EWAC®
Energy and Wildlife Action Coalition

May 19, 2025

Comments regarding:

March 19, 2025 Reopening of the Comment Period Associated with a 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

On December 12, 2024, the U.S. Fish and Wildlife Service ("Service") published 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").[1] The Proposed Rule had a public comment period that closed on March 13, 2025. The Energy and Wildlife Action Coalition ("EWAC")[2] submitted comments in response to the Proposed Rule on March 13, 2025 ("Prior Comments").[3] Subsequently, on March 19, 2025, the Service published a notice in the Federal Register that the agency was reopening the comment periods associated with the Proposed Rule ("Second Notice"), and that the reopened comment period would close on May 19, 2025.[4] EWAC submits these comments in response to the Second Notice based on the knowledge and experience of its membership. EWAC's members develop and maintain electric generation facilities and transmission and distribution infrastructure throughout the United States, including a substantial number of assets within the range of the Monarch.

Increasing domestic power generation and grid stability has been a top priority for decades,[5] and will necessitate continued deployment of new energy generation facilities and associated transmission and distribution infrastructure nationwide to meet the expected increase in demand over the coming decades, as well as maintenance and operation of existing infrastructure in a safe, reliable, and affordable manner. The purpose of this letter is to provide specific information to the Service regarding operation and maintenance of electric generation, storage, transmission, and distribution that will assist the agency in developing provisions of a final 4(d) rule that would encourage owners and operators of such facilities to plant[6] and maintain milkweed and beneficial habitat for the Monarch should the species ultimately be listed as threatened under

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[1] 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-forhttps://www.federalregister.gov/documents/2024/10/11/2024-23573/draft-environmental-impact-statement-for-a-general-conservation-plan-for-the-desert-tortoise-in (hereinafter, "Federal Register Notice").

[2] 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.

[3] Please refer to EWAC's comments found at Docket ID No. FWS-R3-ES-2024-0137-63609, which are fully incorporated herein by reference.

[4] 90 Fed. Reg. 12,694 (March 19, 2025) ("Second Notice").

[5] 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).

[6] EWAC notes that while planting milkweed may be possible for some facilities, for other facilities there may be landowner agreements or other constraints that make establishing milkweed impracticable or impermissible.

the ESA. The comments provided by this letter are meant to supplement, rather than to replace, the Prior Comments.

I. Vegetative Management Activities Conducted in Connection with Operation and Maintenance of Existing Electric Generation, Storage, Transmission and Distribution Facilities Should Not be Subject to Timing Restrictions

EWAC appreciates the Service's inclusion of a proposed exception to the take prohibition for vegetative management activities that remove milkweed and/or nectar plants when conducted at times of year when Monarchs likely are not present.[7] As more fully described in section III(d) of the Prior Comments, however, EWAC believes no timing restriction should apply to vegetative management activities occurring within previously disturbed rights-of-way and on other lands associated with generation, storage, transmission, or distribution of electric In addition to the rationale provided in section III(d) of the Prior Comments, EWAC makes the following observations.

A. Restricting the timing of vegetative management activities is likely to result in an increase in risks to safety and reliability and increased costs of operating and maintaining the electric grid

It is imperative for owners and operators of electric generation, storage, transmission, and distribution facilities to have the ability to maintain the areas supporting such facilities, including rights-of-way, in a manner that ensures safety and reliability and prevents the need for emergency maintenance associated with hazard trees and/or invasive exotic trees, vines, shrubs, or grasses. EWAC notes that vegetative management practices associated with operation and maintenance of electric generation, storage, transmission, and distribution facilities frequently result in supporting early successional habitat that is beneficial to Monarchs.[8] Thus, while such practices result in temporary and sometimes permanent loss of habitat supporting Monarchs, vegetative management practices associated with energy generation, storage, transmission, and distribution facilities are overwhelmingly beneficial to Monarchs. A well-tailored 4(d) rule will both encourage the regulated community to manage vegetation in a way that is beneficial to Monarchs and ensure the continued reliability of the electric grid. In order to inform the Service's consideration of exempting vegetative management practices associated with electric generation, storage, transmission, and distribution facilities, EWAC provides the following information.

Inspections, Maintenance, Repair, and Replacement of Electric Generation, Storage, Transmission, and Distribution Facilities

Routine inspections of electric generation, storage, transmission, and distribution facilities are essential to ensure safety and reliability of the electric grid. Facilities are generally inspected on a routine basis to determine whether and what kind of maintenance is needed at a given facility or location (e.g., identifying damaged infrastructure in need of repair or replacement, establishing or

[7] Proposed Rule at 100,703.

[8] *See e.g.*, Du Clos et al., U.S. Geological Survey Technical Report ME 21-01, Roadside rights-of-way as pollinator habitat: A literature review (April 2021); Kimmel, et al. (2024) Integrated vegetation management within electrical transmission landscapes promotes floral resource and flower-visiting insect diversity. PLoS ONE 19(8): e0308263. https://doi.org/10.1371/journal.pone.0308263.

refining the frequency of vegetation management necessary for each right-of-way based on vegetation type, density, rate of growth, etc.). Most often, vehicle access is necessary for such inspection and must be available year-round. Maintenance, repair and replacement of infrastructure associated with generation, storage, transmission, and distribution of electricity is scheduled and conducted based on information obtained during inspections (see above), based on the prior growing season, or from other data sources, such as citizen observation and reporting.

While owners and operators strive to schedule maintenance, repairs, and replacements during times of year when Monarchs are not present, this may—and likely will be—impracticable in all cases for a variety of reasons. For example, scheduling maintenance, repair, or replacement of electric production, storage, transmission, and distribution infrastructure must take into account factors such as the relative urgency of the repair or maintenance need, the availability of appropriate equipment and personnel, and weather conditions. These circumstances may not allow the completion of a repair in a timeframe that avoids impacts to Monarchs. If the take exemption for maintenance, repair, and replacement of infrastructure is limited to activities occurring only when Monarchs are not present, owners and operators of electric generation, storage, transmission, and distribution infrastructure occurring in areas with year-round Monarch populations or whose infrastructure is in urgent need for maintenance, repair, or replacement while Monarchs are in the area could be forced to go through the time consuming process of obtaining incidental take authorization under ESA sections 7 or 10. This circumstance, in turn, could result in grid instability or could put lives and property at risk.

In addition to the issue of electric grid stability, reliability, and safety, owners and operators of electric generation, storage, transmission, and distribution infrastructure must also take into account the financial constraints associated with rate paying customers. For example, certain species of plants within an electric utility right-of-way typically will be controlled with application of herbicides when their leaves are in full flush through foliar applications; however, if timing restrictions placed on vegetative management activities require such activities to occur when leaves are off during the dormant season through a bark application, the labor and material costs could double. This cost of regulatory compliance, more than likely, would be borne by the rate payer.

Vegetative Management

As is more fully described in section II(d) of EWAC's Prior Comments, the purpose of vegetative management is to remove woody and other incompatible vegetation, which promotes early successional habitat and, therefore, is consistent with maintaining and creating habitat for Monarchs. With respect to electric transmission and distribution infrastructure in particular, the sheer length of rights-of-way traversing the country makes it impracticable, if not impossible, to conduct vegetative management activities only when Monarchs are not present. Variations in weather, supply chains, and availability of equipment and personnel further complicate timing of such activities.

While, ideally, vegetative management practices would occur during times when Monarchs are not present at a given facility, like the repair and replacement of infrastructure, vegetative management activities occur both on a schedule and as a result of data and information gathered during inspection of the relevant infrastructure or right-of-way. In order to manage damaging

vegetation, owners and operators of such facilities may require access during seasonal periods when adult Monarchs and caterpillars may be present to proactively assess and address safety and reliability concerns. Activities necessary for addressing safety and reliability concerns include, but may not be limited to, heavy machinery traffic, tree pruning, brush clearing, mowing, maintenance crews hand-trimming with chainsaws, application of herbicides, animal grazing, and prescribed burning. These activities may occur over a period of several days or weeks, depending on the hazard. For example, to manage for fire risk, infrastructure owners and operators may engage in mowing, or grazing of animals to reduce biomass or use prescribed burns, which may overlap with time periods when adult Monarchs and caterpillars may be present.

It is worth noting that many owners and operators of electric transmission rights-of-way and electric generation and storage facilities are already utilizing integrated vegetation management ("IVM") principles, with guidance provided through American National Standards Institute ("ANSI") standards such as ANSI A300 Part 7: Tree, Shrub, and Other Woody Plant Management – Standard Practices. The International Society of Arboriculture Special Companion Best Management Practices to the ANSI A300 Standards describes IVM as "a system of managing plant communities in which managers set objectives, identify compatible and incompatible vegetation, consider action thresholds, and evaluate, select, and implement the most appropriate control method or methods to achieve their established objectives. The choice of control method or methods is based on considerations of their environmental impact and anticipated effectiveness, along with site characteristics, security, economics, current land use, and other factors."[9]

[9] Best Management Practices, Integrated Management for Utility Rights-of-Way, Second Edition, 2014, H., pp. 5-6. For more information concerning IVM practices, please refer to Nowak, C.A., B.D. Balard. 2005. A Framework for Applying Integrated Vegetation Management on Rights-of-way. Journal of Arboriculture. 31(1): 28-37; Yahner, R.H. 2004 Wildlife Response to more than 50 years of Vegetation Maintenance on a Pennsylvania, U.S. Right-of-way. Journal of Arboriculture. 30(2): 123-126. Bramble WC, Byrnes WR. 1979. Evaluation of the wildlife habitat values of rights-of-way. Journal of Wildlife Management. 43:643-649.; Yahner, R.H., W.C. Bramble, and W.R. Byrnes. 2001. Effect of Vegetation Maintenance of an Electric Transmission Line Right-of-way on Reptile and Amphibian Populations. Journal of Arboriculture. 27:24-28; U.S. Department of the Interior, Bureau of Land Management. 2005. DRAFT: Vegetation Treatment Using Herbicides on Bureau of Land Management Lands in 17 Western States: Programmatic Environmental Impact Statements. DES 05-56. U.S. DOI/BLM. Washington, District of Columbia, USA; Hutnik, R.J., W.C. Bramble and W.R. Byrnes. 1987. Seedbed Contents on an Electric Transmission Right-of-way. In: Byrnes, W.R. and H.A. Holt (Eds.). 1987. Proceedings Fourth Symposium on Environmental Concerns in Rights-of-way Management. Purdue University. West Lafayette, Indiana, USA; Bonneville Power Administration. 2000. Transmission System Vegetation Management Program: Final Environmental Impact Statement. DOE/EIS. Bonneville Power Administration. Portland, Oregon, USA; Bramble, W.C., R.H. Yahner, and W.R. Byrnes. 1992. Breeding-bird population changes following right-of-way maintenance treatments. Journal of Arboriculture. 18:23-32; Childs, Shawn. 2005. Environmental Assessment: PacifiCorp Vegetation Management in Power Line Rights-of-Way. United States Department of Agriculture U.S. Forest Service Wasatch-Cache National Forest. SWCA Environmental. Salt Lake City, Utah, USA; Johnstone, R.A., M.R. Haggie. 2012 Regional Vegetation Management Best Practices Case Studies: An Applied Approach for Utility and Wildlife Managers. Environmental Concerns in Rights-of-Way Management 9th International Symposium (editors: J.M Evans, J.W. Goodrich-Mahoney, D. Mutrie, and J. Reinemann). International Society of Arboriculture, Champaign, Illinois, USA.

Under relevant ANSI standards, various tools and techniques, such as mowing and spraying, are recommended for managing vegetation in a way that promotes the growth of a diverse understory and limits the growth of a brushy, tree-filled area that could impede generation, storage, transmission, or distribution of electricity. The goal of these standards is to promote facilities filled with vegetation compatible to a safe and reliable electric grid, and the end-result is often low-growing herbaceous plant material that can be managed with low-volume, targeted herbicide applications, while simultaneously benefitting Monarchs.

Emergency Management Activities

There will be circumstances where vegetative management activities must occur on an emergency basis in order to allow owners and operators of electric generation, storage, transmission, and distribution facilities to maintain or restore power (e.g., where imminent or existing power outages threaten public safety, in preparation of response to natural disasters, or in direct response to official declarations of emergency), including trimming and/or removal of vegetation and construction activities utilizing heavy machinery, such as replacing damaged infrastructure. In such circumstances, adhering to timing restrictions or seeking permitting under ESA sections 10 or 7 will not be possible. Recognizing that most operators of electric generation, storage, transmission, and distribution facilities are under legal obligations to expeditiously restore power during such emergencies, EWAC believes a 4(d) rule can be crafted by the Service that does not force owners and operators of electric generation, storage, transmission, and distribution facilities to choose between ensuring the safety and reliability of the electric grid and taking proactive steps to manage vegetation for the benefit of the Monarch.

Pesticides

In the preamble to the Proposed Rule, the Service requested information on whether any final 4(d) rule should include an exception for the use of pesticides and, if so, what measures would be "reasonable, feasible, and adequate to reduce or offset pesticide exposure" to Monarchs.[10] "Pesticides" is an umbrella term that typically encompasses both insecticides and herbicides. Energy generation, storage, transmission, and distribution facilities do not utilize insecticides in connection with construction, operation, or maintenance activities. Herbicides are used in the context of vegetative management and typically undergo targeted application to address specific areas in order to avoid the need for extensive mechanical clearing or where mowing is not possible. This includes practices such as spot spray, basal application, cut stump treatment, and foliar application where there is a heavy infestation of woody or exotic vegetation that poses a risk to safety and/or reliability (e.g., privet or kudzu). In the context of vegetative management activities, any final 4(d) rule should except from the take prohibition the application of herbicides year-round. In many instances, use of herbicides are, in fact, a tool to encourage the native seed bank and

[10] Proposed Rule at 100,663.

reduce competition with non-native and invasive species, which improves habitat that supports Monarchs.[11]

B. Restricting the timing of vegetative activities will discourage practices beneficial to the Monarch

In the preamble to the Proposed Rule, the Service explains:

> [t]o achieve a significant increase in the availability of milkweed and nectar plants in monarch breeding areas, [the Service] need[s] to incentivize return of milkweed to large portions of the landscape where it is now nonexistent or where what remains is highly fragmented. ***Given that so much milkweed has been lost historically and that monarchs are impacted by the ongoing effects of this past habitat loss and degradation, [the Service] need[s] an approach that encourages landowners to add milkweeds and nectar plants and implement actions to maintain them***. Creation, enhancement, and maintenance of higher quality habitat by the public may lead to the temporary destruction of milkweed and nectar plants and incidental take of monarchs. ***Private landowner and general public support are crucial because the species is wide-ranging and needs broad conservation action, from small- to large-scale efforts throughout its range***.[12]

As demonstrated by the language above, the Service recognizes that any final 4(d) rule needs to encourage landowners and the general public to create and maintain Monarch habitat because such actions are "crucial" to the conservation of the species. EWAC suggests that the imposition of timing restrictions on vegetative management on lands that have previously been developed would have the effect of ***discouraging*** project owners and operators from creating and maintaining Monarch habitat, as the existence of such habitat can create liabilities and limitations that otherwise would not apply. Many owners and operators of electric generation, storage, transmission, and distribution facilities have legal obligations to maintain the reliability of their equipment (including to take measures to reduce the risk of fire and other circumstances that could result in disruption of energy provision or the destruction of life or property) and to meet the various requirements established under federal, state, and local law relevant to the energy industry which can make timing restrictions associated with vegetative management practices impracticable.[13] To the degree the owner or operator of a given electric generation, storage, transmission, or distribution facility is not currently required to plant milkweed or other plant species beneficial to the Monarch, Service promulgation of a 4(d) rule that requires timing restrictions on vegetative management may prevent such beneficial action from being taken.

For example, many solar developers and operators currently participate in programs, such as Solar Synergy,[14] aimed at establishing or re-establishing habitat for Monarchs and other pollinators.

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[11] See U.S. Department of Agriculture, Forest Service: Herbicides: An Unexpected Ally for Native Plants in the War Against Invasive Species. Science Findings, Issue 115 (Aug. 2015).

[12] *Id*. at 100,683 (emphasis added).

[13] For additional information on some of these requirements, please refer to Section III(d) of the Prior Comments.

[14] Solar Synergy is a program developed by the Bee and Butterfly Habitat Fund in concert with the Monarch Joint Venture, which works directly with solar project developers in order to design high-quality pollinator

These efforts not only benefit the species but can also provide an aesthetically pleasing viewshed to neighboring properties. Participation in these types of programs is neither a legal requirement for construction and operation of solar facilities nor a contractual requirement. While a solar owner/operator's decision to participate voluntarily in programs aimed at increasing pollinator habitat may at first blush appear simple, the imposition of timing restrictions on vegetative management practices in order to protect and maintain Monarch habitat is likely to chill this practice as increased limitations and liabilities may increase costs and risks, and result in site management complexities that create difficulty for operations and maintenance. Further, there is increasing concern by insurance companies, particularly in areas susceptible to drought, of allowing "fuel," in the form of dried vegetation to build up around any electrified equipment. This underscores the need for flexibility to conduct vegetation management at solar facilities, including during periods when adult Monarchs or their caterpillars may be present.

Given there is no obligation under the ESA for a non-federal person or entity to create or affirmatively manage listed species habitat, EWAC recommends the Service remove from any final 4(d) rule any limitation that would disincentivize creation and maintenance of Monarch habitat, including placing timing restrictions on vegetative management practices associated with electric generation, storage, transmission, or distribution.

II. Any Final 4(d) Rule Should Allow a Return to Baseline Conditions Without Penalty

EWAC understands that the Service seeks information on the most effective means to encourage the electric generation, storage, transmission, and distribution industries to establish Monarch habitat. EWAC believes that the most effective way to encourage the regulated community to establish Monarch habitat on private lands is to ensure that actions taken on such lands after Monarch habitat has been established will not be subject to an increase in regulatory burdens, including vegetation management timing restrictions, monitoring, or reporting [15] This is particularly important for owners and operators of electric generation, storage, transmission, and distribution facilities, who are subject not only to statutory obligations to provide safe and reliable electricity, but to fiscal and other obligations associated with project financing and documents establishing the relevant lease or easement under which the facilities operate. For example, at the end of the serviceable life of a given facility (decommissioning), the overwhelming majority of legal instruments require the land on which the facility was constructed to be returned to the underlying landowner in whatever condition the landowner specified in the lease, easement, or other legal agreement. Those provisions may mean that the owner or operator of a given facility must remove any pollinator-friendly habitat that was established during the life of the project. In

habitats within utility-scale renewable energy projects and monitor the efficacy of the same. The program is funded privately and is offered at no additional cost to solar project developers. https://www.beeandbutterflyfund.org/solar.html.

[15] To this end, EWAC advocated for and continues to be supportive of the Nationwide Candidate Conservation Agreement with Assurances for Monarch Butterfly on Energy and Transportation Lands ("Monarch CCAA") and encourages its members to participate in the program should they determine doing so would be beneficial to their development and operations. EWAC recognizes, however, that enrolling in the Monarch CCAA may not be practicable for all owners and operators of electric generation, storage, transmission, and distribution facilities.

such cases, neither the owner or operator of an electric generation, storage, transmission, or distribution facility, nor the landowner, should face potential liability under the ESA.

III. Service Should Provide Additional Resources for Owners and Operators of Electric Generation, Storage, Transmission, and Generation Facilities in the Event Seasonal Restrictions are Adopted in Any Final 4(d) Rule

Should the Service elect to adopt seasonal restrictions on one or more vegetative management practices in any final 4(d) rule, EWAC encourages the Service to publish a table explicitly outlining Monarch activity windows as a reference for project owner and operators, similar to those developed for other species (e.g., Appendix L to the March 2024 Range-wide Indiana Bat and Northern Long-eared Bat Survey Guidelines). Monarch activity periods should be sorted by state, be based on the best available science for fall and spring Monarch migration and should take into consideration that there are areas of the country where Monarchs are present year-round. The ultimate 4(d) rule could then except from the take prohibition non-emergency vegetation management activities that occur outside of time periods identified by the Service as creating substantially higher risk to the Monarch population in the state in which the project is located. This approach would provide predictability to owners and operators of elecctric generation, storage, transmission, and distribution facilities, federal permitting agencies, and the Service, and minimize risk to project operations and management and, therefore, to the safety and reliability of the electric grid. Should the Service take this approach, EWAC encourages the agency to publish any such table or resource in draft and seek public input on the same. Any ultimate table or resource should clarify that the restrictive windows apply only to areas with Monarch foraging habitat and where clearing such habitat would create a substantial risk to the Monarch population in that state. Further, activity restriction periods should not apply where an existing federal, state, or local permit require vegetation management or other habitat-disturbing activities on a schedule that does not align with windows identified by any table, such as standards set by the North American Electric Reliability Corporation.

EWAC likewise encourages the Service to develop, and publish for public comment, a checklist, based on the table, that could be used by project proponents, federal agencies, and the Service to inform and expedite review and completion of consultations under ESA section 7 and any necessary permitting under ESA section 10. The table and checklist should be reviewed on a regular basis (e.g., every five years) to reflect current data with respect to Monarch habitat, migration, and other aspects of the species' life cycle.

IV. Conclusion

If the Service proceeds with finalizing the Proposed Rule, 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. Given the essentially nationwide range of the Monarch, it is reasonable to assume that a final listing—even with a well-tailored 4(d) rule—will have substantial impact on the electric generation, storage, transmission, and distribution industries. Indeed, even the proposed listing rule has had implications on the regulated community in connection with use of nationwide permits under the Clean Water Act and the obligation to provide

pre-construction notification thereunder. EWAC welcomes the opportunity to discuss its comments in greater detail with the Service in order to assist the agency in promulgating a final 4(d) rule that is necessary and advisable for the conservation of the Monarch while also ensuring the safety and reliability of the electric grid.

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