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# **Final Environmental Assessment**

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**FINDING OF NO  
SIGNIFICANT IMPACT**

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## **I. INTRODUCTION**

In accordance with U.S. Fish and Wildlife Service (Service) procedures for complying with the National Environmental Policy Act (NEPA), the Service has completed an environmental review of the following proposed action: Issuance of regulations for the northern long-eared bat (*Myotis septentrionalis*)(NLEB) under section 4(d) of the Endangered Species Act, as amended.

Pursuant to the requirements of the NEPA, the Service developed an Environmental Assessment (EA) to evaluate the potential impacts of the proposed action and alternatives. The EA evaluated three alternatives, based on their ability to meet our purpose and need for action, and the associated impacts to the human environment. Based on the findings of the EA, the Service prepared a Finding of No Significant Impact (FONSI), which is hereby issued pursuant to the Council on Environmental Quality (CEQ) regulations at 40 CFR 1508.13 and the Service's NEPA implementing regulations at 43 CFR §§ 46.300-325. The final EA is incorporated by reference into this FONSI.

## **II. BACKGROUND**

On January 21, 2010, the Service received a petition from the Center for Biological Diversity requesting that the NLEB be listed as threatened or endangered and that critical habitat be designated under the ESA. On June 29, 2011, we published a 90-day finding that the petition to list the NLEB presented substantial information indicating that the requested action may be warranted, and we initiated a status review of the species. Following the status review, on October 2, 2013, we determined that listing the NLEB was warranted due predominantly to the threat of White-nose syndrome (WNS). On October 2, 2013, we published a proposed rule to list the NLEB as an endangered species under the ESA (78 FR 61046). On April 2, 2015, we published a final rule to list the NLEB as a threatened species under the ESA (80 FR 17974).

On January 16, 2015, we published a proposal to create a special rule under section 4(d) of the ESA that would provide regulations that are necessary and advisable to provide for the conservation of the NLEB, if it were to be listed as a threatened species (80 FR 2371). On April 2, 2015, concurrent with the publication of our final decision to list the NLEB as a threatened species, we published an interim 4(d) rule and opened a 90-day comment period on the interim rule (80 FR 17974). At that time, the Service committed to revisit the interim 4(d) rule over the spring, summer, and fall months of 2015, complete a review pursuant to the NEPA, and issue a final 4(d) rule for the NLEB by the end of the calendar year 2015.

## **III. PURPOSE OF AND NEED FOR ACTION**

The purpose of the proposed action is to establish regulations through a final 4(d) rule for the NLEB that are both necessary and advisable, and specifically tailored to the conservation needs of the species. This means ensuring NLEBs are adequately protected when they are most vulnerable (e.g., from birth to flight, when in and around hibernacula), acknowledging WNS as the primary factor leading to the decline of the species that needs to be arrested and reversed, while being careful not to establish regulations that lack conservation value, or that could impede activities that are otherwise consistent with the conservation needs of the species.

#### **IV. PUBLIC INVOLVEMENT, INCLUDING ISSUES AND CONCERNS**

On January 16, 2015, the Service published a draft 4(d) rule for the NLEB, initiating a 60-day public review and comment period (80 FR 2371). During that review and comment period, the Service requested comments or information from Federal and State agencies, the scientific community, or any other interested party concerning the proposed 4(d) rule (see 80 FR 2371 for the nature of that request). We also sought peer review from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve the proposed 4(d) rule.

On April 2, 2015, concurrent with the publication of the final listing rule for the NLEB, the Service published an interim 4(d) rule for the NLEB and initiated a 90-day public review and comment period (80 FR 17974). Thus to-date, the Service has had two public review and comment periods totaling 150-days on the proposed and interim 4(d) rules.

In response to the proposed and interim 4(d) rules, the Service received approximately 40,500 comments, reflecting a variety of issues and concerns. A summary of and response to these comments can be found in the **Summary of Comments and Recommendations on the Proposed and Interim 4(d) Rules** section of the final 4 (d) rule.

All of the issues and concerns expressed through these processes were acknowledged and addressed in our administrative record. Consistent with the Council on Environmental Quality (CEQ) guidance, the issues and concerns identified for analysis in this EA represent potential unresolved conflicts or issues with potentially significant environmental effects (43 CFR 1500.1(b)). These include:

##### **Conservation and Recovery of the NLEB**

Several people commented that the proposed and interim 4(d) rules did not go far enough in protecting the NLEB from threats beyond WNS. Others felt they went too far, arguing that the species is only imperiled because of WNS, and nothing but a cure for WNS will reverse its decline. Some felt the rule did not do anything to address the spread of WNS, suggesting the Service should include decontamination requirements for cavers and cave closures in the rule.

##### **Protective Buffers around NLEB Hibernacula**

Several people commented that the proposed 0.25-mile (radius) protective buffer around NLEB hibernacula was inadequate. Some felt a greater than 0.25-mile buffer was needed to protect NLEBs. Others felt a 0.25-mile protective buffer was too restrictive for landowners, and that certain activities (e.g., selective timber harvest) should not be restricted within the protective buffer. One commenter suggested establishing a 5-mile protective buffer around known hibernacula for operating wind farms.

## **Protective Buffers around NLEB Maternity Roost Trees**

A number of people recommended that we establish year-round protections for maternity roost trees, or conversely, that we remove the protections for maternity roost trees entirely because they are either ineffective, serves as a disincentive for conducting surveys, or may encourage maternity roost tree removal during the non-active season. Others felt that the seasonal nature of the protections should be expanded and tailored to when NLEBs emerge from hibernation to the end of the maternity/pup season (i.e., April 1 through October 1 rather than June 1 through July 31). Several people commented that most NLEB maternity roost tree locations were unknown; therefore, the Service should require landowners who wish to utilize the 4(d) rule to conduct surveys to determine NLEB maternity roost tree presence or absence. Similar to the hibernaculum buffer, some felt the 0.25-mile buffer around known maternity roost trees was excessive, while others felt it was too small.

## **The WNS Zone**

Several people took issue with the concept of a WNS zone. Some felt there should be no WNS zone at all (i.e., NLEB incidental take prohibitions should apply across the entire species range). Others felt the WNS zone was too big, or that it should be modified to accommodate a more site-specific approach, based on proximity to hibernacula. Some commented that the WNS zone will likely change over time and the Service may not be able to provide landowners with certainty about whether and when regulations apply to them. The WNS zone currently includes all or most of the States within the species' range except North Dakota, Montana, and Wyoming.

## **Socioeconomics**

Several commenters expressed concern that the take prohibitions in the interim 4(d) rule could impact business and industry, particularly those involved with land management and development and wind energy activities.

## **V. ALTERNATIVES CONSIDERED**

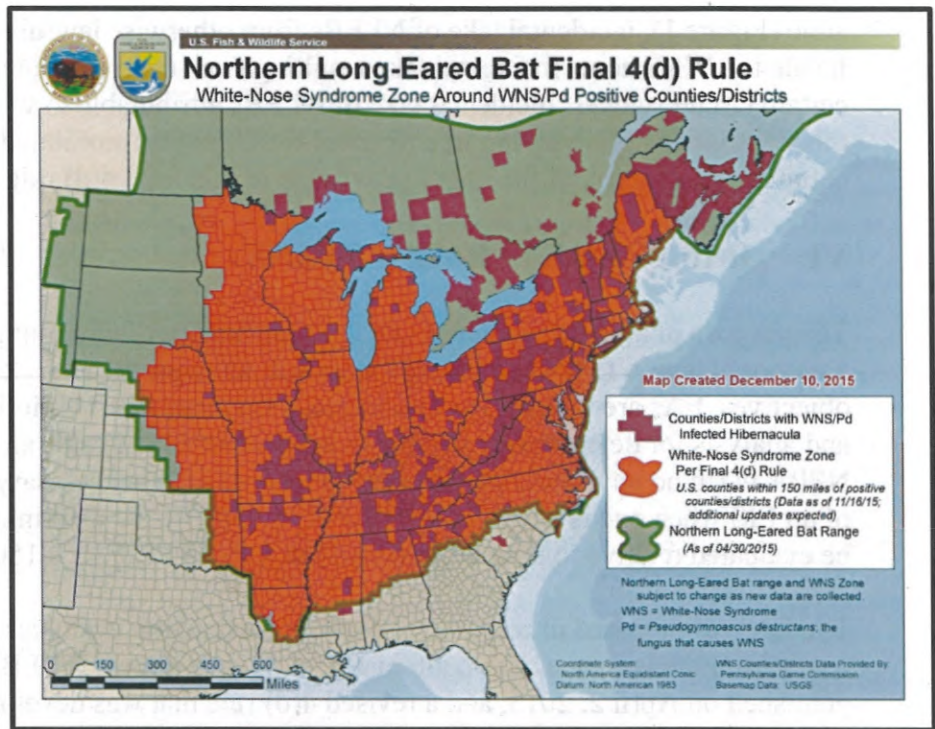
As referenced in the CEQ NEPA regulations regarding the contents of an EA (40 CFR § 1508.9[b]), NEPA section 102(2)(E) requires federal agencies to develop, study, and briefly describe alternatives to any proposed action with the potential to result in unresolved resource conflicts. The EA considers the Service's proposed action, a no-action alternative, and one other action alternative. The following is a brief description of the alternatives considered. For a complete description, as well as alternatives that were considered but not evaluated further, see Chapter 2 in the EA.

### **Alternative 1 – Status Quo (No Action) – Affirm the Interim 4(d) Rule**

Under this alternative, the Service would issue a final 4(d) rule for the NLEB that reflects an "affirmation of the interim 4(d) rule." All of the prohibitions and exceptions in the Service's general ESA regulations at 50 CFR 17.31 and 50 CFR 17.32 would apply to the NLEB. All purposeful take of NLEBs is prohibited. Outside the WNS zone (Figure 1), incidental take of



NLEBs from otherwise lawful activities would be excepted from the take prohibitions. Inside the WNS zone, incidental take is prohibited, except for incidental take that is attributable to certain land management and development activities that follow conservation measures. Incidental take of NLEBs attributable to wind energy development and other activities not specifically excepted would remain prohibited. See page 14 of the EA for a complete description of the major provisions in this final 4(d) rule.



**Figure 1 – Geographic Extent of the WNS Zone**

### **Alternative 2 – Withdraw the Interim 4(d) Rule and Apply the General Regulatory Provisions for Threatened Species at 50 CFR 17.31 and 17.32**

Under this alternative, the Service would withdraw the interim 4(d) rule for the NLEB and apply the general regulatory provisions for threatened wildlife provided under 50 CFR 17.31 and 17.32. The Service would not issue a special rule under section 4(d) of the ESA for the NLEB that provides prohibitions and exceptions tailored to the current conservation needs of the species. All purposeful and incidental take of NLEBs would be prohibited across the NLEB's U.S. range. With regard to land management and development activities and wind energy development, individuals and entities at-risk for unlawful incidental take of NLEBs would need to either avoid take by modifying their activities or seek an incidental take authorization from the Service under sections 7 or 10 of the ESA. To facilitate the analysis and comparison of the alternatives in the EA, we assumed that future section 7 and section 10 processes would include conservation measures similar to those previously established under section 7 and section 10. See page 16 of the EA for a complete description this alternative.

### **Alternative 3 – Establish Regulations for the NLEB under Section 4(d) of the ESA (Proposed Action/Preferred Alternative)**

Under this alternative, the Service would issue a final rule through section 4(d) of the ESA for the NLEB that contains targeted prohibitions and exceptions tailored to the conservation needs of the species. Throughout the species range, all purposeful take of NLEBs would be prohibited, except for specific circumstances related to human structures and human life. Outside the WNS

zone (Figure 1), incidental take of NLEBs from otherwise lawful activities is not prohibited. Inside the WNS zone, incidental take resulting from tree removal activities is prohibited under certain circumstances. Incidental take of NLEBs attributable to wind energy development and other activities not involving tree removal would not be prohibited. See page 17 of the EA for a complete description of the major provisions in this final 4(d) rule.

## **VI. IMPACT DETERMINATIONS**

The purpose of an EA is to determine the significance of environmental impacts associated with a proposed action federal action and to look at alternative means to achieve the agency's objectives. EAs are intended to be concise documents that 1) briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; 2) aids an agency's compliance with NEPA when no environmental impact statement (EIS) is necessary; and 3) facilitates preparation of an EIS when one is necessary (40 C.F.R. § 1508.9). To determine significance, impacts must be evaluated relative to their context and intensity (40 C.F.R. § 1508.27).

The EA was prepared in response to the proposed action evaluates potential impacts that could result from the issuance of two alternative 4(d) rules for the NLEB - an interim 4(d) rule that was published on April 2, 2015, and a revised 4(d) rule that was developed through this NEPA process (Service's preferred alternative), and one alternative to a 4(d) rule. The scope of our analysis covered resource impacts that were reasonably foreseeable and potentially significant. The Service acknowledged in our EA that due to the large geographic extent of the proposed action (i.e., 37 U.S. States), and the temporal and spatial uncertainty about future project locations where impacts could occur, the EA process did not allow for site specific analyses of impacts. The conclusions reached in the EA are based on our analysis of the alternatives and the following assumptions:

- Project proponents will comply with applicable laws and regulations,
- Section 7 and section 10 processes would be completed in unison with demand, and may include the conservation measures described for alternative 2 (see section 2.4.2), and
- Alternative 1, "affirmation of the interim 4(d) rule," is the status quo/no action alternative.

## **VII. SELECTION OF ALTERNATIVE**

The Service has selected its Preferred Alternative (Alternative 3). We believe this alternative best fulfills wildlife conservation mission, priorities, and statutory responsibilities to conserve the NLEB, while giving consideration to economic, environmental, technical, and other factors. The Preferred Alternative is also the alternative that is most consistent with our purpose and need for action. We base this decision on information obtained from:

- The final listing rule for the NLEB;
- Agency and public comments on the listing decision and proposed and interim 4(d) rules;
- The alternatives and their potential environmental consequences discussed in the EA; and
- The Service's draft Biological Opinion.

## VIII. SERVICE FINDING

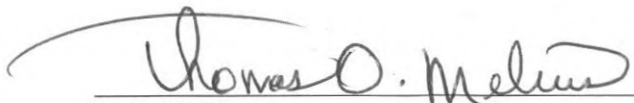
Based on the EA, and in accordance with the guidelines for determining the significance of proposed Federal actions (40 C.F.R. 1508.27), the Service has concluded that issuance of the final 4(d) rule as described in alternative 3 in the EA will not result in significant impacts to the human environment, nor would it create separate, additive cumulative effects to any resources, beyond that which already exist.

The Service's draft Biological Opinion for the proposed final 4(d) rule (Service 2015, unpublished data) estimates the number of NLEBs potentially impacted (i.e., harassment) per year by forest management, forest conversion, and wind energy development activities to be approximately 117,267 individuals from an estimated total population of nearly 10 million bats (1.2 percent of the total population). In addition, approximately 3,285 NLEB pups and 980 NLEB adults could experience harm, which represent approximately 0.1 percent of the estimated pup population, and 0.1 percent of the estimated adult population. Less than 1 percent of pups will be harmed in any State; and less than 1 percent of adults will be harmed in any States, leading us to believe that the vast majority of individuals and populations that survive WNS will likely be unaffected by these activities. Based on the relatively small number of NLEBs potentially impacted annually compared to the estimated State population sizes, we do not anticipate any population-level effects to the NLEB.

Implementation of Alternative 3 will not significantly impact land use patterns or populations, regional or local employment and income, housing or public services, wetlands or floodplains, farmland, ecologically critical areas, cultural or historic resources, air quality, water quality, noise levels, fish and wildlife resources, nor will it conflict with approved local, regional, or State land use plans or policies.

Alternative 3 will not significantly impact any other listed, proposed, or candidate species, or any designated or proposed critical habitat. All practicable means to avoid or minimize environmental harm from the selected alternative have been considered or adopted. The final 4(d) rule conforms to all applicable Federal statutes and executive orders. As a result of these findings, the Service has determined that an EIS will not be prepared.

Signature:



Tom Melius  
Regional Director, Region 3  
U.S. Fish and Wildlife Service

Jan. 5, 2016  
Date



