation sites in California, Arizona, and Nevada.²² Moreover, and as the Service recognizes in the Proposed Rule, Monarch CCAA enrollees are required to carry out conservation measures on their enrolled lands to reduce or remove threats to the Monarch and to create and maintain Monarch habitat annually throughout the species’ range.²³ Thus, all areas enrolled in the Monarch CCAA—and particularly enrolled areas within half a mile of a known aggregation site in California, Arizona, and Nevada—are already protected by strong conservation measures and do not require any special management beyond what is already required under the Monarch CCAA. Those lands, therefore, should not be included in any final critical habitat designation for the Monarch.

III. Comments on the Proposed 4(d) Rule Provisions.

EWAC supports the Service’s use of species-specific 4(d) rules to identify what activities are and are not subject to the “take” prohibition of ESA section 9 relative to threatened species. Species-specific 4(d) rules better reflect the distinction Congress made when it enacted the ESA and applied the ESA section 9 take prohibition only to species listed as endangered. The Service’s use of species-specific 4(d) rules to tailor protections to the key threats faced by threatened species also conserves Service resources by reducing the instances in which the Service must process applications for incidental take permits under ESA section 10(a)(1)(B). As a result, use of 4(d) rules allows the Service to devote its time and resources to addressing species of higher conservation need, engaging in ESA section 7 consultation, processing incidental take permit

¹⁷ 16 U.S.C. 1532(5).

¹⁸ Proposed Rule at 100,689.

¹⁹ *Id.*

²⁰ Monarch CCAA at 9.

²¹ *Id.*

²² *Id.* at 9-10, 44.

²³ Proposed Rule at 100,674.

applications, and responding to petitions. Should the Service determine that issuing a final rule listing the Monarch as threatened is supported by the best available scientific and commercial information, EWAC agrees that use of a 4(d) rule for the species would be biologically and legally appropriate and would provide for the conservation of the species. Further, a tailored 4(d) rule would support the goal of improving the nation’s electric and communications infrastructure²⁴ by helping to streamline the ESA compliance process for energy and transmission projects while providing for the conservation of threatened species.

a. The eastern population of the Monarch should be exempted from take

As the Service describes in the Preamble, there are stark differences between the eastern and western populations of the Monarch in terms of distribution, abundance, and migration and breeding patterns, with the western population experiencing stronger declines than the eastern population. For instance, the Preamble notes that “[t]he species’ resiliency varies between populations, with the estimated probability of extinction for the *eastern migratory North American population at less than 10 percent in 10 years* and 60 to 68 percent for the western migratory North American population in 10 years.”²⁵ Moreover, recent reporting from the World Wildlife Fund-Mexico indicates that the number of the eastern population of Monarchs overwintering in Mexico nearly doubled from the previous year.²⁶ The World Wildlife Fund attributed the increased numbers to better weather conditions (less severe drought) along the population’s migration route as well as indications that “forest degradation in the core zone of the Monarch Butterfly Biosphere Reserve where the species overwinters decreased by 10 percent.”²⁷ Given the clear distinctions between the two populations, the Service should refrain from lumping the two populations together in one broad 4(d) rule.

Section 4(d) of the ESA (“Section 4(d)”) requires the Service to issue for species listed as threatened regulations deemed “necessary and advisable to provide for the conservation of such species.”²⁸ Section 4(d) states that the Service “may” extend the take prohibition to threatened species. Because the eastern population of the Monarch has an estimated extinction probability of less than ten percent in ten years, it would be reasonable not to apply prohibitions on actions that would typically be considered “incidental” take to that population at this time and, instead, focus such prohibitions on the western population, which the agency has given a probability of extinction between 60-68 percent in the same timeframe.

Taking this approach to the two populations of the Monarch would not be novel. Similar approaches have been taken for other species, including the northern long-eared bat (where incidental take resulting from otherwise lawful activities was not prohibited in areas not yet affected by white-nose syndrome)²⁹ and the American burying beetle (where incidental take is

²⁴ Proposed Rule at 100,686, 100,674.

²⁵ Proposed Rule at 100,677 (emphasis added).

²⁶ “Eastern monarch butterfly population nearly doubles in 2025”, citing a report titled “Forest Area Occupied by Monarch Butterflies Colonies in Mexico During the 2024-2025 Hibernation Season (March 2025)”; found at: <https://www.worldwildlife.org/stories/eastern-monarch-butterfly-population-nearly-doubles-in-2025>.

²⁷ *Id.*, citing a report titled “Forest Degradation at the Core Zone of the Monarch Butterfly Biosphere Reserve (2023-2024).”

²⁸ 16 U.S.C. 1533(d).

²⁹ 81 Fed. Reg. 1900 (Jan. 14, 2016) (threatened listing overturned on grounds unrelated to the 4(d) rule for that species).

prohibited in the Southern Plains Analysis Area on defined conservation lands, but not throughout the rest of the species' range).³⁰

b. EWAC supports the Proposed 4(d) Rule provisions excepting certain activities from the take prohibition.

As set forth in the Proposed 4(d) Rule, incidental take of the Monarch would be prohibited unless an exception applies.³¹ Given the wide range of the Monarch and the broad habitat requirements for the species at different life stages, EWAC supports the exceptions included under the Proposed 4(d) Rule, particularly when the activities are conducted in connection with development, construction, operation, or maintenance of transmission and distribution infrastructure and energy generation facilities. Use of a well-tailored 4(d) rule not only will conserve the Monarch, but will also preserve the limited resources of the Service that otherwise would be overwhelmed with applications for permits under ESA section 10(a)(1)(B), consultations under ESA section 7, and other requests for coordination. Although consideration of economic impacts of a listing is not required under the ESA, EWAC notes the substantial economic implications to all sectors of the economy that would occur without a carefully crafted 4(d) rule. For example, there are more than 500,000 miles of high-voltage transmission and five million miles of lower-voltage electric distribution lines crossing the United States.³² Due to the long lead time associated with the ESA section 10(a)(1)(B) permitting process and the fact that most ROW management and maintenance projects would not trigger consultation under ESA section 7, owners and operators of electric transmission and distribution facilities may elect to avoid the Monarch and its habitat for planned management and maintenance activities. If Monarch ROW habitat survey costs averaged \$1,500 per mile, undertaking surveys on even one percent of the country's transmission and distribution ROWs annually would cost owners and operators nearly one hundred million dollars. In many cases, these costs would be borne by rate payers—including those in rural and low-income areas.

For the reasons above and as described in greater detail below, EWAC encourages the Service to retain the exceptions to the take prohibition in any final rule, and to clarify and expand the exceptions as more fully described herein.

c. Habitat clearing due to development, construction, operation, and maintenance of energy production facilities, outside of core wintering habitat, should be excepted from the take prohibition.

EWAC urges the Service to include in any final 4(d) rule an exception from the take prohibition for the clearing or removal of suitable Monarch habitat that may occur in connection with the development, construction, operation, and maintenance of energy production facilities, including site preparation and seeding activities that are done in preparation of construction, located outside of overwintering habitat, regardless of when such activities are conducted.

³⁰ 50 C.F.R. 17.47(d).

³¹ Proposed Rule at 100,684.

³² Institute for Progress, "How to Save America's Transmission System" (Feb. 22, 2024); found at: <https://ifp.org/how-to-save-americas-transmission-system/>.

- d. The exception for vegetation management activities should include impacts associated with vegetation modification, disturbance, and management that is necessary for compliance and safe and reliable facility operations within previously disturbed rights-of-way and other energy and transportation lands, including operational facilities, year-round.**

EWAC appreciates the Service's inclusion of a proposed exception to the take prohibition for vegetation management activities, such as mowing, ground disturbance, and other management activities, that remove milkweed and/or nectar plants when conducted at times of year when Monarchs are not likely present.³³ However, in order to prevent unnecessary impediments relating to the development and delivery of domestic energy, EWAC recommends this exception be revised to clarify that it covers all vegetation establishment and management activities conducted in connection with the operation and maintenance of energy facilities and related transportation infrastructure regardless of where and when such activities occur.

Effective maintenance of electric utility rights-of-way ("ROWs") is essential to ensuring affordable and reliable energy to the entire country including in rural areas. These activities include replacing critical structural components, including crossarms, insulators, shield wire, conductor, replacement or addition of telecommunication fiber, and vegetation management. As explained in greater detail below, maintenance of ROWs must also be carried out in compliance with reliability standards established by the North American Electric Reliability Corporation ("NERC"). While Section 4(d) allows the Service to apply take prohibitions to species listed as threatened, the Service has the ability to tailor these rules to avoid burdens on the regulated community that are not necessary in order to conserve the species at issue. With respect to the Monarch, EWAC encourages the Service to carefully craft any final 4(d) rule to ensure the continued development, generation, and transmission of safe, reliable, and affordable electricity.

Any final 4(d) rule should include an exception to the take prohibition for impacts associated with vegetation modification, disturbance, and management that is necessary for compliance with legal requirements and for safe and reliable facility operations within ROWs and other energy and transportation lands, including operational facilities, year-round. Vegetation management activities are necessary to ensure safe and reliable electricity generation and transmission and must comply with applicable safety and reliability standards, as described more fully below. With respect to transmission and distribution lines, vegetation maintenance activities tend to occur over hundreds of thousands of miles on a periodic cycle, often once every three to seven years, and tend to mimic natural disturbance such as fire. While vegetation management is periodic in nature for each individual transmission or distribution line, the sheer number of miles of ROW in the country and need for planned and emergency management efforts to occur without timing restrictions, combined with the expansive distribution and general nature of Monarch habitat makes seasonal restrictions impracticable.

Compliance with safety and reliability standards is not optional for entities who own and operate electric transmission and distribution facilities. These entities must comply with a number of standards established by NERC, including FAC-003-4, Transmission Vegetation Management, which provides direction on how to "maintain a reliable transmission system by using a defense-

³³ Proposed Rule at 100,703.

in-depth strategy to manage vegetation located on transmission [ROWs] and minimize encroachments from vegetation located adjacent to the ROW, thus preventing the risk of those vegetation-related outages” that could lead to a progressive failure of the transmission lines and widespread power outages (referred to in FAC-003-4 as “cascading”). In many cases, measures taken to comply with NERC standards benefits the Monarch. These activities are typically constrained to narrow ROWs or other discrete areas rather than an entire grassland habitat. Moreover, existing requirements for owners and operators of transmission and distribution facilities to control woody vegetation in ROWs to meet NERC reliability standards result in maintenance of early successional habitat that is necessary for the Monarch. For example, targeted or selective herbicide application (e.g., foliar spraying, cut stump treatment, and basal bark application) on woody vegetation to maintain vegetation height restrictions, necessary to meet NERC reliability standards below transmission lines, reduces the density of the midstory and prevents canopy development along ROWs. Removing woody stems promotes the proliferation of herbaceous systems that are more inviting to milkweed and other nectar species. Accordingly, any impacts to the Monarch because of vegetation management activities would be periodic and limited in scale but would ultimately result in maintaining or improving Monarch habitat over time.

Similar to owners and operators of transmission and distribution facilities, owners and operators of energy generation facilities also engage in vegetation maintenance to ensure the safe and efficient generation of electricity. For example, solar generation facilities engage in vegetation maintenance to avoid shading of solar panels, which could result in a reduction in the generation capacity at these facilities³⁴ and reduce the buildup of fuel sources below energized equipment in order to reduce the risk of wildfire. Further, failure to provide a broad exception for vegetation management activities is likely to disincentivize developers and operators from identifying portions of their facilities and ROWs where it would be appropriate to use pollinator-friendly seed mixes and management practices, as operators will want to avoid introducing vegetation within their facilities which could serve as an attractant for monarchs and other listed species, thereby creating an ESA liability that would not otherwise exist. With the foregoing in mind, any exception for vegetation management activities should clearly specify that it covers all activities associated with maintaining and managing vegetation at energy facilities and related transportation infrastructure.

EWAC also suggests that the Service modify this exception to remove timing restrictions on vegetation management activities. If this exception were to apply only during the times of year when Monarchs are not likely present, it would severely impede the ability of project operators and developers to comply with other legal requirements, including those relating to grid reliability, such as NERC’s FAC-003-4. Additionally, some vegetative species—including invasive species—must be treated at specific times of year that may not coincide with times of year when the Monarch is not present. Under this exception as proposed, it is possible that in some regions, there could be no time of year to undertake vegetation management activities where, for example, there are seasonal restrictions on clearing due to the presence of habitat for other sensitive species (e.g., golden-cheeked warblers or northern long-eared bats) or other regulatory frameworks that govern these types of activities (e.g., local/regional erosion and sediment control requirements, etc.). Anything short of a broad exception for vegetation management activities would be

³⁴ In general, vegetation height at solar generation facilities must be kept to no more than 18-24 inches.

insufficient and would compromise the nation's energy security, reliability, and affordability, in contravention of the Administration's domestic energy objectives.

e. Direct mortality and injury due to collisions that occur in connection with construction, operation, maintenance, and decommissioning of energy infrastructure should be excepted from the take prohibition.

The Proposed 4(d) Rule exempts from the take prohibition death and injury as a result of vehicle strikes.³⁵ The Preamble notes that best available information shows Monarch mortality as a result of vehicle strikes is not one of the primary threats to the Monarch, and that research indicates roadside Monarch habitat may still provide a net benefit to the species despite losses due to strikes.³⁶

Because direct collision with objects was not identified by the Service in its SSA as a primary threat to the species, EWAC recommends that in any final 4(d) rule, all unintentional strikes of Monarchs (including adult Monarchs, larvae, or eggs) resulting in injury or direct mortality should be excepted from the take prohibition. In addition to direct strikes not being a primary driver of Monarch population changes, EWAC notes the impracticability of avoidance of such strikes, as essentially any object that is moving while a Monarch is flying could result in a collision. Moreover, ensuring avoidance of such strikes is not possible in most instances. Because the movement of any object creates a risk of striking Monarchs, and there is often no practically viable way to avoid or minimize the risk of potential strikes, any final 4(d) rule should include a general exception for take resulting from strikes by moving objects—including all forms of electricity generation and transmission and distribution infrastructure.

Absent a broad exemption in any final 4(d) rule for collision, EWAC recommends the Service include an exception to the take prohibition for direct mortality and injury to the Monarch (including adult Monarchs, larvae, or eggs) that may occur in connection with development, construction, operation, maintenance, and decommissioning activities associated with all forms of electricity generation, storage, transmission, and distribution facilities, including, but not limited to, collisions with electricity generation infrastructure, transmission and distribution lines, energy storage facilities, and maintenance vehicles and other mechanical equipment. Just as the Service found roadside Monarch habitat may still provide a net benefit to the species despite strike-related losses, there is also a strong correlation between energy generation lands and ROW maintenance and proliferation of pollinator habitat.³⁷ Including an exception for electric infrastructure will help minimize the risk that a final rule listing the Monarch will impede the Administration's energy-related goals.

f. Direct mortality and injury due to collisions with energy infrastructure during emergency operations and response activities should be excepted from the take prohibition.

EWAC suggests that any final 4(d) rule except from the take prohibition direct mortality and injury to the Monarch (including adult Monarchs, larvae, or eggs) that may occur as a result

³⁵ Proposed Rule at 100,686.

³⁶ *Id.*

³⁷ Monarch CCAA at 17.

of emergency operations and emergency maintenance or response activities associated with energy production, storage, transmission, distribution, and transportation infrastructure even if such activities occur in occupied or core wintering habitat. Examples of such activities include, but are not limited to, clearing vegetation occupied by the Monarch, its larvae, or its eggs, in connection with emergency responses to weather-related operational issues, hazards to human safety, unintentional fires, and other “acts of God.” Emergency response activities involve unplanned access and work activities associated with prevention of, or responding to, emergencies or unforeseen circumstances calling for immediate action, such as natural disasters or electrical outage repair needs. These activities cannot reasonably be avoided and, therefore, any take of Monarch that may occur as a result of these activities should be excepted from any final 4(d) rule.

g. Indirect impacts related to habitat alterations resulting from emergency responses should be excepted from the take prohibition.

In addition to EWAC’s suggestion above, and in the event the Service does not adopt a general exception for vegetation management activities for energy production, transportation, and distribution facilities, any final 4(d) rule should include an exception to the take prohibition for indirect impacts to the Monarch (including adult Monarchs, larvae, or eggs) that may occur in connection with alterations to Monarch habitat caused by activities associated with emergency response activities. As noted above, emergency response activities are essential services that are not reasonably avoidable. Thus, any take of Monarch that may occur due to such activities should be excepted from any final 4(d) rule.

h. Activities on conservation lands that maintain or improve Monarch habitat should be excepted from the take prohibition.

EWAC suggests that, in any final 4(d) rule, the Service add an exception to the take prohibition for activities occurring on conservation lands (including conservation lands managed by federal, state, or local agencies or private partnerships) that maintain or improve Monarch habitat. The exception should apply irrespective of whether Monarch conservation is the primary purpose of the activities.

i. Conversion or restoration of areas associated with energy infrastructure to their previous land uses should be excepted from the take prohibition.

EWAC also urges the Service to include in any final 4(d) rule an exception to the take prohibition for conversion or restoration of areas previously associated with energy and transportation infrastructure leases or ROWs to the prior land use. The exception should apply to conversion activities that occur after infrastructure has been decommissioned or removed.

j. Selective and targeted herbicide use should be excepted from the take prohibition.

In the Preamble, the Service asks whether it should include an exception to the take prohibition for the use of pesticides and, if so, what measures are reasonable, feasible, and adequate to reduce or offset pesticide exposure to Monarchs from non-agricultural uses. The Service

specifically seeks information regarding herbicide uses and application methods.³⁸ EWAC supports inclusion of an exception for chemical controls used to manage vegetation for non-agricultural purposes, consistent with principles of Integrated Vegetation Management. Specifically, EWAC encourages the Service to provide an exception for incompatible vegetation control methods that include selective herbicide application in the context of vegetation management within utility ROWs and on energy generation lands. Selective and targeted herbicide application would allow transmission and distribution line infrastructure and energy generation facility maintenance workers to select the control method that is most appropriate and effective in each location, while still achieving the goal of targeting undesirable vegetation and promoting desirable vegetation. Moreover, controlling invasive species at this scale is one of the only ways to support growth of desirable vegetation. As noted above, ROWs are maintained to remove woody stems, which can promote the proliferation of herbaceous systems that are more conducive to growing milkweed and other nectar species. Adding an exception to allow for targeted chemical controls will help ensure the rule does not overly burden the electric power sector.

In the event the Service elects not to provide a general exception for use of herbicides across the range of the Monarch, EWAC suggests the Service provide a general exception for use of herbicides within the range of the eastern population of the Monarch and limiting targeted herbicide application in the western population for tall-growing, woody species—including invasive species—that could compromise system reliability, regardless of the time of year.

k. Activities consistent with the Monarch CCAA should be excepted from the take prohibition.

In addition to the exceptions set forth in the Proposed 4(d) Rule, EWAC urges the Service to provide an exception for vegetation management activities aligned with the Monarch CCAA conservation measures that are conducted by an entity not enrolled in the Monarch CCAA, but that is engaging in activities eligible for enrollment and is voluntarily establishing and/or managing areas of habitat consistent with the Monarch CCAA. As previously noted, EWAC and its members fully support and see great value in the voluntary conservation efforts of the Monarch CCAA and do not suggest doing anything that would otherwise undermine the program. However, the establishment and/or management of habitat pursuant to the terms of the Monarch CCAA is intended to result in a net benefit to the Monarch, despite any potential losses resulting from the covered activities. Therefore, those entities voluntarily implementing actions consistent with the Monarch CCAA should also receive regulatory assurances that those beneficial activities will not be subject to enforcement under the ESA.

IV. Service Should Not Delay Processing Applications for Conservation Agreements Benefitting Monarchs.

While not directly related to the Proposed Rule, EWAC encourages the Service to move swiftly to complete its review and publish for public comment the “*Nationwide Conservation Benefit Agreement for Bumble Bees on Energy and Transportation Lands*,” which was developed by the University of Illinois Chicago as a companion program to the Monarch CCAA. This

³⁸ Proposed Rule at 100,663.

proposal has been before the Service since May 2024, without any clear indication for when it may be published for public consideration. Completing review of this draft proposal and any other pending voluntary conservation programs will undoubtedly provide additional benefits to the Monarch given the focus of those efforts on protecting pollinator habitats.

V. Conclusion.

If the Service proceeds with finalizing any of the proposed rules, EWAC encourages the Service to give full weight to ongoing programmatic conservation efforts benefitting the Monarch, as well as the impact of a final listing rule, critical habitat designation, and 4(d) rule on the economy generally and the energy sector specifically, and in turn work to minimize those impacts while maximizing conservation of the species. EWAC welcomes the opportunity to discuss its comments in greater detail with the Service.

Please feel free to contact the following EWAC representatives:

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