

## **The Northern Long-Eared Bat (NLEB) and the Endangered Species Act**

### **Issue Background**

- The Fish and Wildlife Service (FWS) acknowledges that declines in NLEB populations which led to a proposed listing as endangered under the Endangered Species Act (ESA) are caused by White Nose Syndrome (WNS) and are unrelated to the practice of forestry.
- The NLEB has proven to be an incredibly opportunistic species that favors a mosaic of different forest age classes (mature forests alongside early to mid successional forests) for habitat—the precise conditions which sustainable forest management provides.
- Focusing resources on a cure for WNS should be a far higher priority than listing or imposing additional restrictions on landowners practicing sustainable forest management.
- Listing the NLEB as “threatened” at least allows the FWS to adopt rules under section 4(d) of the ESA specifying activities that may continue without violating the ESA even if the activity might inadvertently interfere with or harm individual NLEBs (“incidental take”).
- However, the 4(d) proposal, while recognizing that forest management generally may continue without ESA regulation, does create some unnecessary restrictions on forest management that put at risk NLEB conservation trends now occurring at the landscape level.

### **Concerns with Proposed 4(d) Rule**

**Quarter Mile Radius Restrictions:** The proposal disallows “incidental take” for forest management activities within a quarter-mile radius of any hibernaculum (cave) known to be occupied, or clearcutting within a quarter-mile radius of any known occupied roost tree.

- According to FWS, a quarter-mile radius equals a seasonal “no-management” zone of 128 acres.
- If the typical hibernaculum is occupied from autumn to spring, as FWS estimates—a period in excess of 6 months—the 4(d) rule would hold forest management activities within that area, like harvesting and planting, liable for any incidental NLEB takes during that period.
- In many parts of the NLEB range, forest management activities are best conducted on a seasonal basis; some sites are only accessible on a seasonal basis.
- The presence of an NLEB hibernaculum on or near forest land would, at best, prevent them from optimizing the scheduling of these forest management activities and, at worst, make forest management impossible.
- In effect, the obstruction to forest management which the “quarter-mile radius” provisions cause would have the unfortunate effect of placing landowners and NLEB conservation in conflict, rather than in cooperation.

**Pine Plantation Conversions:** We are also concerned that the rule proposes excluding “conversion of a mixed forest into an intensively managed monoculture pine plantation” from the definition of “forest management,” thereby excluding conversions from the “incidental take” authorization within areas in which WNS is present.

- The Service does not provide any support for the assertion that “typically these types of monoculture pine plantations provide very poor-quality bat habitat.”
- Although conversion of mixed forest to plantation pine is infrequent today, site characteristics may make such conversion desirable, and withdrawal of the option may reduce motivations to own or manage forestland within WNS risk zones.
- The term “intensively managed” and “pine monoculture” are subjective enough to limit options for any landowner concerned about hitting some trigger disallowing the “incidental take” authorization for forest management.

**Forest Management Considerations:**

- Forest management activities and the disruption they may cause to nearby NLEB’s breeding and thriving, are relatively infrequent with approximately 2 percent of forests in States within the range of the NLEB impacted annually.
- Any evaluation of these infrequent disruptions must be weighed against the potential for long-term deterioration of NLEB habitat if the land management activity that created and fostered that habitat in the first place is prohibited, unreasonably obstructed, or placed within a framework of uncertainty.
- Family forest ownerships—approximately 62% of all privately held U.S. timberland, where holdings much smaller than 128 acres are the rule—would be particularly impacted by these restrictions.

We reiterate that drawing the emphasis of federal policy away from developing and implementing a treatment program for WNS to imposing new controls on forest management and limiting landowners’ options is counterproductive. On the contrary, it risks reversing the land management trends that enabled NLEB to thrive in its expanded range.