

Update to the Forest Management Advisory Committee Regarding Northern Long-Eared Bat (NLEB) & Fish and Wildlife Service's Proposed 4(d) Rule

Background:

- October 2013 – USFWS proposes to list NLEB with an endangered status
- January 2014 – MI DNR submits comment letter to USFWS recommending listing with threatened status and use of a 4(d) rule to exempt normal forest management
- April 2014 – MI, WI, IN & MN DNRs send joint letter to USFWS requesting a delay for NLEB listing decision and increased consultation with states
- March 2014 – White nose syndrome (WNS) confirmed in Michigan
- June 2014 – USFWS extends final listing decision by 6 months (to April 2, 2015)
- September 2014 – USFWS announces that it will fund the MI, WI & MN DNRs' grant proposal for development of a Habitat Conservation Plan (HCP) for cave-dwelling bats
- October 2014 – MI DNR works with other states to convene a state-led 3-day NLEB conference to develop and provide direction to USFWS on final listing decision
- January 2015 – USFWS proposes a 4(d) rule for use if NLEB listed with threatened status that exempts normal forest management if conservation measures are followed

Current Situation (as of February 17, 2015):

- The decision to list the NLEB as endangered, threatened or not warranted has not been made. The final listing determination will be made on April 2, 2015.
- If the FWS determines the science warrants listing NLEB as threatened they want to be prepared to publish a final 4(d) rule simultaneously with the final listing determination. The FWS published the proposed NLEB 4(d) rule in the federal register January 16, 2015.
- The proposed 4(d) rule includes a map that delineates 2 areas: 1) areas affected by WNS and 2) areas not affected by WNS. The proposed 4(d) rule will only apply to those areas currently affected by WNS. Incidental 'take' that occurs in areas not affected by WNS will be allowed.
- The proposed NLEB 4(d) rule will allow incidental 'take' during the following activities, as long as the habitat conservation measures (see below) are followed:
 - All normal forest management activities
 - Routine maintenance and up to 100-foot expansion of existing right-of-way corridors (transportation, utilities, energy delivery, and other). NOTE: Does not allow new ROW projects.
 - Prairie management
 - Limited tree removal projects

- Habitat conservation measures – the allowed activities must:
 - Occur more than 0.25 miles from a known, occupied hibernacula
 - Avoid cutting or destroying known, occupied maternity roost trees during the pup season (June 1-July 31)
 - Avoid clearcuts within 0.25 miles of known, occupied maternity roost trees during the pup season (June 1-July 31)
- Activities that do not follow the conservation measures may be allowed following consultation with the FWS.
- Additional activities allowed by the 4(d) rule:
 - NLEB research (for a 1 year period)
 - Hazard tree removal
 - NLEB removal from human dwellings
- The proposed 4(d) rule defines the following:

“**Forest management** includes, but not limited to, timber harvest and other silvicultural treatments, prescribed burning, invasive species control, wildlife openings, and temporary roads.”

Minimal Tree Removal – “...many activities involve cutting or removal of individual or limited numbers of trees, but do not significantly change the overall nature and function of the local forested habitat.

Where This Leaves Us on April 2, 2015:

- If listed as ‘Endangered’ then the 4(d) rule will not apply and a Habitat Conservation Plan will be required to authorize incidental take
- If listed as ‘Threatened’ then the 4(d) rule will apply but activities not covered in 4(d) rule will need FWS approval
- Regardless of listing status, all activities with a Federal ‘nexus’ (federal land, funding, permit, etc.) will require consultation with FWS

Next Steps:

- MI DNR is working with other states to submit a comment letter that supports the proposed 4(d) rule
- MI DNR will continue to prepare for the April 2 listing decision, so that regardless of NLEB’s status following the decision, land use activities will be disrupted to the least extent possible and NLEB conservation will continue
- MI DNR will continue to work with WI & MN DNRs to develop an HCP for cave-dwelling bats
- MI DNR will continue to work with partners on NLEB and WNS research in Michigan
- MI DNR will continue to communicate with partners about NLEB listing and potential impacts