



March 17, 2015

*Via [www.regulations.gov](http://www.regulations.gov)*

Mr. Tony Sullins  
Endangered Species Chief  
U.S. Fish and Wildlife Service  
Midwest Regional Office  
5600 American Boulevard West  
Suite 990  
Bloomington, Minnesota 55437

**Re: Proposed Rule on Listing the Northern Long-Eared Bat with a Rule Under Section 4(d), Docket No. FWS-R5-ES-2011-0024**

Dear Mr. Sullins:

The Interstate Natural Gas Association of America (INGAA), a trade association that advocates regulatory and legislative positions of importance to the interstate natural gas pipeline industry in North America, respectfully submits these comments in response to the U.S. Fish and Wildlife Service (USFWS or Service)'s proposed rule on listing the northern long-eared bat (NLEB). The USFWS is proposing to list the NLEB and create a species-specific rule under section 4(d) of the Endangered Species Act (Proposed Rule).<sup>1</sup> A number of INGAA members have natural gas pipeline assets in the eastern United States within the range of the NLEB habitat area and will be directly impacted by this proposed rule.

In the Proposed Rule, the USFWS requested comment on whether the NLEB should be listed as threatened, endangered, or does not warrant listing. If the USFWS elects to list the NLEB, INGAA supports categorizing this species as *threatened*, not endangered. INGAA also recommends that the USFWS extend its proposed section 4(d) exceptions to include re-vegetated interstate natural gas pipeline construction projects.

INGAA supports listing this species as threatened, not endangered, because the source of impact to the species is a disease (white nose syndrome) and not human activity. There is no causal nexus between human activity and impacts to the NLEB's habitat. The USFWS can protect the NLEB by listing it as threatened and at the same time allow critical energy infrastructure projects

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<sup>1</sup> *Endangered and Threatened Wildlife and Plant; Listing the Northern Long-Eared Bat with a Rule under Section 4(d) of the Act*, 80 Fed. Reg. 2371 (January 16, 2015).

to move forward. As discussed below, re-vegetated interstate natural gas pipeline construction projects will have a minimal impact on the NLEB and its habitat.

If the USFWS elects to designate the NLEB as threatened, the Service should consider including interstate natural gas pipeline construction projects in its list of section 4(d) exceptions. In the Proposed Rule, the USFWS lists four exceptions to the general prohibition on an incidental take of the NLEB: (1) forest management; (2) maintenance and limited expansion of existing rights-of-way and transmission corridors; (3) prairie management; and (4) projects resulting in minimal tree removal.<sup>2</sup> These exceptions apply provided that these activities protect known maternity roosts and hibernacula.

INGAA members appreciate the inclusion of the maintenance and limited expansion (up to 100 feet) of an existing pipeline right-of-way. However, INGAA members also urge the USFWS to expand this exception to include construction of interstate natural gas pipelines. The impacts of such projects on the NLEB would be temporary and minimal considering the infrastructure ultimately is buried and the area is re-vegetated after the project is complete. Re-vegetated corridors may provide new foraging, commuting and roosting habitat for the NLEB, leading to a benefit for the species.

Natural gas pipeline construction projects cause a fraction of the impact that forest management activities create. The area disturbed due to a natural gas pipeline construction project is not as large as the potential disturbance from forest management activities. FERC rules require pipeline rights-of-way to be re-vegetated quickly after construction. Operators are permitted to re-vegetate temporary construction rights-of-way consistent with nearby areas including forest. The typical greenfield natural gas pipeline permanent right-of-way is 50 feet wide. Although routes with multiple pipelines are wider, the right-of-way width still is significantly less than forest management activities. Also, per the Federal Energy Regulatory Commission Upland Erosion Control, Revegetation, and Maintenance Plan (Plan),<sup>3</sup> pipeline operators are not allowed to mow the permanent right-of-way more frequently than every 3 years. A corridor only 10 feet wide may be mowed each year for ease of required testing access. These rules and restrictions significantly reduce the effect of pipeline right-of-way development on habitat degradation. A right-of-way in a forested area also has the beneficial effect of adding an “edge effect” for foraging species that feed on moths, flies, leafhoppers, caddisflies and beetles over the vegetated right-of-way.

Finally, the USFWS should revise the “limited tree removal” exception to include all tree removal projects that have minimal impact on the NLEB. In the proposed rule, the USFWS includes an exception for projects resulting in limited tree removal because such projects do not materially affect the local forest habitat. Pipeline construction projects do not significantly

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<sup>2</sup> *Id.*

<sup>3</sup> *Upland Erosion Control, Revegetation, and Maintenance Plan*, Federal Energy Regulatory Commission, Office of Energy Projects, Washington, D.C. (May 2013).

change the overall nature and function of the local forested habitat, particularly since the area is re-vegetated and reclaimed when the project is complete.

In summary, should the USFWS determine the NLEB warrants listing, it should be listed as threatened, not endangered, and the USFWS should expand the exceptions listed in its proposed section 4(d) rule to include any incidental take created by re-vegetated natural gas pipeline construction projects that are conducted in accordance with the conservation measures proposed in the rule.

INGAA appreciates your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Kurdock", with a long horizontal flourish extending to the right.

Brianne Kurdock  
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