



February 18th, 2015

Mr. Dan Ashe
Director
U.S. Fish and Wildlife Service
1849 C Street, NW
Washington, DC 20240

RE: **Docket No. FWS–R5–ES–2011–0024**

Listing the Northern Long-eared Bat with a Rule Under Section 4(d) of the Endangered Species Act.

Dear Mr. Ashe,

The Forest Guild is providing comments in response to your agency’s proposal for a special rule under authority of section 4(d) of the Endangered Species Act that would provide guidance for “necessary and advisable measures” to provide for the conservation of the northern long-eared bat (*Myotis septentrionalis*; *NLEB*), should your agency determine the species warrants listing as threatened under the ESA.

The Forest Guild is a non-profit organization dedicated to promoting responsible forest conservation through science-based research, advocacy, and professional practice. Our over 700 members include practicing foresters, ecologists, researchers, academics, and a wide range of professionals involved in forest conservation and forest stewardship.

As we stated in previous comments to you on the proposed listing, the Forest Guild believes it is essential that any NLEB listing decision recognize the positive and complementary role that sustainable forestry practices play in sustaining viable populations of NLEB and other forest dwelling bats. Flexibility to practice sustainable forest management is necessary and advisable for the conservation of NLEB in order to maintain and enhance the extensive forested landscape that comprises essential summer habitat throughout 38 states of NLEB range. For that reason we are supportive of the overall intent behind the proposed 4(d) rule. It seems clear that your agency staff have given weight to the input from the large number of forest practitioners and forestry agencies who have commented on the proposed rule, and we are pleased to see a proposal that reflects that input while creating reasonable guidance for protecting this important forest dwelling species.

Based on discussions with our members, and conversations with your agency staff, we would like to offer specific observations and recommendations on the proposed 4(d) rule. Some of these items could be reflected in a revision to the draft rule, others might require some clarification of how the rule would be administered.

- Given the very large number of federal, state, county, and tribal agencies, and **the well over 10 million private forest owners** that would be affected within known NLEB range, we believe it will be essential for FWS to realistically gauge the administrative workload for your agency and the public regulatory burden that will be created by any listing decision. For that reason we support the exceptions from the prohibition on taking that are created in the proposed rule for forest management, hazard tree removal, minimal tree removal, prairie management, and right-of-way management. We also suggest FWS consider additional exceptions that are detailed in the following points.
- The proposed conservation measure that defines a .25 mile buffer zone around known, occupied, hibernacula within which the exemption from prohibition on take would not apply raises concerns. It's unclear whether this restriction is intended to be in effect year-round, or only when hibernacula are occupied during the winter hibernation period. If it is intended to be in effect only when hibernating NLEB are present, we believe the rule should clarify this and specify dates or a method of determining when occupancy should be deemed to occur. If the intent of this provision is simply minimizing direct disturbance from logging, then a seasonal restriction is appropriate. If the prohibition is intended to be in effect year-round, such a broad restriction would create a significant constraint in regions where known hibernacula are common. If the intent however is to retain desirable habitat around hibernacula areas, we believe that could be defined in a more flexible and less restrictive way, perhaps similar to the conservation measure we have proposed for the zone around known maternity roost trees.
- We support the basic intent of the proposed conservation measure that calls for avoiding clearcuts within .25 miles of known maternity roosts during the pup season (June 1st – July 31st), but we suggest a need for additional flexibility. As proposed, most members of the public will find the restriction on clearcutting to be straightforward, however, defining clearcut for purposes of this rule is less simple than it seems. Practices that are considered clearcuts for silvicultural purposes, may still retain significant habitat and roosting structure beneficial for bats that we believe would address the intent of the conservation measures you have proposed in the rule. We propose additional language to clarify that certain forest practices that retain significant suitable structure for roosting bats should be allowed, regardless of which silvicultural method is being used. Additional language (or a fourth conservation measure) might state that: *Forest management activities that occur during the pup season (June 1 – July 31) that retain without disturbance at least 25% of the available forest habitat within .25 miles of a known, occupied maternity roost tree, or that retain at least 5 live trees larger than 10" in diameter at breast height per acre within .25 miles of a known, occupied maternity roost tree will not be prohibited.*

- Finally, as your agency considers the best way to administer guidelines for species conservation on such a wide scope and scale, we urge you to consider the role that third-party sustainable forest certification could play in ensuring conservation practices that go beyond those identified in the proposed 4(d) rule. There are several third-party forest certification programs in place today that require certificate-holders to comply with robust standards of environmental protection, including identifying and adopting appropriate management practices to conserve threatened and endangered species on their ownerships. We would ask that FWS consider recognizing forest management by third-party certificate holders as an alternative to, and a higher standard than, the more prescriptive and more limited conservation measures established in the proposed rule.

Language for a certification alternative might state that: Forest management activities practiced by current certificate-holders under a third-party forest certification system with standards that include provisions for surveying, monitoring, and conservation measures necessary to protect threatened and endangered species shall be exempt from the prohibition on taking for forest management activities provided that: such lands have an active, documented conservation program in place to identify, monitor, and conserve habitat for NLEB; that such a program includes routine field work to identify active hibernacula and maternity roosts, and that any such locations that are positively identified are reported to the state's Natural Heritage Database, and; that such a plan and activities to carry out the plan have been reviewed and approved by the representatives of the certification program.

In closing we want to re-iterate our appreciation for the efforts your agency and staff have made to incorporate previous comments into this proposed rule. In our interactions with your field staff we've appreciated their willingness to gather new information, and their recognition of the special challenges that the proposed NLEB listings creates for such a large number of people. Overall, we're encouraged by the direction the Fish and Wildlife Service is taking on this important issue and we remain committed to working with you and others to help assure that we can address this conservation threat in an effective way.

Thank you for your continued attention to this important issue and your consideration of these comments. Please feel free to contact me with any questions or clarifications.

Sincerely,



Fred Clark
Executive Director

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