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Public Comments Processing
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**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:

The twenty-four undersigned forestry associations appreciate the opportunity 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 adopt comments provided by the National Council for Air and Stream Improvement, Inc. (NCASI), regarding the Proposed Rule, and do not repeat them here.

The National Alliance of Forest Owners (NAFO) is a national advocacy organization advancing federal policies that ensure private working forests provide clean air, clean water, wildlife habitat and jobs through sustainable practices and strong markets. NAFO member companies own and manage more than 46 million acres of private working forests. The additional undersigned organizations conduct forestry programs on behalf of their members, representing tens of millions of additional acres of private working forests across the country. Several NAFO members and the undersigned organizations manage working forests within the range of the northern long-eared bat (NLEB); in total there are over 293 million acres of private forestland in states where NLEBs are found.

The Benefits of Private Working Forests

Approximately 360 million acres – or 70% – of working forests in the U.S. are on private land, owned by individuals, families, small and large businesses, and Americans who invest in working forests for retirement. Private working forests are a critical nature-based solution to many of our most pressing environmental challenges. According to an analysis by the [Ecological Society of America](#), privately owned forests are home to 60% of our at-risk species, making them critical to wildlife conservation. Actively managed working forests provide a full range of species habitat, including early successional forests, open canopy, and riparian areas protected using state-approved water quality best management practices (BMPs). Collaboration between private forest owners and state and federal agencies is proven to drive conservation outcomes, often precluding the need for regulatory actions, and aiding in species recovery efforts. Assurances for these outcomes is often provided for many working forests through independent, third-party certification of forest management activities or of fiber sourcing activities.

Private forest owners have a long and successful track record of managing forests for long-term productivity and providing important benefits for air and water quality, wildlife habitat, and rural economies. Forest owners throughout the country are also engaging in successful conservation

efforts through NAFO's [Wildlife Conservation Initiative](#) (WCI), a collaborative partnership with the Service, NCASI, and other stakeholders to conserve at-risk and endangered species. The WCI advances a shared understanding of sustainable forest management and carries out research and management actions integral to species conservation. Through the WCI, private forest owners provide access, data, and information to help inform decision-making and improve outcomes for both landowners and species at greater scale. The Service should continue to recognize and cite the conservation value of working forests and importance of collaborative conservation in the NLEB final rule and other forthcoming agency actions.

Comments

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

Private working forests represent a dominant land use within much of the NLEB range, and active forest management at the landscape scale provides long-term benefits for the NLEB (Bergeson et al. 2021, Morris et al. 2010, Brooks 2009, Vindigni et al. 2009, and Perry and Thill 2007), and for bat communities in general (e.g., Bender et al. 2015). For example, NLEB and other *Myotis* species forage in forests with a history of active management, including recently harvested forest stands (e.g., Owen et al. 2003; Dodd et al. 2012), and roost in a variety of tree species and forest conditions (e.g., Menzel et al. 2002; Carter et al. 2005; Perry and Thill 2007), including harvested areas (Bergeson et al. 2021). NCASI provided additional and detailed explanations of working forest conservation contributions in its comments, which we endorse.

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 (including forest type, age, and structural characteristics) habitat 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 active 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 (WNS), 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 that 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 range (Oswalt et al. 2019; Table 3) and cite scientific evidence demonstrating the compatibility of active forest management with maintaining forest conditions needed by NLEB. Managed forests support year-round habitat conditions for the NLEB, as it provides diverse structure across a landscape, including in recently harvested areas and riparian forest stands created through implementation of state-approved water quality BMPs (e.g., Gorman et al. 2022).

A large body of scientific literature indicates that forest conditions are not limiting, and forest management helps to maintain forest conditions required by the NLEB across landscapes and provides conservation benefits to the species. As such, 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. The Service needs to reference both the ability of forest management to *retain* conditions and to *improve* forest conditions, which will assist in long-term survival and recovery of the species. Additionally, regardless of the final decision on the NLEB, the Service should continue to support efforts like the WCI, which produce win-win outcomes for at-risk and listed species, for regulatory and conservation communities, and for private landowners.

3. The take explanation should be revised to recognize 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.

87 Fed. Reg. 16450 (March 23, 2022). However, the Service does not explain 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). The Service should 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 that forest management activities, if they comply with the provisions of the existing section 4(d) rule, are not likely to cause a take.

As noted above, the Proposed Rule lists “(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” as an activity that may potentially result in a violation of the prohibition on take 87 Fed. Reg. at 16450. The specific activities listed are normal forestry operations that do not generally require authorization to conduct. Moreover, these normal forestry operations can create and maintain forest conditions beneficial for NLEBs. We urge the Service to avoid

this confusion by recognizing that given the breadth of the forested landscape, the likelihood of injury to an NLEB is remote if the principles from the existing section 4(d) rule are followed.

The Service has previously recognized the value of sustainable forest management to ongoing NLEB conservation efforts in the existing section 4(d) rule. While the consequences of WNS on the NLEB have worsened, the Service has not clearly stated 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 rulemaking that forest management will not 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.

Conclusion

Given the Service's recognition of private working forest values, we urge the Service to state in the final rule its willingness to work collaboratively with forest owners for conserving species, including NLEB. Additionally, where appropriate, the Service should work with forest owners 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 water quality BMP programs provide conservation benefits for terrestrial species as well as aquatic ones.

We appreciate the opportunity to provide the Service with the perspective of private forest owners in the context of the Proposed Rule. We ask the Service to apply these comments, along with those from NCASI, in its final rule.

Respectfully,



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Submitted on behalf of:

Alabama Forestry Association
Arkansas Forestry Association
Association of Consulting Foresters
Empire State Forest Products Association
Florida Forestry Association
Forest Landowners Association
Forestry Association of South Carolina

The Hardwood Federation
Kentucky Forest Industries Association
Louisiana Forestry Association
Maine Forest Products Council
Massachusetts Forest Alliance
Minnesota Forest Industries
National Alliance of Forest Owners

National Woodland Owners Association
New Hampshire Timberland Owners
North Carolina Forestry Association
Pennsylvania Forest Products Association
Southeastern Lumber Manufacturers
Association

Society of American Foresters
Tennessee Forestry Association
Texas Forestry Association
Virginia Forestry Association
West Virginia Forestry Association

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