

Northern Long Eared Bat Battle Continues

As you know, the U.S. Fish and Wildlife Service's (FWS) announcement regarding the NLEB was released in early April. And as with most news from the federal government, the final determination on the NLEB's status under the Endangered Species Act is a mixed bag. On the **plus** side:

- FWS declared the NLEB be listed as "**threatened**," rather than "endangered." While the difference in definition may seem small, in terms of application under the Endangered Species Act, it is significant. The threatened designation allows for some flexibility in protective measures and restrictions. (An endangered listing would have triggered a number of extremely stringent protective actions, limiting virtually any activity that is deemed disruptive to the bat's habitat, regardless of how those activities actually impact the bat.)
- FWS does recognize that forestry related activities do not have significant impact on the NLEB and they freely acknowledge that the White Nose Syndrome (WNS), a fungal disease spread during winter months in caves and hibernation sites, is the main cause of the bat's population decline.
- FWS also published a related interim 4(d) rule outlining required protective measures, as well as exceptions to regulations, including forest management and timber harvests in areas impacted by the WNS. (This rule will be refined during the balance of 2015, with a final rule anticipated by year end.)

On the **negative** side, despite their recognition of the true cause of the NLEB population decline, the interim guidance does put restraints on timber harvesting, particularly during the months of June and July, when NLEB pups are born.

What the 4(d) rule means to You

FWS has designated "buffer zones" that are defined as areas within 150 miles of U.S. and Canadian districts where WNS has been detected. These zones effectively cover most of the eastern part of the U.S., with the exception of some of the most southern areas of southern states. **For areas outside the buffer zones, the 4(d) rule essentially does not apply and business may proceed as usual.**

For areas **within** the buffer zones, the 4(d) rule **exempts** forest management practices, limited tree removal projects - provided these activities protect known maternity roosts and hibernacula, removal of hazardous trees, maintenance and limited expansion of transportation and utility rights-of-way and prairie habitat management from the guidance.

However, these activities must be conducted under the following restraints:

- Activity occurs more than .25 miles from known, occupied hibernacula (caves or bat hibernation sites). This applies for all months of the year.
- Activity avoids cutting or destroying known, occupied roost trees between June 1 and July 31 (pup season). However, trees near or next to roost trees may be removed, although clear cuts would be prohibited.
- Activity avoids clear cuts (and similar harvest methods, e.g. seed tree, shelterwood and coppice) within 0.25 mile (0.4 km) of known, occupied roost trees between June 1 and July 31 (pup season).
- During months other than June and July, forest management activities - including timber harvests - may proceed as normal **unless** they are within the .25 mile radius of known hibernacula under the interim rule.

The Reality is ...

This interim rule does **not** take into account the extensive comments provided by the Hardwood Federation and our colleagues in the wood products industry, and is virtually unchanged from the draft rule published for comment in January 2015. But because of the vast number of comments received by the FWS, they are taking more time to consider a final rule, and will continue to take comments until July 1, 2015.

Bottom Line

More work is clearly needed! This interim guidance may be providing some flexibility, but the June-July timber harvesting restriction occurs in the middle of prime harvest season for many locations, leaving operators to struggle during months of more questionable weather. And the guidance does nothing to solve the primary issue of the NLEB population decline: The White Nose Syndrome.

This issue remains a top priority for the Federation and we will continue to fight on behalf of the industry for realistic, practical and impactful solutions to the question of healthy forest management and healthy Northern Long Eared Bats.