

December 10, 2018

Submitted via www.regulations.gov

Public Comments Processing, Attn: FWS-R4-ES-2018-0057
U.S. Fish and Wildlife Service
MS: BPHC
5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: Comments on the U.S. Fish and Wildlife Service 12-Month Petition Finding and Threatened Species Status for Eastern Black Rail With a Section 4(d) Rule (FWS-R4-ES-2018-0057); 83 *Fed. Reg.* 50610 (October 9, 2018)

To Whom It May Concern:

The National Rural Electric Cooperative Association (NRECA) respectfully submits the following comments in response to the U.S. Fish and Wildlife Service (FWS) 12-Month Petition Finding and Threatened Species Status for Eastern Black Rail With a Section 4(d) Rule (83 *Fed. Reg.* 50610) (October 9, 2018).

NRECA is the national service organization for America's electric cooperatives. NRECA represents the interests of the nation's more than 900 rural electric utilities responsible for keeping the lights on for more than 42 million people across 47 states. Electric cooperatives are member-owned, not-for-profit small businesses¹ serving member-consumers facing significant economic challenges, especially in rural areas. They are driven by their purpose to power communities and empower their members to improve their quality of life. Affordable electricity is the lifeblood of the American economy, and for 75 years electric co-ops have been proud to keep the lights on. Given their critical role in providing affordable, reliable, and universally accessible electric service, electric cooperatives are vital to the economic health of the communities they serve.

The eastern black rail occurs in as many as 35 states and the District of Columbia. Given this broad range, some NRECA members' operations could be affected by the subspecies listing and associated Section 4(d) Rule, if finalized. Overall NRECA and its members support the proposed Section 4(d) Rule for the eastern black rail, but we request a few changes to improve clarity and implementation.

Clarify treatment activities.

We support the exception to the prohibition for "Haying, Mowing, and Other Mechanical Treatment Activities" during the nesting, brooding, or post-breeding molt periods for maintenance of existing fire breaks, roads, transmission corridor rights-of-way, and fence lines. This exception is critical to cooperatives' ability to properly maintain their infrastructure and deliver affordable, reliable electric power to their communities 24 hours a day, 7 days a week. It is essential for electric cooperatives to

¹ As defined by the Small Business Administration.

manage vegetation located on power line rights-of-way and minimize encroachments from vegetation located adjacent to the right-of-way to meet mandatory reliability standards, mitigate the risks of vegetation-related outages and other operational problems, and reduce wildfire risks. In addition to mowing and other mechanical treatments, routine vegetation management may also include activities such as the non-mechanical removal of trees and other vegetation; application of Environmental Protection Agency (EPA)-approved and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)-registered herbicides; and planting of native shrubs and grasses for restoration. Access road improvements and erosion control activities may also occur. NRECA requests that FWS recognize these activities as part of the exception to the prohibition as they are necessary to meet safety and operational needs of electric infrastructure.

Include O&M activities.

In addition to vegetation management, electric cooperatives must also perform required operation and maintenance (O&M) work to reduce liability risks and keep the lights on. It may be necessary for these activities to take place during the eastern black rail nesting, brooding, and/or post-brooding molt periods too. Routine O&M activities include such actions as the following: modifying, repairing, maintaining, or upgrading existing electric infrastructure; adding or replacing equipment (*e.g.*, breakers, transformers, switches); pole replacement; reconductoring; and access road improvements. O&M activities occur within or immediately adjacent to previously disturbed rights-of-way and typically have short-term, negligible environmental impacts. Therefore, NRECA recommends that FWS include O&M activities as an exception to the “take” prohibitions.

Clarify what qualifies as “existing infrastructure.”

The proposed Section 4(d) Rule provides exceptions for existing transmission corridor rights-of-way. NRECA requests that FWS clarify that electric distribution corridor rights-of-way, in addition to transmission line rights-of-way, and all associated electric infrastructure such as substations, are also included in this exception. America’s electric cooperatives own and maintain 2.6 million miles of electric distribution lines (42 percent of the nation’s total), which are critical to delivering power to consumers at the end of the line. We also urge FWS to include buried and aerial fiber optic lines as part of any infrastructure being covered under this exception as they are critical to the data and telecommunications capabilities that cooperatives are using to manage operations on their systems and meet the demands of the communities they serve. Broadband services may have their own dedicated rights-of-way or be co-located within transmission and distribution rights-of-way.

We also ask that FWS add provisions so that future electric transmission and distribution rights-of-way and related infrastructure will also be included in this exception once constructed. New utility installations are placed in disturbed corridors or parallel to existing corridors to the greatest extent feasible. However, there are instances when new rights-of-way are required – primarily with respect to rural connectivity, tribal development, reliability, and safety considerations. Electric cooperatives are already motivated by cost, efficiency, and other considerations to locate new linear projects within or parallel to existing corridors when it is safe and possible to do so. For example, an existing right-of-way may be expanded on either side in order to complete work necessary to enhance reliability or improve system resiliency. To continue to ensure a proper functioning of the energy grid, cooperatives will be building, maintaining, and upgrading more distribution and transmission lines over time. NRECA wants to ensure that this vital work will not be prohibited should the Section 4(d) Rule for the eastern black rail be finalized. We want to ensure NRECA members can continue to provide affordable, reliable electric

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services to member-consumers and that additional infrastructure needed to preserve or enhance grid reliability can be sited, constructed, and maintained in a cost effective and efficient manner.

Provide early notification of timing prohibitions.

NRECA appreciates the proposal's acknowledgement of local variability across the wide geographic range of the eastern black rail. We encourage FWS to work as early as possible with affected stakeholders like electric cooperatives to provide transparency on the start date for any sensitive period for the eastern black rail, such as nesting, to facilitate efficient project planning in a timely manner. This will help minimize project delays and costs, while promoting conservation of the subspecies.

Consider rescission of "blanket" 4(d) rule.

Finally, NRECA urges FWS to ensure this Section 4(d) Rule is consistent with the anticipated final rule FWS is working on to rescind the "blanket Section 4(d) Rule."² We support the expedited finalization of that rule and want to ensure implementation of this Section 4(d) Rule proceeds smoothly in conjunction so that protections in place for the eastern black rail are consistent with the needs of the species. NRECA appreciates that FWS put forth the proposed Section 4(d) Rule concurrently with the proposed listing decision as it will give cooperatives much-needed planning time for implementation.

Thank you for considering our comments. We welcome an opportunity to discuss our recommendations further with your team.

Sincerely,

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² 83 *Fed. Reg.* 35174 (July 25, 2018).