



March 19, 2018

U.S. Fish & Wildlife Service  
MS: BPHC  
5175 Leesburg Pike  
Falls Church, VA 22041-3803

**RE: Docket No. FWS-R5-ES-2017-0011**

**Endangered and Threatened Wildlife and Plants; 90-Day Findings for Five Species – Tricolored Bat  
82 Fed. Reg. 60362 (December 20, 2017)**

With this letter, the American Exploration and Production Council (AXPC), the Independent Petroleum Association of America (IPAA), and the American Petroleum Institute (API) are pleased to submit these comments in response to the captioned public notice, published in the Federal Register December 20, 2017, in which the U.S. Fish & Wildlife Service (USFWS or the Service) announced 90-day findings on several petitions to list or reclassify wildlife or plants under the Endangered Species Act of 1973, as amended (ESA), including the Tricolored bat (*Perimyotis subflavus*).

AXPC is a national trade association representing 31 of America's premier independent natural gas and oil exploration and production companies. The operations of AXPC members are limited to the exploration for and production of natural gas and oil. The Mission of AXPC is to constructively and thoughtfully work for sound energy, environmental and related domestic public policies that encourage the responsible exploration, development and production of natural gas and oil to meet the needs of consumers and fuel our economy.

IPAA is a national trade association representing the thousands of independent crude oil and natural gas explorer/producers in the United States. It also operates in close cooperation with 44 unaffiliated independent national, state and regional associations, which together represent thousands of royalty owners and the companies which provide services and supplies to the domestic industry. IPAA is dedicated to ensuring a strong, viable domestic oil and natural gas industry, recognizing that an adequate and secure supply of energy developed in an environmentally responsible manner is essential to the national economy.

API is the only national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million U.S. jobs and nearly 8 percent of the U.S. economy. API's more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. They provide most of the nation's energy and are backed by a growing grassroots movement of more than 40 million Americans.

AXPC, IPAA and API appreciate the opportunity to constructively comment on the recent positive 90-day finding by the USFWS for the Tricolored bat and its potential listing under the ESA. AXPC, IPAA and API understand the ecological, economic and scientific value of bats. Among other ecosystem services, bats

benefit people and agriculture by providing nontoxic pest-control services totaling more than \$3.7 billion per year<sup>1</sup>. Further, we support USFWS efforts to conserve imperiled bat species, and the effort to find a successful treatment for White-nose syndrome (WNS), the disease that is a primary cause for the bats' unprecedented mortality and decline.

The oil and natural gas industry filed extensive comments in the review of the status of the Northern long-eared bat (*Myotis septentrionalis*), a species whose range overlaps that of the Tricolored bat and that, like the Tricolored bat, is experiencing epidemic WNS. As the Service continues its review of the Tricolored bat, we look forward to supporting appropriate conservation outcomes for the species that align with the USFWS mission of "work(ing) with others to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people,"<sup>2</sup> while ensuring responsible and essential development our nation's energy resources.

In determining whether to list a species under the ESA, USFWS must examine the adequacy of existing regulatory mechanisms that address the threats facing the species<sup>3</sup>. If the regulatory protections are adequate, then listing may not be necessary or appropriate. These same regulatory factors should also be examined when the Service is considering, pursuant to its section 4(d) authority, what conservation measures may be "necessary and advisable for the conservation and management" of a threatened species<sup>4</sup>. To the extent that existing regulatory mechanisms are adequate to deal with a particular threat to the species, then it is neither necessary nor advisable to impose the prohibition against incidental take on the activities that are not responsible for that threat.

In 2015, the Northern long-eared bat was listed as Threatened with a 4(d) Rule, due to significant population declines because of WNS. Northern long-eared and Tricolored bats share a comparable life history and range, as previously considered by USFWS when making the decision to list the Northern long-eared bat as Threatened with a 4(d) Rule that includes prudent restrictions for tree clearing and provides opportunities for conservation of the species. Because the range and habitat of the Tricolored bat within the region is similar to those of bats already listed under the ESA, conservation measures and forest management practices are currently in place to ensure that habitat modifications resulting from activities that manage forests would not significantly affect the conservation of the threatened northern long-eared bat or other bat species that share its range. Further, based on the recently updated (as of January 2, 2018) *Northern Long-Eared Bat Final 4(d) Rule: White-Nose Syndrome Zone Around WNS/Pd Positive Counties/Districts*<sup>5</sup>, Tricolored bats would already benefit from the conservations measures afforded to the Northern long-eared bat.

Though federal protection for species under the ESA is often driven by reductions in species' habitats, the decline in the Tricolored bat's population – like that of the Northern long-eared bat – is primarily due to disease, not habitat loss. Thus, a listing decision for the Tricolored bat that results in additional habitat restrictions beyond the requirements under the 4(d) rule for the Northern long-eared bat would

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<sup>1</sup> Justin G. Boyles, Paul M. Cryan, Gary F. McCracken, Thomas H. Kunz. Economic Importance of Bats in Agriculture. Science April 2011, Vol. 332, Issue 6025, pp. 41-42.

<sup>2</sup> FWS Fundamentals, July 16, 2013.

<sup>3</sup> Endangered Species Act of 1973 (ESA; 16 U.S.C. § 1531 et seq.), Sec. 4(a)(1)(D).

<sup>4</sup> Ibid., Sec. 4(d)

<sup>5</sup> 81 Fed. Reg. 1900 (January 14, 2016), see 2018 update at <https://www.fws.gov/Midwest/endangered/mammals/nleb/index.html>

likely have a minimal, if any, impact on conserving the species or preventing the spread of WNS, and would instead unreasonably burden activities that do not cause population-level effects on the species.

This point was thoroughly addressed in industry's comments to the FWS during the consideration of the 4(d) rule for the Northern long-eared bat (see attached). The comments included a discussion on the ways drilling and production activities in Pennsylvania's state forests are carefully regulated to minimize impacts of these activities and to ensure the continued viability of the forests in a multiple use context. Pennsylvania's regulations governing oil and gas activities in state forests can be considered as an exercise in "forest management," which FWS defines as "the practical application of biological, physical, quantitative, managerial, economic, social, and policy principles to the regeneration, management, utilization and conservation of forests."<sup>6</sup>

Specifically, as noted in the April 2014 Shale-Gas Monitoring Report (Monitoring Report), it is the mission of Pennsylvania's Department of Conservation and Natural Resources (DCNR) to "ensure the long-term health, viability, and productivity of" state forests.<sup>7</sup> DCNR's "overarching goal is to manage state forest sustainably under sound ecosystem management"—i.e., under the principles of forest management, as defined by FWS. In that regard, DCNR is well aware that "[n]atural gas development ... affects a variety of forest resources and values, such as ... wildlife habitat" through "[f]orest conversion and fragmentation,"<sup>8</sup> and has therefore put both regulatory and monitoring mechanisms in place to minimize the impacts of such development. Where oil and gas development "is permitted to occur," DCNR "strives[s] to minimize the surface impact to the greatest reasonable extent and to mitigate for the impact whenever possible."<sup>9</sup> For example, shale-gas leases restrict surface disturbance in sensitive areas and limit overall surface disturbance to approximately 2 percent of the acreage within the lease tract.<sup>10</sup> In addition, "[s]ince the onset of shale-gas development on state forest lands, [DCNR] has worked with gas operators to limit forest fragmentation resulting from infrastructure construction."<sup>11</sup> Moreover, with respect to reclamation and restoration of disturbed areas where "loss of forest" may have occurred, DCNR's goal is "to reduce the impact of shale-gas development by restoring areas converted for gas infrastructure to their original habitat or creating habitat for plants and wildlife." DCNR notes that "[w]ith proper planning and effective, thoughtful implementation, suitable habitat can be created for many species of plants and wildlife during partial and complete restoration of gas-related sites."<sup>12</sup>

If the Service makes the determination to propose to list the Tricolored bat under ESA, AXPC, IPAA and API strongly urge FWS to acknowledge that WNS is the primary threat to the Tricolored bat species population, to recognize existing conservation measures benefitting the Tricolored bat during the species status assessment, and to adopt a 4(d) rule to include oil and gas activities conducted in accordance with applicable state and federal law. Further, if USFWS undertakes the designation of critical habitat for the tricolored bat, AXPC, IPAA and API would like to be included as stakeholders in the process.

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<sup>6</sup> U.S. Fish and Wildlife Service, Introduction Appendix . Forest Management Guidelines J-1

<sup>7</sup> Monitoring Report at p. 12.

<sup>8</sup> *Id.* at p. 1 and 3.

<sup>9</sup> *Id.* at p. 1.

<sup>10</sup> *Id.* at p. 3.

<sup>11</sup> *Id.* at p. 210.

<sup>12</sup> *Id.* at p. 208.

Thank you for your consideration of these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "V. Bruce Thompson". The signature is fluid and cursive, with a large initial "V" and a long, sweeping tail.

V. Bruce Thompson  
President  
American Exploration & Production Council

A handwritten signature in black ink, appearing to read "Dan Naatz". The signature is cursive and somewhat stylized, with a prominent "D" and a long, sweeping tail.

Dan Naatz  
Senior Vice President of Federal Resources & Political Affairs  
Independent Petroleum Association of America

A handwritten signature in black ink, appearing to read "Richard Ranger". The signature is cursive and somewhat stylized, with a prominent "R" and a long, sweeping tail.

Richard Ranger  
Senior Policy Advisor  
American Petroleum Institute