



March 12, 2025

Submitted via regulations.gov

Ms. Barbara Hosler
Regional Listing Coordinator
Midwest Region Headquarters
U.S. Fish and Wildlife Service
5600 American Blvd., Bloomington, MN 55437

Re: Notice of Proposed Rulemaking for Threatened Species Status with Section 4(d) Rule for Monarch Butterfly and Designation of Critical Habitat, 89 Fed. Reg. 100,662 (Dec. 12, 2024) (Docket No. FWS-R3-ES-2024-0137)

Dear Ms. Hosler:

GPA Midstream Association ("GPA Midstream") appreciates this opportunity to submit comments on the U.S. Fish and Wildlife Service ("Service" or "FWS") notice of a proposed rulemaking regarding the Threatened Species Status with Section 4(d) Rule for Monarch Butterfly and Designation of Critical Habitat (hereinafter the "Proposed Rule" or "Proposal"). FWS claims the monarch butterfly meets the Endangered Species Act of 1973 ("ESA") definition of threatened species with protective regulation under 4(d) of the act ("4(d) rule") and proposes a designation of critical habitat.

GPA Midstream has served the U.S. energy industry since 1921 and has over 50 domestic corporate members that directly employ 55,000 employees in a wide variety of services that move vital energy products such as natural gas, natural gas liquids, crude oil and refined products, commonly referred to as "midstream activities." The work of our members indirectly creates or impacts an additional 400,000 jobs across the U.S. economy. In 2022, GPA Midstream members operated over 250,000 miles of gas pipelines, gathered over 85 billion cubic feet per day of natural gas, and operated over 375 natural gas processing facilities that delivered pipeline quality gas into markets across a majority of the U.S. interstate and intrastate pipeline systems.

GPA Midstream supports the Service's efforts to protect threatened species when there is a sound scientific justification for such a determination, and a number of GPA Midstream member companies already participate in the Candidate Conservation Agreement with Assurances for the Monarch Butterfly, have enrolled and are awaiting approval, or plan to enroll. GPA Midstream, however, is concerned the Proposed Rule is not based on the best

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available science and that it should be withdrawn pending further analysis of the most recent population studies. If the Service moves forward with the threatened status in the Proposal, GPA Midstream believes reasonable 4(d) rules should include exemptions for pipeline right of way (ROW) and would offer opportunities to increase monarch habitat and population. FWS should similarly allow additional impartial incidental take exceptions to include transportation and energy infrastructure projects.

I. The Service Should Withdraw the Proposed Rule as Not Based on the Best Scientific Data Available

The Service must rely on the “best scientific and commercial data available” when conducting the fact-intensive analysis necessary to determine whether a species is threatened or endangered.¹ In response to Comment 1 in the Summary of Peer Reviewer Comments in the Proposal, the Service unreasonably dismisses the population bounce back above 200,000 after a low of less than 2,000 individuals in the winter of 2019-2020.² In response to this data, the Service speculated that it was “plausible” that “good weather” accounted for higher counts but, without explanation, concluded that “we are currently unable to determine whether the western migratory population’s status is improving or if these data support the continuation of its fluctuation and decline.”³ The Service’s admission that, in the face of higher population counts, it is “unable to determine whether the western migratory population’s status is improving” or declining should preclude a listing at this time. At the very least, further scientific review is necessary to refute the evidence of improving population numbers.

In response to Comment 3, the Service acknowledges an overwintering population median annual growth rate of 0.93 of the eastern population. Summarily, and without sufficient supporting data or explanation, the Service rejects this population growth and claims the population to be declining.⁴ Instead, it relies on models to presume a future population decline while admitting that “the models cannot identify the mechanism behind the apparent decline in growth rate as populations increase.”⁵ While further study may be necessary to establish population trends, the Service cannot justify the Proposal as relying on the best scientific data available.

The Service’s plausible best and worst case scenarios rely upon inconsistent data to justify 60 year projections of population trends. While the best-case scenarios project future population growth, the Service relies upon the RCP8.5 worst-case scenario in projections of the Western population and RCP4.5 for the Eastern population.⁶ The Service fails to

¹ 16 U.S.C. § 1533(b)(1); see also 5 U.S.C. § 706 (an agency action that is contrary to law must be set aside by a reviewing court).

² 89 Fed. Reg. at 100,665.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 100,678.

justify these models as “reasonably reliable predictions” to justify their use as the best available science as required by law.⁷ The worst-case model in the RCP8.5 should not be considered the best available science if the models are considered in the Proposed Rule. If the Service uses any of these models, they should be consistent throughout the rule. Should the Service rely upon different scenarios for different populations, the rule must clearly state the reasons for doing so in order to allow for sufficient public commentary and peer review.

II. The Service Should Allow Reasonable 4(d) Exemption for Pipeline Right of Way Maintenance and Construction

The Proposal should include a 4(d) rule exemption for linear energy projects such as pipeline replacement, new pipeline installation and ROW maintenance. Impacts from these projects are temporary and are revegetated upon completion. Many of these ROWs can be (or already are) populated with flowering vegetation and milkweed, providing high quality habitat for monarch butterflies and other pollinators. In many cases the post-project revegetated ROW can provide superior habitat than before due to brush and invasive species removal along with replacing previous vegetation with more desirable plant species.

Due to the vast amount of acreage of energy ROW corridors across the country, this presents a good opportunity for FWS to work with industry on the Proposed Rule to create a solution that reduces burdens on industry while increasing habitat and providing a net benefit for the Monarch. If no exemptions were permitted, energy projects across the country could see major delays and unnecessary burden due to consultation requirements. The sheer number of required consultations would strain the resources of FWS as well.

Due to the migrating nature of monarch butterflies, any restrictions should be seasonally based. Once monarch butterflies have left a certain region of the United States, especially during the fall migration due to seasonal die back of milkweed and flowering vegetation, restrictions should be lifted.

III. The Service Should Ensure Impartiality with Regard to Exemptions from Incidental Take

The Service should ensure that the range of proposed exceptions from incidental take reflects impartiality and adequately contemplates a reasonable range of options. Currently, the Service proposes exceptions for vehicle mortality, capture, silviculture and agricultural practices, and fire management, but does not include other activities that could also have an incidental impact to species populations while providing opportunities for habitat improvement. Additional exceptions should be proposed for transportation and

⁷ 50 CFR 424.11(d)

energy infrastructure projects as these projects can often be designed to avoid, minimize, and mitigate species impacts while capitalizing on opportunities for habitat improvements.

Sincerely,

A handwritten signature in black ink, appearing to read 'AM', written in a cursive style.

Andrew Mooney
Director, Federal Affairs
GPA Midstream Association