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U.S. Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
Washington, D.C. 20240

Re: Request for Information: Regulatory Reform, 90 Fed. Reg. 21,504 (May 20, 2025)

To Whom it May Concern:

GPA Midstream Association ("GPA Midstream") appreciates the opportunity to provide recommendations to the Department of the Interior ("Interior") rules that should be modified or repealed.

GPA Midstream has served the U.S. energy industry since 1921 and represents more than 50 domestic corporate members that directly employ 57,000 employees engaged in the gathering, transporting, processing, treating, storage, and marketing of 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 2023, GPA Midstream members had an economic impact of $206.2 billion through operating more than 500,000 miles of pipelines, gathering more than 91 billion cubic feet per day of natural gas, and operating more than 365 natural gas processing facilities that delivered pipeline quality gas into markets across a majority of the U.S. interstate and intrastate pipeline systems.

Introduction

GPA Midstream appreciates Interior's attention to unnecessary regulatory burdens on industry, particularly those that delay or discourage investments in energy infrastructure and domestic energy production. We look forward to working with the Administration to help reduce unnecessary, costly, and unduly burdensome regulations and ensure that rules are reasonable, embrace common sense, and optimize costs and benefits. With this framework in mind, GPA Midstream has identified several agency actions that should be rescinded. These include:

- The October 2021 rule imposing strict criminal liability for incidental takes of migratory birds under the Migratory Bird Treaty Act;

- The Bureau of Land Management ("BLM") Waste Prevention Rule, which is already preliminarily enjoined in several states;

- Final rules rescinding necessary reforms to how the U.S. Fish & Wildlife Service and the National Marine Fisheries Service ("the Services") implement Sections 4 and 4(d) of the Endangered Species Act;

- The final rule listing two distinct population segments of the lesser prairie-chicken as endangered despite lacking a valid reason for treating those populations as distinct segments;

- The final rule reclassifying the northern long-eared bat as endangered as the Fish & Wildlife Service lacked the information necessary for this action;

- The proposed rules to list the tricolored bat as endangered and the monarch butterfly as threatened under the Endangered Species Act as neither proposal includes data sufficient to support the respective listings; and

- Proposed Notice to Lessees No. 5 that would begin enforcement of standards that are impossible to meet due to the Bureau of Land Management's inaction in approving required equipment, software, and test methods, and requiring reporting to a database that does not yet exist.

These regulations, and the reasons for rescinding them, are described briefly below.

Final Rule, U.S. Fish & Wildlife Service, Regulations Governing Take of Migratory Birds; Revocation of Provisions, 86 Fed. Reg. 54,642 (Oct. 4, 2021).

This final rule, 86 Fed. Reg. 54,642 (Oct. 4, 2021) (the "Biden MBTA Rule") rescinded a final rulemaking interpreting the scope of the Migratory Bird Treaty Act as only applying to intentional takes, not takes incidental to otherwise lawful activities. *See* 86 Fed. Reg. 1,134 (Jan. 7, 2021) (codifying Solicitor's Opinion M-37050) ("2021 Rule"). The result of the Biden MBTA Rule was to re-impose strict criminal liability for lawful commercial activity that accidentally or indirectly led to the death of migratory birds.

Several courts adopted the same interpretation of the Migratory Bird Treaty Act as the 2021 Rule in holding that incidentally taking migratory birds is not a crime under the Act. *See*, *e.g.*, *Seattle Audubon Soc'y v. Evans*, 952 F.2d 297 (9th Cir. 1991) (Act is directed at hunters and poachers, not indirect deaths from habitat destruction); *Newton County Wildlife Ass'n v. U.S. Forest Serv.*, 113 F.3d 110 (8th Cir. 1997) (deaths incidental to logging not covered by the Act); *Curry v. U.S. Forest Serv.*, 988 F. Supp. 541 (W.D. Pa. 1997) (Act did not apply to timber sale); *United States v. Chevron USA, Inc.*, 2009 WL 3645170 (W.D. La. Oct. 30, 2009) (rejecting plea agreement because entrapment of brown pelicans in offshore oil well caisson is not an intentional take); *United States v. Ray Westall Operating, Inc.*, 2009 U.S. Dist. LEXIS 130674 (D. N.M. Feb. 25, 2009) (dismissing charges as Congress did not intend to criminalize negligent acts or omissions that were not directed at birds); *United States v. CITGO Petroleum Corp.*, 801 F.3d 477 (5th Cir. 2015) ("taking" requires deliberate acts done directly and intentionally to migratory birds). Nevertheless, in hearing a challenge to Solicitor's Opinion M-37050, the Southern District of New York adopted the minority position, holding that the Migratory Bird Treaty Act criminalizes any lawful action that may incidentally take a migratory bird and rejected Solicitor's

Opinion M-37050. *Natural Resources Defense Council v. U.S. Dep't of the Interior*, 478 F. Supp. 3d 469 (S.D.N.Y. 2020). Interior appealed the ruling but, upon taking office, the Biden Administration dismissed the appeal. 86 Fed. Reg. at 54,642.

The Solicitor recently re-instated the 2021 interpretation of the Migratory Bird Treaty Act, effective in all jurisdictions except for the Southern District of New York. *See* M-37085, Withdrawal of Solicitor Opinion M-37065 "Permanent Withdrawal of Solicitor Opinion M-37050 'The Migratory Bird Treaty Act Does Not Prohibit Incidental Take'" (Apr. 11, 2025). GPA Midstream agrees that this constitutes the best interpretation of the statute, however, issuing the interpretation through notice and comment rulemaking would provide additional certainty to industry. Although several regulations have been issued, rescinded by the following administration, and then re-instated again, notice and comment rulemakings still provide more permanence than a Solicitor's Opinion, which can be rescinded and replaced without any public comment or process.

Final Rule, Bureau of Land Management, Waste Prevention, Production Subject to Royalties, and Resource Conservation, 89 Fed. Reg. 25,378 (Apr. 10, 2024).

The Waste Prevention, Production Subject to Royalties, and Resource Conservation rule ("Waste Prevention Rule") has already been vacated, preliminarily enjoined, and rescinded by BLM once, yet it continues to impose unnecessary – and unlawful – costs and burdens on industry. The Waste Prevention Rule imposes overly complicated and unnecessary restrictions on venting and flaring for operations on federal and Indian lands. Disguised as royalty provisions intended to maximize federal revenues, the Waste Prevention Rule was designed to impose onerous environmental controls that would discourage fossil fuel development on federal and Indian lands.

The Waste Prevention Rule is clearly unlawful. First issued during the Obama Administration, 81 Fed. Reg. 83,008 (Nov. 18, 2016), it was challenged in court and preliminarily enjoined as unlawfully regulating air quality, not waste of gas subject to royalties. *Wyoming v. U.S. Dep't of Interior*, Case No. 16-cv-00285 (D. Wy. Nov. 8, 2017). The prior Trump Administration rescinded the rule. 83 Fed. Reg. 49,184 (Sept. 18, 2018). A district court, however, in a poorly reasoned opinion, subsequently found that rescinding a rule already held to be unlawful was, itself, unlawful. *California v. Bernhardt*, 472 F. Supp. 3d 573 (N.D. Cal. 2020). The decision briefly resurrected the Waste Prevention Rule but the District Court of Wyoming – which previously issued a preliminary injunction – made that injunction permanent three months later, finding the Rule exceeded BLM's authority. *Wyoming v. Dep't of Interior*, 493 F. Supp. 3d 1046 (D. Wy. 2020). However, like some clichéd movie monster, the Waste Prevention Rule could not be killed. Ignoring the Wyoming District Court's ruling, the Biden Administration re-issued the Waste Prevention Rule with only superficial changes. 89 Fed. Reg. 25,378 (Apr. 10, 2024). A new court issued a new preliminary injunction, finding that BLM exceeded its statutory authority, failed to provide a rational explanation for key provisions, and that the rule conflicted with the Clean Air Act. The injunction, however, while still in place, only applies to Montana,

North Dakota, Texas, Utah, and Wyoming. Operations in other States must still comply with an illegal and burdensome regulation that was created to discourage oil and gas development on federal and Indian lands. The Waste Prevention Rule is clearly ripe for rescission.

Final Rule, U.S. Fish & Wildlife Service, Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants, 89 Fed. Reg. 23,919 (Apr. 5, 2024).

Through this final rule (the "4(d) Rule"), the Service re-instated the "blanket rule" that provides the same Section 4(d) protections for newly listed threatened species as endangered species. The 4(d) Rule's one-size-fits-all approach ignores species-specific risks to impose unnecessarily stringent restrictions on energy infrastructure development without little or no added benefit to the threatened species. Instead, the Service should re-instate the approach it took during the prior Trump Administration. *See* 87 Fed. Reg. 44,753 (Aug. 27, 2019). That prior rule tailored regulations to an individual species' primary threats consistent with its Special Status Assessment. This approach provides for a more meaningful and efficient consultation process while avoiding unnecessary burdens on project developers.

Final Rule, Fish & Wildlife Service and National Marine Fisheries Service, Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designating Critical Habitat, 89 Fed. Reg. 24,300 (Apr. 5, 2024).

This rule (the "Section 4 Rule") rescinded regulatory reforms that provided greater consistency, clarity, and certainty to the Endangered Species Act listing process. 84 Fed. Reg. 45,020 (Aug. 27, 2019) ("2019 Rule"). In addition to adding vague language to the regulations on listing (*e.g.*, muddying language on whether economic impacts will be considered; re-defining "foreseeable future" to turn on predictions instead of "information;" delisting "if appropriate" without defining what is appropriate), it unlawfully allows the Services to designate "unoccupied areas," where listed species have never been found, as critical habitat. Further, the Section 4 Rule rescinded the definition of "habitat" promulgated in response to *Weyerhaeuser Co. v. U.S. Fish & Wildlife Service*, 586 U.S. 9 (2018). Without a definition of "habitat," the Services will take an unnecessarily opaque, case-by-case approach to outlining a species' habitat, reducing consistency and increasingly litigation. Therefore, we strongly urge the Department to rescind the Section 4 Rule and reinstate the 2019 Rule.

Final Rule, Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status with Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment, 87 Fed. Reg. 72,674 (Nov. 25, 2022).

GPA Midstream understands that the U.S. Fish & Wildlife Service has confessed error in creating two distinct population segments for the lesser prairie-chicken and has moved for a voluntary vacatur and remand of the final rule listing the segments under the Endangered Species

Act. *See* Defendants' Motion for Voluntary Vacatur and Remand, *Texas v. Dep't of the Interior*, Case No. 23-cv-00047 (W.D. Tex. May 7, 2025). Given that a prior attempt to list the lesser prairie-chicken was vacated, *Permian Basin Petroleum Association v. Department of the Interior*, 127 F. Supp. 3d 700 (W.D. Tex. 2015), and that dividing the prairie-chicken population into a southern and northern distinct population segment was designed to circumvent the court's ruling, we strongly support the Service's intent to address that issue on remand. Further, as several studies have shown, when the lesser prairie-chicken population is considered as a whole, that population is either stable or increasing. Thus, on remand, the Service should consider the most recent data for the population as a whole and, unlike with the listing rule itself, properly account for voluntary conservation measures in considering whether to re-list the lesser prairie-chicken.

Final Rule, U.S. Fish & Wildlife Service, Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bats, 87 Fed. Reg. 73,488 (Nov. 30, 2022).

The Service listed the Northern Long-Eared Bat as endangered despite admitting to having insufficient information regarding the species' range, population size, population trends, and distribution. This meant that the Service not only lacked the "best available data" required under the Endangered Species Act but it deprived the public of the ability to provide meaningful comments on the proposal. As a result, the final listing rule imposes onerous restrictions on lawful activities, including midstream activities, despite the fact that the primary threat to Northern Long-Eared Bats is white nose syndrome. Thus, reclassifying Northern Long-Eared Bats from threatened to endangered provides no benefit to the bats while burdening energy development across the bat's 37-state range. The Service should reduce the classification back to threatened until it can obtain the information necessary to properly evaluate whether the Northern Long-Eared Bat meets the requirements for an endangered listing.

Proposed Rule, U.S. Fish & Wildlife Service, Endangered and Threatened Wildlife and Plants; Endangered Species Status for Tricolored Bat, 87 Fed. Reg. 56,381 (Sept. 14, 2022).

The Service proposed listing the Tricolored Bat, which is found in 39 states and the District of Columbia, as endangered. As with the Northern Long-Eared Bat, the primary threat is white nose syndrome, not industrial activities or development. And also like the Northern Long-Eared Bat listing, the proposal for the Tricolored Bat lacks the scientific data to support an endangered classification. Specifically, the Service proposed listing the Tricolored Bat as endangered despite admitting that it lacks fundamental information regarding its range and population trends. The species status assessment largely relied on unpublished reports and data that are impossible for the public to review and comment on while omitting relevant studies that did not support an endangerment listing. The proposal also declines to consider listing distinct population segments of the Tricolored Bat, given the Service's poor understanding of its range and distribution, and an expansive range across 39 States.

In fact, listing a single population as endangered would involve an enormous potential habitat that would delay numerous midstream infrastructure projects and create significant uncertainty due to the need for formal consultation. Yet, no delays or restrictions on working in or around Tricolored Bat habitat would impact the species' survivability due to the effects of white nose syndrome. Because listing the Tricolored Bat as endangered would involve substantial burdens without any corresponding benefits, the Service should withdraw the proposal until it can gather and review proper supporting information.

Proposed Rule, U.S. Fish & Wildlife Service, Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Monarch Butterfly and Designation of Critical Habitat, 89 Fed. Reg. 100,662 (Dec. 12, 2024).

This proposed rule should be officially withdrawn. Although Monarch Butterfly populations have fluctuated over recent years, the Fish & Wildlife Service's rationale for listing the butterfly dismisses evidence of population increases, as noted by peer reviewers. At best, the Fish & Wildlife Service should wait until population data actually supports a proposal to list the Monarch Butterfly as threatened.

Proposed Notice, Bureau of Land Management, Clarifying the Implementation of Certain BLM Oil and Gas Measurement Regulations, 89 Fed. Reg. 90,037 (Nov. 14, 2024).

BLM should withdraw proposed Notice to Lessee 5 ("NTL-5"), intended to provide clarifications regarding the enforcement of 43 C.F.R., Part 3170, Subparts 3174 and 3175, issued in 2016 to govern the use of approved equipment and software for the measurement of oil and gas. Specifically, NTL-5 would require operators to only use approved measurement equipment, software, and methods within one year after BLM issues test procedures for classes of equipment. Any use of unapproved equipment, software, and methods would be subject to enforcement. However, despite posting test methods for two equipment types, flow conditioners and Coriolis meters, BLM has not approved **any** equipment since the regulations issued in 2016. As explained in GPA Midstream's December 12, 2024 comments, BLM's Equipment Approval Program has been plagued from the start with a lack of resources, technical challenges, and confusion about what type of test data BLM's Production Measurement Team requires to review and approve equipment. It would obviously be unfair to require operators to use only approved equipment, or face penalties, when BLM has never approved the use of any equipment.

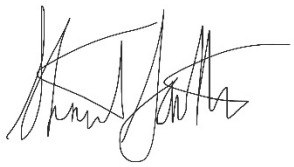
Even if BLM could approve equipment shortly after issuing test methods, it would still be virtually impossible to comply with proposed NTL-5. Once BLM approves any particular piece of equipment, the entire industry would be forced to purchase and replace their existing equipment in whatever few months are remaining within the one year window. It is unlikely that equipment manufacturers and the contractors required to install the approved equipment could accommodate this surge in demand in such a short time. Further, once installed, proposed NTL-5 would prohibit necessary and routine software upgrades for the equipment as each software version must be tested and approved by the Production Measurement Team.

Further, proposed NTL-5 would require all operators to submit gas analysis reports to BLM's Gas Analysis Reporting and Verification System ("GARVS"), which has not yet been developed. Proposed NTL-5 would require operators to submit reports within three months of GARVS coming online – at a yet undetermined date – but operators would need a significantly longer time to modify their accounting systems to create reports that GARVS could accept. Given that BLM has not yet begun developing GARVS, nobody, including BLM, knows how operators would be required to modify their systems. Thus, proposed NTL-5 would unfairly subject operators to enforcement actions even though compliance with the 2016 regulations remains wholly impractical, if not impossible. Proposed NTL-5 should be formally withdrawn.

Conclusion

GPA Midstream strongly supports Interior's work to identify and reduce unnecessary and overly burdensome regulations. Please reach out if you have any questions or want to talk more on the input provided.

Respectfully submitted,



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