

**Northern Long-eared Bat Project Review Fact Sheet**  
New York Field Office

The following fact sheet is intended to provide information to assist project sponsors, as well as any involved federal and state agencies, with the review of activities that occur within the likely range of the northern long-eared bat (*Myotis septentrionalis*) (NLEB) within the State of New York. This fact sheet can be used to assist with compliance with the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). **PLEASE NOTE - this fact sheet does not apply to wind development projects as they involve many unique considerations.** Contact the U.S. Fish and Wildlife Service (Service) directly for technical assistance for wind projects.

*Background*

On April 2, 2015, the Service listed the NLEB as a threatened species with an interim 4(d) rule (80 FR 17973). On January 14, 2016, the Service published a final 4(d) rule (81 FR 1900), effective February 16, 2016. The NLEB is also listed as a threatened species by the State of New York with no similar 4(d)-type rule at the State level. The primary threat to the species is white-nose syndrome (WNS), a disease affecting hibernating bats. Other potential threats identified in the listing rule and 4(d) rule include killing/injuring bats during removal of occupied habitat, winter or summer habitat loss or degradation, human disturbance, and collision with wind turbines.

*Evaluation of Presence or Probable Absence*

To determine whether the proposed project site may be occupied by NLEB, the Service recommends the following analytical approach:<sup>1</sup>

Step 1. Is the proposed project within an area<sup>2</sup> that has been identified by the Service as known or likely to contain NLEB?

- No: No further coordination regarding the NLEB is necessary at this time.
- Yes: Proceed to Step 2.

Step 2. Is there existing information regarding presence/absence of NLEB at the site (*e.g.*, proximity to hibernacula, prior summer netting)?<sup>3</sup>

- No: Proceed to Step 3.
- Yes: Document existing information and coordinate with the Service.

Step 3. Is there any suitable NLEB habitat<sup>4</sup> present within the proposed project action area?

- No: No further coordination regarding the NLEB is necessary at this time.
- Yes: Determine whether the proposed project involves any direct or indirect effects to NLEB.

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<sup>1</sup> This reflects our current understanding, but future studies may require a revision to this guidance. See project review guidance here: <http://www.fws.gov/northeast/nyfo/es/section7.htm>

<sup>2</sup> <https://ecos.fws.gov/ipac/>

<sup>3</sup> <http://www.fws.gov/northeast/nyfo/es/NYSpecies.htm> and <http://www.dec.ny.gov/animals/38801.html>

<sup>4</sup> <http://www.fws.gov/midwest/endangered/mammals/inba/inbasummersurveyguidance.html>

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#### *Determination of Direct or Indirect Effects*

Each project will need an individual assessment of whether direct effects (those that would result from activities while NLEB are present) or indirect effects (those that are caused by or will result from the proposed action and are later in time, but are still reasonably likely to occur [50 CFR 402.02]) to NLEB are expected.

For example, consider whether a project may result in temporary or permanent increases in noise, vibration, dust, chemical use, lighting, vehicle use, and general levels of human activity. Also, consider whether a project may result in temporary or permanent loss, degradation, and/or fragmentation of roosting, foraging, swarming, commuting, or wintering habitat.

#### *Optional Surveys for NLEB*

Should suitable NLEB habitat be present and should the proposed project have the potential for impacting NLEB, coordinate with the Service to determine whether you prefer to 1) assume presence or 2) conduct optional surveys<sup>5</sup>. Due to the limited time frame when bat surveys can be completed and in order to avoid project delays, it is strongly recommended that the project sponsor (or involved federal agency) contact the Service as early as possible during project planning to determine if surveys or additional avoidance and/or minimization measures are recommended. If NLEB presence is detected during surveys, the Service should be contacted immediately for further assistance in determining whether your action may adversely affect NLEB. If no bats are detected after protocol surveys, submit the results of the survey as soon as possible for our review, in accordance with the survey scope of work.

#### *Compliance with Final 4(d) Rule*

If NLEB are present or assumed to be present and may be affected by the proposed action, either include measures to fully avoid impacts (see examples in “Optional Additional Conservation Measures” below) or if all impacts cannot be avoided, determine if the proposed action is in compliance with the final 4(d) rule for the NLEB<sup>6</sup>. **NOTE:** Compliance with the 4(d) rule DOES NOT automatically equate to “not likely to adversely affect.” Also, there is no 4(d) rule for the Indiana bat. Additional coordination is required for projects that may affect the Indiana bat (or any other federally-listed species).

If the proposed action involves a federal agency (that is carrying out, funding, or permitting an activity), additional consultation under Section 7(a)(2) of the ESA is required. Determine if the federal agency is interested in following an optional framework.<sup>7</sup>

The final 4(d) rule prohibits all purposeful take except:

- Removal of NLEB from human structures.
- Defense of human life (*e.g.*, public health monitoring for rabies).
- Removal of hazardous trees for protection of human life and property.

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<sup>5</sup> <http://www.fws.gov/midwest/endangered/mammals/inba/inbasummersurveyguidance.html>

<sup>6</sup> <http://www.fws.gov/midwest/endangered/mammals/nleb/>

<sup>7</sup> <http://www.fws.gov/midwest/endangered/mammals/nleb/s7.html>

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The final 4(d) rule prohibits the following incidental take in areas of the country inside the WNS Zone (which is all of New York):

- Incidental take that occurs within a hibernaculum. This may include disturbing or disrupting hibernating individuals when they are present as well as the physical or other alteration of the hibernaculum's entrance or environment when bats are not present if the result of the activity will impair essential behavioral patterns, including sheltering.
- Incidental take caused by tree removal that occurs in specific locations:
  - Within 0.25 mile of a known hibernaculum, at any time of year.
  - Within a 150-foot radius of a known occupied maternity roost tree during the pup season (June 1-July 31).

All other incidental take is allowed under the final 4(d) rule. For more information about the NLEB listing and final 4(d) rule, visit: <http://www.fws.gov/midwest/endangered/mammals/nleb/>.

*Optional Additional Conservation Measures*

Conservation measures are designed to avoid or minimize the likelihood of adverse impacts or result in beneficial effects to NLEBs from projects.

For those federal agencies wishing to contribute to their Section 7(a)(1) obligations, we suggest carrying out the conservation measures listed below. We also encourage non-federal project proponents to implement the following conservation measures. As we better understand a given proposed project, including any proposed conservation measures for NLEB, the Service may have additional recommendations. The Service recommends that project sponsors seek our assistance in developing these new measures.

- Perform NLEB surveys according to the most recent summer survey guidelines and provide results to the Service.
- Conduct tree removal activities outside of the NLEB pup season (June 1-July 31) or the active season (April 1-October 31).
- Avoid clearing suitable forest habitat within a 5-mile radius of known or assumed NLEB hibernacula during the spring staging and fall swarming season (April 1-May 14 and August 16-October 31).
- Manage forests to ensure a continual supply of snags and other suitable maternity roosts trees.
- Conduct prescribed burns outside the pup season (June 1-July 31) and/or the active season (April 1-October 31). Avoid high-intensity burns (causing tree scorch higher than NLEB roosting heights) during the summer maternity season to minimize direct impacts to NLEB.
- Perform bridge repair, retrofit, maintenance, and/or rehabilitation work outside the NLEB active season (April 1-October 31) in areas where NLEB are known to roost on bridges or where such use is likely.
- Do not use military smoke and obscurants within forested suitable NLEB habitat during the pup season (June 1-July 31) or the active season (April 15-October 31).
- Minimize the use of herbicides and pesticides. If necessary, spot treatment is preferred over aerial/broadcast application.

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- Seek to minimize light pollution by angling lights downward or via other light minimization measures.
- Participate in actions to manage and reduce the impacts of WNS on NLEBs. Actions needed to investigate and manage WNS are described in a national plan<sup>8</sup> the Service developed in coordination with other state and federal agencies.

*Information to Provide to the Service*

Follow our steps found at <http://www.fws.gov/northeast/nyfo/es/section7.htm> for more information on what to submit for project reviews.

If the NLEB is the only species that needs to be addressed, federal agencies and designated non-federal representatives can use the streamlined project submittal form found at <http://www.fws.gov/midwest/endangered/mammals/nleb/s7.html>.

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<sup>8</sup> <https://www.whitenosesyndrome.org/white-nose-syndrome-response-plans>