

Northern Long-eared Bat Consultation Guidelines

Background: The NLEB was listed by the U.S. Fish and Wildlife Service (USFWS) as threatened under the federal Endangered Species Act (ESA) on April 2, 2015. On January 14, 2016 a final rule was issued. The USFWS completed a programmatic intra-service Biological Opinion (BO) for the final NLEB 4(d) rule. For NRCS actions that are consistent with the BO and 4(d) rule, an optional streamlined consultation framework is available.

Explanation: The NRCS will use the USFWS' "Northern Long-Eared Bat 4(d) Rule Streamlined Consultation Form" (attached) to satisfy our 7(a)(2) ESA consultation responsibilities. This process requires NRCS to provide USFWS at least 30 days prior notification of a federal action. The following process is to be followed:

- 1) **Existing Contracts** (signed prior to 2016): No tree removal will be allowed during June 1– July 31 for any practice involving tree removal that may affect the NLEB.
 - a) All practices involving tree removal that are complete by April 15, 2016 may be assessed to have no effect on the NLEB, document this as described below.
 - b) Contracted practices involving tree removal after April 15 shall be treated as described below.
- 2) **Contracts Not Yet Obligated:** No tree removal will be planned or scheduled during June 1 – July 31 for any practice per the instructions below.
- 3) **All contracts:** for any practice involving tree removal that may affect NLEB, the *practice narrative* must include the following language: "No tree removal is to occur from June 1 to July 31. Tree removal must not take place until NRCS confirms that ESA requirements for NLEB have been met."

Instructions for minimizing incidental take and promoting conservation of the NLEB:

- I. **Consultation not covered by the NLEB 4(d) Rule Streamlined Framework:**
 - a. Any tree removal within 1/4 mile of a NLEB hibernacula, 150 feet of a known maternity roost tree, or during the months of June and July may result in incidental take of NLEB that is not exempted by the final 4(d) rule. In these cases the streamlined 4(d) consultation framework is not to be used and normal ESA section 7 consultation will be required. Planning or scheduling under these circumstances may proceed only with STC concurrence, and may require site-specific monitoring approved by the USFWS.
- II. **No Consultation Needed (does not meet conditions in I. above):**
 - a. NRCS will make a "no effect" determination for practices that do not involve tree removal or for practices that will involve tree removal, but will not affect NLEB. Requirements for a justifiable "no effect" determination include **all** of the following:
 - 1) The District Conservationist must document the planned action is not within ¼ mile of a known NLEB hibernacula or within 150 feet radius of a known NLEB maternity roost, *and*
 - 2) The planned action will involve one acre or less of cumulative tree removal, *and*
 - 3) Trees to be removed do not have notable cracks, cavities, sloughing or deeply fissured bark, *and*
 - 4) Trees targeted for removal are not in a riparian buffer along a natural water body or water course, *and*
 - 5) Trees to be removed are in a "non-forestland" land use planning unit.

Note: During installation of conservation practices unplanned tree removal may be required. On a case-by-case basis, with concurrence of the NRCS State Biologist, practices may be considered to be no effect if conducted during the period from November 1 to April 15.

- III. NLEB 4(d) rule Streamlined Consultation Required (does not meet I. or II. above):
- a. These consultations will use the USFWS' "NLEB 4(d) rule Streamlined Consultation Form", located alongside this document in the FOTG.
 - 1) The form and supporting documentation will be emailed to [Shay White](#), USFWS, with a Cc: to Wende Mahaney (wende_mahaney@fws.gov), and Debbie Gray (debbie.gray@me.usda.gov). **Important - The email subject line must include the client's application or contract #.**
 - 2) The 30 day period for USFWS response starts on the date the consultation package is electronically submitted to the USFWS.
 - b. The NRCS State Office will track the date the consultation was electronically submitted and the 30-day period due date for a USFWS response.
 - 1) Once the 30-day response period has expired, the FO will be notified by the State Office.
 - 2) Upon receipt of explicit concurrence with NRCS, or the passage of 30 days with no response, "NLAA" can be documented by the FO per the USFWS "Streamlined Framework". At this point, client signatures may be obtained, and fund obligation may proceed.

Effect documentation requirements

ME-ECS-1:

- 1) No effect determinations and justifications for making a no effect determination are to be documented under 3.A. of the ME-ECS-1.
- 2) "Not likely to adversely affect" (NLAA) NLEB will be documented by:
 - a) Checking the "No" box under 3.B.ii
 - b) On page 3, under Federal Consultations
 - i) Check the box next to Northern Long-eared Bat,
 - ii) "Anticipated Effect" choose "NLAA" from the dropdown list.
 - iii) Refer to the "NLEB 4(d) Rule Streamlined Consultation Form" for "Project Objective", Existing Baseline Condition", "Proposed Planned Condition" and "Description of Practice application/Anticipated Effects".
- 3) If explicit concurrence with NRCS' NLAA determination is received from USFWS, or no response from the USFWS occurs within 30 days of form submittal, then check the "Yes" box under Step 5, and type in "ESA" in the space provided.

NRCS-CPA-52, per NB 190-16-6.

- 1) Record the NLEB effect determination as either "no effect" or "may affect",
- 2) For NLAA determinations, reference the ME-ECS-1 and NLEB 4(d) Rule Consultation Form. Include the date consultation was initiated, date of USFWS NLAA concurrence or note the USFWS did not respond within 30 days of submittal.

Important planning considerations

- 1) Be sure to consider and prioritize alternatives that reduce likelihood of NLEB impacts in planning steps.
- 2) Encourage clients to conduct tree removal activities from November 1 to April 15 as a good conservation measure, document this in planning assistance notes.