

**May 12, 2025**

Comments regarding:

**January 21, 2025 Endangered and Threatened Wildlife and Plants; 90-Day Findings for Eight Species**

Submitted by:

**Energy and Wildlife Action Coalition**

Filed electronically to the attention of:

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Docket No. FWS-R2-ES-2024-0099-0001

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”) January 21, 2025 Endangered and Threatened Wildlife and Plants; 90-Day Findings for Eight Species (“90-Day Finding”).<sup>2</sup> Specifically, EWAC submits comments in response to the Service’s 90-day positive finding on a petition to list the Morrison bumble bee (*Bombus morrisoni*) as threatened or endangered under the Endangered Species Act (“ESA”). As a result of the positive 90-day Finding on the Morrison bumble bee, the Service has opened a 12-month status review to inform its required determination as to whether listing the species is warranted (“12-month Finding”). EWAC provides these comments to inform the 12-month status review based on the knowledge and experience of its membership.

EWAC appreciates the Service’s work to protect endangered, threatened, and at-risk species, and recognizes the role of regulated industries in environmental stewardship and aiding species conservation. Over the past several years, the energy and transportation industries have worked tirelessly on several programmatic efforts to conserve pollinators and their habitats, including through the development of the Nationwide Conservation Benefit Agreement for Bumble Bees on Energy and Transportation Lands (“Bumble Bee CBA”), which was submitted to the Service in May 2024. Importantly, the Morrison bumble bee is among the seven species of bumble bee that are covered by the Bumble Bee CBA. As described in greater detail below, EWAC urges the Service to fully consider ongoing, voluntary efforts of the electric generation and transmission sectors specifically, and the entire regulated community more broadly, to conserve pollinator species, including the Morrison bumble bee, in making a 12-month Finding, and to move as expeditiously as possible to review and approve the Bumble Bee CBA, which was developed collaboratively among industry representatives, the University of Illinois-Chicago, the Wisconsin Department of Natural Resources (“WDNR”) and the Service.

As the Service is aware, recent Executive Orders issued by President Trump and Secretarial Orders issued by Secretary of the Interior Burgum emphasize the need for domestic energy development and streamlined permitting processes.<sup>3</sup> In EWAC’s experience, permitting approvals under the ESA can substantially delay and increase costs for electric generation and transmission projects, in some cases for years at a time. These delays and costs are antithetical to the policies outlined by President Trump and Secretary Burgum, which call for removing roadblocks to advancing the nation’s domestic energy supply. EWAC urges the Service to rely only on sound scientific principles as it undertakes the 12-month status review. To the degree the Service

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<sup>1</sup> EWAC is a national 501(c)(6) trade association 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> U.S. Fish & Wildlife Service, *Endangered and Threatened Wildlife and Plants; 90-Day Findings for Eight Species*, 90 Fed. Reg. 7038 (Jan. 21, 2025), available at: <https://www.federalregister.gov/documents/2025/01/21/2025-01118/endangered-and-threatened-wildlife-and-plants-90-day-findings-for-eight-species>.

<sup>3</sup> See, e.g., Executive Order 14156, “Declaring a National Energy Emergency”; Executive Order 14154, “Unleashing American Energy”; Secretarial Order 3418, “Unleashing American Energy”; Secretarial Order 3417, “Addressing the National Energy Emergency.”

determines in its 12-month Finding that listing the Morrison bumble bee is warranted, EWAC reserves the right to provide substantive comments on any proposed listing rule and, further, urges the agency to employ every tool at its disposal to ensure permitting of electric generation and transmission projects is not unduly delayed, including through the promulgation of a species-specific rule under section 4(d) of the ESA (“4(d) rule”).

**I. The Service should give full weight to ongoing efforts to conserve bumble bees.**

Under Section 4(b)(1)(A) of the ESA, before making a listing decision, the Service is required to consider State and local conservation efforts to protect the species.<sup>4</sup> The Policy for Evaluation of Conservation Efforts (“PECE Policy”) guides the Service’s evaluation process in all decisions to list a species where State or local conservation efforts are in place or are planned.<sup>5</sup> The PECE Policy explains that, if a conservation effort meets certain Service-defined criteria, it may contribute to a Service determination that listing a species as threatened or endangered is unnecessary.<sup>6</sup> To obviate the need for listing a species, the conservation plan must be sufficiently certain to be implemented and effective, including having the necessary funding, legal authority, authorizations, and quantifiable, scientifically valid parameters.<sup>7</sup>

Multiple industries have pursued formalized agreements to conserve pollinator species, including the domestic electric generation and transmission sectors. Among the initiatives in which EWAC has specific involvement is the Bumble Bee CBA. The Bumble Bee CBA is a collaborative effort among the Service, University of Illinois Chicago, WDNR, and dozens of representatives from the energy and transportation sectors, including EWAC and some of its individual members. In January 2023, the Service announced that it would provide nearly \$800,000 toward development of the Bumble Bee CBA, pursuant to section 6 of the ESA. The Morrison bumble bee is among the seven species of bumble bee to be covered initially by the Bumble Bee CBA. Pursuant to Service regulations, the goal of the Bumble Bee CBA is to provide a net conservation benefit to the Morrison bumble bee. As of the date of this letter, the Service has had the draft CBA under review for 10 months, but has not yet published the draft for public review and comment. Considering the Service’s publication of the 90-Day Finding, EWAC urges the agency to publish the draft CBA in the Federal Register as expeditiously as possible so that the conservation measures set forth in the Bumble Bee CBA can be considered by the public alongside the positive 90-day finding for the Morrison bumble bee.

In addition to the Bumble Bee CBA, other conservation efforts led by the energy and transportation sectors benefit the Morrison bumble bee. For example, the conservation measures outlined in the Nationwide Candidate Conservation Agreement with Assurances for the Monarch Butterfly on Energy and Transportation Lands (“Monarch CCAA”),<sup>8</sup> which was approved by the Service on April 8, 2020, indirectly benefits the Morrison bumble bee. As set forth in that document, the Monarch CCAA “can, in some cases, also address conservation measures

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<sup>4</sup> 16 U.S.C. § 1533(b)(1)(A).

<sup>5</sup> 68 Fed. Reg. 15100 (Mar. 28, 2003).

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

<sup>7</sup> *Id.* at 15114–15.

<sup>8</sup> Energy Resources Center at The University of Illinois at Chicago, Nationwide Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportation Lands (March 2020), available at: [https://www.fws.gov/sites/default/files/documents/Final\\_CCAA\\_040720\\_Fully%20Executed.pdf](https://www.fws.gov/sites/default/files/documents/Final_CCAA_040720_Fully%20Executed.pdf).

established for other listed species,” including species of bees.<sup>9</sup> The vegetation management and herbicide practices established as conservation measures for the monarch butterfly in the Monarch CCAA may also apply to the Morrison bumble bee.<sup>10</sup>

States and conservation groups have also engaged collaboratively with the Service in order to conserve the Morrison bumble bee. For example, the Washington Department of Fish and Wildlife and The Xerces Society worked with the U.S. Forest Service, Bureau of Land Management, and the Service to develop and adopt the Washington Bumblebee Conservation Strategy,<sup>11</sup> which identifies certain priority areas for conservation and includes recommendations for managing land cover, protecting nesting habitat, and creating foraging areas.

Section 4(b)(1)(A) of the ESA requires the Service to consider the Bumble Bee CBA, the Monarch CCAA, and the conservation measures of state and local entities that may obviate the need for listing the Morrison bumble bee; however, EWAC is concerned that the Service has a history of discounting the benefits of these kinds of voluntary efforts and, in turn, listing species despite the existence of substantial on-the-ground and/or planned conservation.<sup>12</sup> The Service’s failure to consider fully in its listing decisions the substantial investment made by private and public entities to conserve sensitive species undertaken before those species are listed, has a chilling effect that is likely to stymie voluntary conservation efforts in the future by signaling to the regulated community that these efforts are futile and do not influence listing decisions. The result of this messaging likely will be a reduction in private investment in such efforts and less conservation for species overall. With the forgoing in mind, EWAC urges the Service to give full and appropriate weight to existing and proposed conservation efforts benefiting the Morrison bumble bee, when considering whether listing the species under the ESA is warranted. Fully accounting for the benefits provided by these conservation efforts is in line with the ESA, Service policy, and the priorities established by this Administration.

## **II. Full consideration should be given to the economic implications of listing wide-ranging pollinator species.**

On February 3, 2025, Department of the Interior Secretary Doug Burgum issued Secretarial Order 3418, “Unleashing American Energy,” which, among other things, requires the Service to develop a plan to review and revise all relevant critical habitat designations to take into consideration the economic impact of the action. This Order reflects the Trump Administration’s renewed focus on determining the economic impact of federal actions that may affect the nation’s domestic energy resources.

Listing the Morrison bumble bee will undoubtedly have detrimental economic impacts on regulated entities throughout the species’ range. The listing will necessitate increased permitting under section 10 of the ESA, and accompanying compliance costs to the permittees. The listing will also necessitate increased consultation efforts with the Service under section 7 of the ESA.

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<sup>9</sup> *Id.* at 31.

<sup>10</sup> *Id.* at 31–32.

<sup>11</sup> Strategy to Protect State and Federally Recognized Bumble Bee Species of Conservation Concern (February 2023), found at: <https://xerces.org/publications/scientific-reports/strategy-to-protect-state-and-federally-recognized-bumble-bee> (last visited February 21, 2025).

<sup>12</sup> *See, e.g.*, 87 Fed. Reg. 72,674 (Nov. 25, 2022).

Both activities result in project and funding delays, which could imperil or substantially set back efforts to produce and deliver lower-cost energy to consumers.

### **III. EWAC encourages adoption of a sensible 4(d) rule.**

Should the Service ultimately conclude in its 12-month Finding that listing the Morrison bumble bee under the ESA is warranted and propose to list the species as threatened, EWAC urges the Service to propose a 4(d) rule that takes into account the beneficial effects of the kinds of vegetative management practices routinely used by owners and operators of electric generation, transmission, and distribution facilities, and exempts such practices from the take prohibition of ESA section 9. Such practices are necessary to ensure the safe and reliable generation and transmission of electricity and, at the same time, are beneficial to pollinator species, including the Morrison bumble bee. For example, with respect to transmission and distribution lines, vegetation management activities tend to occur on a periodic cycle, are typically constrained to narrow rights-of-way (ROWs) or other discrete areas rather than an entire grassland habitat, and require control of woody vegetation that encourages proliferation of herbaceous systems that support plant species utilized by the Morrison bumble bee in various life stages, including, foraging, overwintering, and nesting. Maintenance of ROWs also includes areas that are equally as important to the Morrison bumble bee in various life stages for foraging, nesting, and overwintering, such as shrub/scrub areas, forest edges, and barren areas.

Adoption of a sensible 4(d) rule will ensure the conservation of the Morrison bumble bee, while also ensuring that listing the species will not unduly hinder the Trump Administration's focus on the development and deployment of domestic energy sources.

### **IV. Conclusion.**

EWAC urges the Service to conduct full and careful analysis of the status of the Morrison bumble bee taking into full consideration (1) ongoing and existing conservation efforts, (2) the economic impact of a listing decision on regulated entities, and (3) how the use of a carefully tailored 4(d) rule could result in conserving the species while not hindering deployment of domestic energy sources. EWAC appreciates the Service's consideration of these comments and welcomes the opportunity to discuss our views further with the Service.

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