

June XX, 2015

Public Comments Processing
Attn: FWS-R5-ES-2011-0024
Division of Policy, Performance, and Management Programs
U.S. Fish and Wildlife Service, MS: BPHC
5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: Comment on Interim 4(d) Rule for the Northern Long-Eared Bat

Dear Sir/Madam,

The Southern Group of State Foresters (SGSF) and the Northeastern Area Association of State Foresters (NAASF) are submitting these comments in response to the US Fish and Wildlife Service's (USFWS) comment period for the interim rule under section 4(d) of the Endangered Species Act pertaining to the threatened listing for the northern long-eared bat (NLEB) (80 Fed. Reg. 17974). Our organizations have actively engaged in providing information and comments throughout the NLEB listing process, including on the draft 4(d) rule released in January 2015. Our comments herein focus on concerns associated with the substance of the interim 4(d) rule, as well as the implementation of that rule by the Federal agencies since its release. Per guidance from USFWS, these comments do not restate those we have made in previous letters; we therefore request that our organizations' previous input also be considered by USFWS in its development of the final 4(d) rule.

The SGSF represents the interests of the State Foresters from across a 13-state area of the southern United States, 11 of which are within the range of the NLEB (AL, AR, GA, KY, LA, MS, NC, OK, SC, TN and VA). NAASF likewise represents the State Foresters and their respective agencies in each of the 20 Northeastern Area States and the District of Columbia, all of which are within the NLEB range (CT, DC, DE, IL, IN, IA, ME, MD, MA, MI, MN, MO, NH, NJ, NY, OH, PA, RI, VT, WV, WI). The SGSF and NAASF members manage hundreds of millions of acres of state and private forestland - work that plays an important role in protecting, managing, and improving NLEB habitat.

We appreciate the recognition in the interim 4(d) rule of the important role forest management plays in NLEB habitat creation and maintenance. Nevertheless, we have some serious concerns about the clarity and science behind certain elements. Already, we understand that the interim 4(d) rule has been interpreted inconsistently, and in many cases more prohibitively towards forest management, in the field. We hope that these comments may assist in improving the final 4(d) rule and allow consistent and effective application by forest managers and owners. We also hope that many of the implementation issues currently being experienced in the field will be addressed before the issuance of a final 4(d) rule in 2016.

Defining Forest Management

The interim 4(d) rule maintains language from the draft 4(d) rule excluding "*conversion of mature hardwood or mixed, forest into intensively managed monoculture pine plantation stands*" (80 Fed. Reg. 18025) from the definition of forest management, thus rendering such activities ineligible for the provisions of the 4(d) rule. In previous comments, we emphasized that inclusion of language regarding plantations must be supported by science. We also indicated the importance of clearly defining terms to avoid implementation inconsistencies and confusion across the NLEB range, yet we note that "intensively managed," a term that is variably understood and interpreted, remains undefined.

The interim 4(d) rule added only a single attribution to a 20-year old paper (Allen et al, 1996) that does not at any point mention NLEB. The summary of this paper provided in the interim 4(d) rule states that pine plantations “*prohibit variably stocked stands, layers of understory and midstory vegetation, and longer rotations that enhance and maintain habitat traits required by many forest-dependent wildlife species*” (80 Fed. Reg. 18025). Given the dated nature of the paper, it is not able to incorporate studies conducted since its publication that have shown that many wildlife species thrive in forest plantations. An excellent example of this is evidenced by the return of the Swainson’s Warbler to southern landscapes, a return fostered by the species’ preference for plantations.¹ We maintain that the provisions of the 4(d) rule must be supported by science. While we appreciate the effort to provide additional scientific backing, we find the use of dated and non-NLEB specific science inappropriate, particularly if in doing so, a potentially important management tool is removed from forest managers’ toolbox. We therefore respectfully request that the final 4(d) rule not exclude “*conversion of mature hardwood or mixed forest into intensively managed monoculture pine plantation stands*” (80 Fed. Reg. 18025) from the definition of forest management.

The interim 4(d) rule also includes new language additional to that included in the earlier version of the draft 4(d) rule that attempts to further define the term “clearcut.” New terms, including “seed tree,” “shelterwood,” and “coppice,” are introduced as part of this effort. The Society of American Foresters’ online dictionary delineates each of the terms clearcut, seed tree, shelterwood, and coppice as distinct silvicultural methods leading to varying landscape outcomes.² Rather than use a variety of terms that convey different forest management practices, we urge USFWS to focus instead on encouraging the protection of beneficial NLEB habitat features on the landscape, such as snags. Any such efforts in the rule should be based upon the best available science on NLEB habitat requirements.

Inclusion of State BMPs Requirement

The interim 4(d) rule adds language that “*in addition to conservation measures, forest management and silviculture activities should adhere to any applicable State water quality best management practices*” (80 Fed. Reg. 18025). While we fully support and laud the success of State best management practices (BMPs), reference to them in this rule is confusing and inappropriate. BMPs are directed at maintaining water quality, and the rule makes no tie between hydrologic outcomes and the maintenance of forest habitat for NLEB. Reference to State BMP programs in the final rule should be removed for this reason.

Additionally, many State BMP programs are non-regulatory in nature. Including them as a federal requirement for being able to apply the 4(d) rule confuses this point and changes the dynamic of programs that have been very successful at achieving water quality outcomes as currently structured.³

Latitudinal Diversity in Timing of Two Month Pup Season

We would also like to call attention to an issue associated with the pup season restrictions on forest management, laid out in the interim 4(d) rule as June 1 –July 31. We are in agreement with the USFWS that the duration of the season should be two months based on the biology of the NLEB; however, the timing of that season is likely geographically dependent. Latitudinal diversity of the NLEB suggests that mammalian photoperiodism, which is directly linked to reproductive activities, must be taken into consideration north to south across its range. We encourage the USFWS to use the best science available

¹ Graves, Gary R., Recent large-scale colonisation of southern pine plantations by Swainson’s Warbler *Limnotherapia swainsonii*, Bird Conservation International, October, 30 2014, DOI: <http://dx.doi.org/10.1017/S0959270914000306>

² Society of American Foresters online dictionary (<http://www.dictionaryofforestry.org/>)

³ Protecting Water Quality Through State Forestry Best Management Practices, NASF Report, http://www.stateforesters.org/sites/default/files/issues-and-policies-document-attachments/Protecting_Water_Quality_through_State_Forestry_BMPs_FINAL.pdf

regarding both the day length and temperature differences that exist across the species range, and to provide allowance for appropriate variations in reproductive periods in the final rule. This ability to consider latitudinal variations will allow managers to schedule forest management activities that best limit disruption to the NLEB during the two month pup season.

Clarity

The interim 4(d) rule appears to interchangeably and inconsistently utilize the terms “maternity roost tree” and “roost tree.” On a USFWS informational teleconference that followed publication of the interim 4(d) rule, USFWS personnel clearly stated that the intent is to use “maternity roost tree” throughout. This is sensible considering that the objective is to protect non-volant pups that are being reared in “maternity roost trees.” The distinction between “maternity roost tree” and “roost tree” is critical, and without consistent use of the term “maternity roost tree,” there will be confusion and likely misinterpretation in rule implementation. We respectfully request that the final 4(d) rule consistently utilize the term “maternity roost tree” throughout. We further suggest that this point be clarified to all USFWS field offices in advance of publication of the final rule in order to clarify intent and avoid interim implementation problems.

Implementation Issues

While not directly related to the substance of the interim 4(d) rule, we also want to call attention to the need for clear communication and coordination with regard to implementation of the 4(d) rule, both in current interim form, as well as once the final rule is released. In the few months since the interim rule’s release, USFWS field offices have crafted differing biological opinions on how forest management should be treated under the rule, some of which have been much more prohibitive with regards to forest management activities than the text of the interim 4(d) rule itself suggests.

In addition, other agencies that manage forestry assistance programs, such as the USDA Natural Resources Conservation Service (NRCS) and the US Forest Service (USFS), need clear direction on consultation obligations relative to the rule. In the months since the interim rule was released, federal agencies across the range of the NLEB have given wildly variable advice and direction to States and landowners on how forest management could proceed under the threatened listing and interim 4(d) rule. Clear and consistent communication and guidance from the USFWS to all their field offices and other federal entities is needed to ensure that consistent implementation of the 4(d) rule can proceed in the manner that was intended, following extensive public consultation, by those who crafted it.

Conclusion

We thank the USFWS for continued engagement with the State Forestry and Wildlife agencies on the NLEB listing. Our partnership enables us to work together to benefit the NLEB, serve as landscape stewards, and provide critical assistance to landowners to sustainably manage their lands and forests. We look forward to continuing to work closely with the USFWS on these important efforts.

Sincerely,

George Geissler
State Forester, Oklahoma
Chair, Southern Group of State Foresters

Peter Church
State Forester, Massachusetts
President, Northeastern Area Association of State Foresters