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Docket No. FWS-R3-ES-2021-0140

Public Comments Processing
Attn: FWS-R3-ES-2021-0140
U.S. Fish and Wildlife Service
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5275 Leesburg Pike
Falls Church, VA 22041-3803

**Re: *Endangered Species Status for Northern Long-Eared Bat*, 87 Fed. Reg. 16442
(March 23, 2022), Docket No. FWS-R3-ES-2021-0140**

To Whom It May Concern:

We write to you today to submit the following comments on the U.S. Fish and Wildlife Service's (Service) proposed rule regarding the northern long-eared bat (*Myotis septentrionalis*); *Endangered Species Status for Northern Long-Eared Bat*, 87 Fed. Reg. 16442 (March 23, 2022). Docket No. FWS-R3-ES-2021-0140 ("Proposed Rule"). In addition to the comments below, we fully endorse and incorporate by reference the comments provided by the National Council for Air and Stream Improvement, Inc. (NCASI) regarding the Proposed Rule, and do not repeat them here.

The Hardwood Federation is the unified voice on federal legislative and regulatory policy in Washington, DC representing 30 local, regional, and national trade associations that serve hardwood businesses and their employees located in every state in the nation. The Federation works in tandem with our allied forest products industry sector partners, including the American Forest & Paper Association (AF&PA), the National Wooden Pallet and Container Association (NWPCA) and the Treated Wood Council (TWC) to advance U.S. wood products producers and manufacturers through fact-based public policy and marketplace advocacy.

AF&PA member companies make essential products from renewable and recycled resources, generate renewable bioenergy and are committed to continuous improvement through the industry's sustainability initiative — Better Practices, Better Planet 2030: Sustainable Products for a Sustainable Future.

The TWC represents companies that harvest and saw wood, manufacture wood preservatives, and produce pressure treated wood products.

The NWPCA is the global industry advocate for wooden pallet and container manufacturers. Wooden pallets are readily customizable and serve as a critical component of the supply chain, transporting roughly 90% of all consumer goods. Wooden pallets are also the most recovered and recycled packaging product with a 93% recycle rate.

The U.S. hardwood sector is a fully integrated industry from logging to the manufacture of finished consumer goods which touch every aspect of American life including flooring, cabinets, furniture and moldings in our homes. Packaging, tissue and paper supplies are made of residual chips and dust from hardwood mills. Industrial mats, shipping pallets and railway ties made from low grade hardwood lumber are crucial to America's vast transportation infrastructure. Hardwood processing and manufacturing entities rely primarily on domestic private and public working forestlands for the raw materials that go into their products.

We recognize that the Service will not consider economic impacts in its determination whether to list the northern long-eared bat under the ESA. However, as you consider management and recovery policies, we believe it would be helpful to understand the breadth of the forest products industry throughout the range of the NLEB. While we summarize this in terms of economic impact, we urge you to also consider this as evidence of conservation opportunity. Of the 38 states touched by the NLEB range, the forest products industry has a significant presence in 29. These states contain a total of 80,085,969 acres of public and private timberland. The industry provides a total of 2.2 million direct, indirect, and induced jobs with a combined payroll of \$80 billion. Annual timber sales and manufacturing shipments equaled \$210.7 billion, with a combined contribution to the states GDPs of \$89 billion. Forest-related industries made the largest contributions to their state manufacturing (on a percentage basis) in Arkansas, which was the highest in the South with 19.90 percent; Pennsylvania, the highest in Appalachia with 9.98 percent; Maine in the Northeast with 23.73 percent; and Wisconsin with 14.04 percent in the Midwest¹.

The forest products industry accounts for approximately four percent of the total U.S. manufacturing GDP, manufactures nearly \$300 billion in products annually and employs approximately 950,000 people. The industry meets a payroll of approximately \$60 billion annually and is among the top 10 manufacturing sector employers in 45 states.

The forest products industry recognizes the devastating impact White Nose Syndrome has had on the Northern Long Eared Bat (NLEB). However, we also recognize, as does the Service, that

¹ These states are AL, AR, FL, GA, IL, IN, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NH, NY, NC, OH, OK, PA, SC, SD, TN, VA, VT, WV, and WY.

forestry related activities, including harvesting and management activities, are not the cause of the species' decline. In fact, as again noted by the Service, forest activities SUPPORT the viability of the NLEB and other bat species. Access to working forests, on both public and private lands, must be maintained to ensure the health and viability of the U.S. hardwood industry which is essential to the economic health of rural communities across the country.

We strongly encourage the Service to continue to recognize and cite the importance of working forests and collaborative conservation in the NLEB and other forthcoming listing decisions and to minimize impacts on the entire industry supply chain. Specific recommendations, which mirror those of the National Alliance of Forest Owners (NAFO), are below:

Comments

1. Forest management and silviculture are vital to the long-term survival and recovery of the NLEB and other *Myotis* species.

Public and private working forests represent a dominant land use within much of the NLEB range, and active forest management provides long-term benefits for the NLEB and other *Myotis* species². For example, NLEB and other *Myotis* species forage in forests with a history of active management, including recently harvested forest stands,³ and roosting in a variety of tree species and forest conditions⁴, including harvested areas.⁵ NCASI, in its comments that we endorse above, provided additional and detailed explanations of working forest conservation contributions.

² Bergeson, Scott M; et al. 2021. Free-ranging bats alter thermoregulatory behavior in response to reproductive stage, roost type, and weather. *Journal of Mammalogy*, Volume 102, Issue 3, June 2021, Pages 705–717.

Thill, Ronald E. & Perry, Roger W. 2007. Roost selection by male and female northern long-eared bats in a pine-dominated landscape. *Forest Ecology and Management*. 247(1-3): 220-226.

³Owen, Sheldon F; et al. 2004. Bat Activity in Harvested and Intact Forest Stands in the Allegheny Mountains, *Northern Journal of Applied Forestry*, Volume 21, Issue 3, September 2004, Pages 154–159.

Dodd, Luke E; et al. 2012. Forest structure affects trophic linkages: How silvicultural disturbance impacts bats and their insect prey. *Forest Ecology and Management*, Volume 267, 2012, Pages 262-270.

⁴Menzel, Michael A; et al. 2002. Effects of group selection silviculture in bottomland hardwoods on the spatial activity patterns of bats, *Forest Ecology and Management*, Volume 162, Issues 2–3, Pages 209-218.

Carter Timothy C. & Feldhamer, George A; 2005. Roost tree use by maternity colonies of Indiana bats and northern long-eared bats in southern Illinois. *Forest Ecology and Management*, Volume 219, Issues 2–3, Pages 259-268.

Thill, Ronald E. & Perry, Roger W. 2007.

⁵Bergeson et al. 2021

The Service in the Proposed Rule appropriately recognizes “forest management can be beneficial to bat species (for example, maintaining or increasing suitable roosting and foraging habitat). Forest management that results in heterogenous habitat (including forest type, age, and structural characteristics) may benefit tree-roosting bat species such as the northern long-eared bat” 87 Fed. Reg. 16448 (March 23, 2022). This is consistent with the Service’s finding when adopting the current section 4(d) rule, “forest management and silviculture are vital to the long-term survival and recovery of the species” 81 Fed. Reg. 1900, 1909 (January 14, 2016). We urge the Service to maintain this approach in the final rule and encourage forest management in a manner that continues to provide conservation value for the NLEB.

2. Habitat loss is not a key stressor at the species level and is not limiting.

Sustainably managed forests are critical to the survival of the NLEB, and the Service correctly identifies that the NLEB is experiencing significant declines due to White Nose Syndrome, a fungal disease. In the Proposed Rule, the Service affirms that “Although there are other stressors affecting the northern long-eared bat, the primary factor influencing its viability is white-nose syndrome (WNS)...” and that “habitat loss alone is not considered to be a key stressor at the species level, and habitat does not appear to be limiting.” 87 Fed. Reg. 16446 (March 23, 2022). We support this assertion that the true threat to the species survival and recovery is WNS, and forest conditions are not limiting for these populations. In the final rule, the Service should explicitly recognize that forest area has generally been stable or increasing since 1953 throughout the NLEB range⁶ and cite scientific evidence demonstrating the compatibility of active forest management for maintaining forest conditions needed by NLEB.

Given forest management activities have been important to sustaining habitat for remaining NLEBs and will be essential to helping recover the species by maintaining forest cover long term, we encourage the Service to review material provided by NCASI and expressly incorporate it into the final rule as a part of the best available science supporting this fact. Additionally, it would be appropriate to include a discussion of not only the ability of forest management to *retain* conditions but also to *improve* forest conditions, which may assist in long-term survival and recovery of the species.

⁶Oswalt, Sonja N.; et al. 2019. *Forest Resources of the United States, 2017: a technical document supporting the Forest Service 2020 RPA Assessment*. Gen. Tech. Rep. WO-97. Washington, DC: U.S. Department of Agriculture, Forest Service, Washington Office.

3. The take provisions should be revised to explain that *actual death or injury of a protected animal is necessary for a violation.*

The Endangered Species Act defines “take” to mean “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect” or any attempt to do so. The Service has further defined “harm” to mean, “...an act which *actually kills or injures* wildlife. Such act may include significant habitat modification or degradation where it *actually kills or injures* by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering” (50 C.F.R. § 17.3 (emphasis added)). In the Proposed Rule, the Service has some discussion of what activities might cause a prohibited take of the species. Among the described activities, the Service identified the following:

(4) Unauthorized destruction or modification of suitable forested habitat (including unauthorized grading, leveling, burning, herbicide spraying, or other destruction or modification of habitat) in ways that kills or injures individuals by significantly impairing the species’ essential breeding, foraging, sheltering, commuting, or other essential life functions.

(5) Unauthorized removal or destruction of trees and other natural and manmade structures being used as roosts by the northern long-eared bat that results in take of the species.

However, the Service leaves out references to the need for these activities to cause an “actual death or injury” to be a violation of section 9 of the Endangered Species Act, 16 U.S.C. § 1538(a)(1)(B). When the Supreme Court upheld the definition of harm, the Court recognized that the Secretary of the Interior adopted the harm definition “to emphasize that actual death or injury of a protected animal is necessary for a violation.” *Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon*, 515 U.S. 687, 691 n.2 (1995). We request that the Service explain in the final rule that an actual death or injury of a NLEB is necessary to cause a take under the harm definition, including by means of habitat modification.

4. The Service should explicitly recognize, if the final decision is to list the NLEB as endangered, that forest management activities, if they comply with the provisions of the existing section 4(d) rule, are not likely to cause a take.

The Service has previously recognized the value of forestry best management practices (BMPs) and sustainable forest management to ongoing NLEB conservation efforts in the existing section 4(d) rule. While the ravages of WNS on the NLEB have worsened, the Service has omitted evidence that forest management and silviculture are vital to the long-term survival and recovery of the species. We request that the Service expressly recognize in the final rule that silviculture is a category of activities not expected to negatively impact the species’

conservation and recovery efforts and is necessary for long-term survival and recovery of the NLEB. While a specific forest management activity may cause a take, there is no reasonable certainty that this will occur if forest owners and managers continue to follow the principles of the section 4(d) rule. This of course would not exempt forest management from the prohibition on take but would provide guidance for future development of streamlined conservation agreements that can provide incidental take protections. Further and most importantly, continued recognition of the benefits of sustainably managed forests for the conservation of the NLEB will encourage and reward proactive management practices beneficial to the NLEB and result in a clear conservation benefit for the species.

Given the Service's recognition of private working forest values, we urge the Service to document in the final rule its willingness to work collaboratively with forest owners, where necessary, to develop streamlined agreements, including Habitat Conservation Plans, that provide regulatory assurances to landowners and recognize that forest management conducted in accordance with state-approved forestry BMP programs will not be subject to enforcement under the prohibition on take in section 9 of the ESA.

We appreciate the opportunity to provide the Service with the perspective of the forest products industry in the context of the Proposed Rule. We ask the Service to apply these comments, along with those from NAFO and NCASI, to the final rule.

Respectfully,

Dana Lee Cole, Executive Director
Hardwood Federation

On Behalf Of:

The American Forest & Paper Association
The National Wooden Pallet and Container Association
The Treated Wood Council

The Hardwood Federation Member Associations

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| Allegheny Hardwood Utilization Group | Kentucky Forest Industries Association |
| American Hardwood Export Council | Lake States Lumber Association |
| Appalachian Hardwood Manufacturers Inc. | Maple Flooring Manufacturers Assn. |
| Appalachian Lumbermen's Club | Missouri Forest Products Association |
| Decorative Hardwoods Association | National Hardwood Lumber Association |
| Empire State Forest Products Assn. | National Wood Flooring Association |
| Hardwood Distributors Association | National Woodland Owners Assn. |
| Hardwood Manufacturers Association | North Carolina Forestry Association |
| Indiana Hardwood Lumberman's Assn. | Northeastern Loggers' Association |

Ohio Forestry Association
Pennsylvania Forest Products Assn.
Penn-York Lumbermen's Club
Railway Tie Association
Southern Cypress Manufacturers Assn.
Southwest Hardwood Manufacturers Club

Tennessee Forestry Association
Western Hardwood Association
West Virginia Forestry Association
Virginia Forest Products Association
Westside Hardwood Club
Wood Component Manufacturers Assn.