

The Northern Long-Eared Bat (NLEB) and the USACE Regulatory Permit Process

By the U.S. Army Corps of Engineers (USACE), Buffalo District

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Introduction:

The northern long-eared bat (*Myotis septentrionalis*) is a small-sized insectivorous bat widely distributed in the eastern United States and across Canada. Due to declines in their population caused by White-Nose Syndrome (https://www.whitenosesyndrome.org/sites/default/files/resource/white-nose_fact_sheet_6-2014_1.pdf), the NLEB was listed as a Threatened species under the Endangered Species Act (ESA) in April 2015 by the United States Fish and Wildlife Service (USFWS). White-Nose Syndrome is a disease that affects hibernating bats and is named for the white fungus that appears on the bats' nose and other areas of the bats. The disease has caused extensive mortality of hibernating bats in eastern North America and has recently been found in the west.

Range of the NLEB in the USACE Buffalo District:

The range of the NLEB includes **all counties** in the USACE Buffalo District Regulatory Program boundaries in both New York and Ohio (see <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx> for a map of the District Boundaries).

NLEB Ecology and Habitat Information:

During the summer months (approximately April-August), NLEBs use forested/wooded habitat where the bats roost, forage, and travel. Summer NLEB habitat may also include adjacent or interspersed non-forested habitats such as emergent wetlands and edges of agricultural land, old fields, or pastures. Potential NLEB summer roosting habitat includes live or dead trees that are generally ≥ 3 inches diameter at breast height (DBH) with cracked or exfoliating bark, broken limbs, cavities, or crevices. Individual trees may be considered suitable habitat when they exhibit any of the aforementioned characteristics and are located within approximately 1,000 feet of other forested habitat. NLEBs travel and forage along linear features such as riparian corridors, paths, forest edge, and fence rows, as well as forage along streams, wetlands, and ponds. Potential summer roosting habitat for NLEBs also includes human-made structures, such as buildings, barns, bat houses, and bridges. During the fall months (approximately August-September) prior to hibernation, NLEBs swarm in wooded areas around their hibernacula. In the winter (approximately October-March), NLEBs hibernate in caves and abandoned mines.

Final 4(d) Rule:

On January 14, 2016, the USFWS issued the NLEB Final 4(d) Rule to help conserve this imperiled species while allowing human activities with minimal impacts to its population. The Final (4) Rule went into effect on February 16, 2016 and aims to protect known summer maternity roosting habitat and the areas around known hibernacula, including the hibernaculum itself. More specifically, the rule does not prohibit tree clearing while the bat is there during the summer roosting period (April to August) as long as the tree clearing is not conducted near a known hibernaculum any time of the year or near known maternity roost trees during the pup-rearing season (June 1 to July 31). The 4(d) Rule directs the public and Federal Agencies for known locations to each state's Natural Heritage Information Agency, in New York it is the New York Natural Heritage Program (<http://www.dec.ny.gov/animals/29338.html>) and in Ohio it is the Ohio Field Ecological Services Field Office of the USFWS (contact information below).

Final 4(d) Rule and the USACE Regulatory Permit Process:

Under Section 7 of the ESA, Federal Agencies are required to make effects determinations on listed species as a result of their actions (such as the Corps' issuing a permit) and coordinate with the USFWS where required. Under the Final 4(d) Rule a form of coordination known as Formal Consultation is required between the USFWS and the Action Agency (Corps) by Section 7 of the ESA. More specifically, any Corps permit applications that involve clearing trees greater than or equal to 3 inches diameter at breast height (DBH) between April 1 to October 31 are required to go through a 30-day coordination period with the USFWS. Note that the 4(d) Rule does not apply to known maternity roosting habitat and buffer areas (during the pup-rearing season, June 1 to July 31) or to areas around a known hibernaculum any time of the year. Therefore, proposed tree removal within these areas would require traditional Formal Consultation, which could take up to 125 days for the USFWS to issue a Biological Opinion. In areas where the Federally-Endangered Indiana bat (*Myotis sodalis*) is present, the Corps must make an effects determination on the Indiana bat which could prohibit use of the Northern long-eared bat Final 4(d) Rule to cover tree clearing from April 1 to October 31 since there will be a conflict in potential clearing dates.

New Guidance on Potential Pre-Construction Notification (PCN) Nationwide Permit (NWP) Applications in New York:

General Condition No. 18 of the NWP Program (Endangered Species) states a PCN is required to be submitted if the project is in the “vicinity” of any applicant’s project. Since the NLEB’s range is in all counties of the USACE Buffalo District Regulatory Program boundaries, all NWP applications in the USACE Buffalo District Regulatory Program boundaries require a PCN (see <http://www.lrb.usace.army.mil/Missions/Regulatory/NationwidePermits.aspx> for information on the USACE Buffalo District NWP Program).

The Threatened listing of this species has had a large impact on processing of applications in our New York Section, expanding the scope of review to several counties where there were previously no known species listed. In an effort to help applicants in New York whose project would be a PCN since the NLEB or Indiana bat is in the vicinity but the project would not involve impacts to the structures used by these bats for summer roosting, this office has worked with the New York Field Office of the USFWS and developed a guidance document that further defines “vicinity” in the Buffalo District. This guidance document is only to be used for the two listed bat species within the District’s boundaries and can be found on our webpage. We strongly recommend applicants review this document to determine if projects are not required to submit a PCN to this office. Questions on this Guidance document or PCNs, can be directed to this office at (716) 879-4330.

Additional Information Needed in USACE Regulatory Permit Application Submittals:

Information that applicants can provide in their application package to streamline the USACE effects determination and coordination are:

- Are trees proposed to be cleared for the project? Will any bridges or other potential roosting structures, e.g. buildings, barns, etc., be impacted?
- How many potential roost trees will be cleared (individual trees or acres of trees)? What type of trees (hardwoods or coniferous) and what is the general size of the tree (Diameter Breast Height - Tree DBH is outside bark diameter at breast height. Breast height is defined as 4.5 feet (1.37m) above the forest floor on the uphill side of the tree. How many individual trees or acres of forest will be cleared from April to October 31? And how many individual trees or acres of forest will be cleared from June 1 to July 31? In general, most, but not all, adverse effects to the bat can be

reduced and the overall process quicker if seasonal tree clearing restrictions are implemented (i.e. not disturbing habitat when occupied by bat).

- Do the trees being felled contain any cracks, crevices, or loose bark?
- Information on if any presence/absence surveys of the bat have been conducted on the property. For more information on these surveys, contact the local USFWS office, as listed above.

Check back to our Homepage website in the future for more information on our progress on this effort. <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>.

Further information on the bat or the Final 4(d) Rule can be found at <http://www.fws.gov/midwest/endangered/mammals/nleb/> Further questions on the Final 4(d) Rule should be directed to the local USFWS Field office as listed below.

For more information on other Federally-listed species protected under the ESA: In New York State, please either visit the USFWS Information for Planning and Conservation (IPAC) website, <http://ecos.fws.gov/ipac/>, or contact the USFWS New York Field Office – (607) 753-9699, <http://www.fws.gov/northeast/nvfo/>. In Ohio, we recommend contacting the USFWS Ohio Ecological Services Field Office directly – (614) 416-8993, <http://www.fws.gov/midwest/ohio/index.html>.