

**Hardwood Federation**  
**December 2022**

**Department of Interior Rolls Out “Endangered”  
Classification for Northern Long-Eared Bat**

On November 29, 2022, the U.S. Fish and Wildlife Service (FWS) announced a [final rule](#) to reclassify the northern long-eared bat (NLEB) as “endangered” under the Endangered Species Act (ESA). The agency concluded that the species, currently listed as threatened, now requires additional protections under the act due to the wide-range impacts of white-nose syndrome. Their assessment found that white-nose syndrome has spread to nearly 80% of the species’ range and almost all of the U.S. range since the bat was listed as threatened in 2015. The [final rule](#) to reclassify the northern long-eared bat as endangered appeared in the November 30, 2022 issue of the Federal Register and will become effective on January 30, 2023.

In comments filed on the proposal to the new rule in May, HF reiterated the fact that sustainably managed forests are critical to the survival of the NLEB. HF further pointed out that 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.” In our comments, HF expressed support for this assertion that the true threat to the species survival and recovery is WNS, and forest conditions are not limiting for these populations.

The FWS hosted an information session for stakeholders in early December, which included an overview of the final rule and a Q&A session. During the hour-long webinar, FWS official outlined high-level aspects of the final rule, including general regulatory issues that may face the forestry sector. Agency personnel stated that, as a general matter, forestry projects currently operating in compliance with permits will not be subject to new restrictions that would otherwise be triggered by the new classification of the NLEB as “endangered.” They did not, however, go into detail about new permits moving forward.

That said, FWS staff spent a lot of time discussing a provision in the new rule that outlines 14 examples of project types that are not likely to trigger additional ESA regulations. Staff emphasized that the list, intended to be illustrative, is not comprehensive. These include:

- (1) Minimal tree removal and vegetation management activities that occur any time of the year outside of suitable forested/wooded habitat and more than 5 miles from known or potential hibernacula.
- (2) Insignificant amounts of suitable forested/wooded habitat removal provided it occurs during the hibernation period and the modification of habitat does not significantly

impair an essential behavior pattern such that it is likely to result in the actual killing or injury of northern long-eared bats after hibernation, and ....

- (3) Prescribed fire activities that are restricted to the inactive (hibernation) season, provided they are more than 0.5 miles from a known hibernacula and do not result in changes to suitable forested/wooded habitat to the extent that the habitat becomes unsuitable for the northern long-eared bat.

The agency goes on to outline nine examples of project types that are likely to trigger new ESA restrictions, including:

- (1) 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 kill or injure individuals by significantly impairing the species' essential breeding, foraging, sheltering, commuting, or other essential life functions.
- (2) And 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

In response to several questions posed by stakeholders, FWS pointed out that industry can consult the agency's Ecological Services Program, including representatives in [eight regional field offices](#), for practical questions related to specific projects. FWS personnel also stated that they will publish formal guidance arising from the new rule in early 2023. We have picked up from conversations with colleagues that the Service is contemplating 1000 acre buffer zones from known roost trees and known maternity trees. This would be a much more stringent restriction from the current 4(d) rule which is based on "known and occupied" roost trees. We have also heard discussion of imposing buffers around maternity tree "colonies," where the assumption is that if there is a known maternity tree, those trees surrounding it are likely to be roosted in as well. The bottom line is we may be seeing potentially severe seasonal harvesting restrictions in those states that do not have a habitat conservation plan in place. Of course, nothing is final until formal guidance is issued, and we will be diligently tracking the process.

Hardwood Federation staff will be reaching out to both the US Forest Service and Fish and Wildlife Service to emphasize the importance of implementing rules in the most flexible manner possible in order to minimize impacts on timber harvest projects. To learn more about the latest on the NLEB, please click [here](#).