

that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

#### *Conservation Efforts and Regulatory Mechanisms*

Below is a brief description of conservation measures and regulatory mechanisms currently in place. Please see the SSA report for a more detailed description (Service 2021, Appendix 4).

Multiple national and international efforts are underway in an attempt to reduce the impacts of WNS. Despite these efforts, there are no proven measures to reduce the severity of impacts of WNS. More than 100 State and Federal agencies, Tribes, organizations, and institutions are engaged in this collaborative work to combat WNS and conserve affected bats. Partners from all 37 States in the northern long-eared bat's range, Canada, and Mexico are engaged in collaborations to conduct disease surveillance, population monitoring, and management actions in preparation for or response to WNS.

To reduce bat fatalities, some wind facilities "feather" turbine blades (*i.e.*, pitch turbine blades parallel with the prevailing wind direction to slow rotation speeds) at low wind speeds at times when bats are more likely to be present. The wind speed at which the turbine blades begin to generate electricity is known as the "cut-in speed," and this can be set at the manufacturer's recommended speed or at a higher threshold, typically referred to as curtailment. The effectiveness of feathering below various cut-in speeds differs among sites and years (Arnett et al. 2013, entire; Berthinussen et al. 2021, pp. 94–106); nonetheless, most studies have shown all-bat (based on dead bats detected from all bat species) fatality reductions of greater than 50 percent associated with raising cut-in speeds by 1.0–3.0 meters per second (m/s) above the manufacturer's cut-in speed (Arnett et al. 2013, entire; USFWS unpublished data). The effectiveness of curtailment at reducing fatality rates specifically for the northern long-eared bat has not been documented.

All States have active forestry programs with a variety of goals and objectives. Several States have established habitat protection buffers around known Indiana bat hibernacula that will also serve to benefit other bat

species by maintaining sufficient quality and quantity of swarming habitat. Some States conduct some of their forest management activities in the winter within known listed bat home ranges as a measure that would protect maternity colonies and non-volant (non-flying) pups during summer months. Depending on the type and timing of activities, forest management can be beneficial to bat species (for example, maintaining or increasing suitable roosting and foraging habitat). Forest management that results in heterogeneous (including forest type, age, and structural characteristics) habitat may benefit tree-roosting bat species such as northern long-eared bat (Silvis et al. 2016, p. 37). Silvicultural practices can meet both male and female northern long-eared bats' roosting requirements by maintaining large-diameter snags in early stages of decay, while allowing for regeneration of forests (Lacki and Schwierjohann 2001, p. 487).

Many State and Federal agencies, conservation organizations, and land trusts have installed bat-friendly gates to protect important hibernation sites. All known hibernacula within national grasslands and forestlands of the Rocky Mountain Region of the U.S. Forest Service (USFS) are closed during the winter hibernation period, primarily due to the threat of WNS, although this will reduce disturbance to bats in general inhabiting these hibernacula (USFS 2013, unpaginated). Because of concern over the importance of bat roosts, including hibernacula, the American Society of Mammalogists developed guidelines for protection of roosts, many of which have been adopted by government agencies and special interest groups (Sheffield et al. 1992, p. 707). Also, regulations, such as the Federal Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*), protect caves on Federal lands by limiting access to some caves, thereby reducing disturbance. Finally, many Indiana bat hibernacula have been gated, and some have been permanently protected via acquisition or easement, which provides benefits to other bats that also use the sites, including the northern long-eared bat.

The northern long-eared bat is listed as endangered under Canada's Species at Risk Act (COSEWIC 2013, entire). In addition, the northern long-eared bat receives varying degrees of protection through State laws, which designate the species as endangered in 9 States (Arkansas, Connecticut, Delaware, Indiana, Maine, Massachusetts, Missouri, New Hampshire, and Vermont); as threatened in 10 States

(Georgia, Illinois, Louisiana, Maryland, New York, Ohio, Pennsylvania, Tennessee, Virginia, and Wisconsin); and as a species of special concern in 10 States (Alabama, Iowa, Michigan, Minnesota, Mississippi, Oklahoma, South Carolina, South Dakota, West Virginia, and Wyoming).

#### **Determination of Northern Long-Eared Bat Status**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an "endangered species" as a species in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

#### *Status Throughout All of Its Range*

WNS has been the foremost stressor on the northern long-eared bat for more than a decade and continues to be currently. The fungus that causes the disease, *Pd*, invades the skin of bats and leads to infection that increases the frequency and duration of arousals during hibernation that eventually deplete the fat reserves needed to survive winter and results in mortality. There is no known mitigation or treatment strategy to slow the spread of *Pd* or to treat WNS in bats. WNS has caused estimated northern long-eared bat population declines of 97–100 percent across 79 percent of the species' range (Factor C). Winter abundance (from known hibernacula) has declined rangewide (49 percent) and declined across all but one RPU (declines range from 0 to 90 percent), and the number of extant winter colonies also declined rangewide (81 percent) and across all RPUs (40–88 percent). There has also been a noticeable shift towards smaller colony sizes, with a 96–100 percent decline in the number of large hibernacula ( $\geq 100$  individuals). Rangewide summer occupancy has

declined by 80 percent from 2010–2019. Summer data collected from mobile acoustic transects found a 79 percent decline in rangewide relative abundance from 2009–2019, and summer mist-net captures declined by 43–77 percent (across RPUs) compared to pre-WNS capture rates. We created projections for the species using its current condition and the current rates of mortality from WNS effects and wind energy. Rangewide abundance is projected to decline by 95 percent and the spatial extent is projected to decline by 75 percent from historical conditions by 2030.

As a result of these steep population declines, the northern long-eared bat's resiliency is greatly compromised in its current condition. Because the northern long-eared bat's abundance and spatial extent substantially declined, its redundancy has decreased such that northern long-eared bats are more vulnerable to catastrophic events. The northern long-eared bat's representation has also been reduced, as the steep and continued declines in abundance have likely led to reductions in genetic diversity, and thereby reduced the northern long-eared bat's adaptive capacity. Further, the projected widespread reduction in the distribution of occupied hibernacula under current conditions will lead to losses in the diversity of environments and climatic conditions occupied, which will impede natural selection and further limit the northern long-eared bat's ability to adapt to changing environmental conditions. Moreover, at its current low abundance, loss of genetic diversity via genetic drift will likely accelerate. Consequently, limiting natural selection process and decreasing genetic diversity will further lessen the northern long-eared bat's ability to adapt to novel changes (currently ongoing as well as future changes) and exacerbate declines due to continued exposure to WNS and other stressors. Thus, even without further *Pd* spread and additional pressure from other stressors, the northern long-eared bat's viability has declined substantially and is expected to continue to rapidly decline over the near term.

Current population trends and status indicate this species is currently in danger of extinction. The species continues to experience the catastrophic effects of WNS and the compounding effect of other stressors from which extinction is now a plausible outcome under the current conditions. Therefore, the species meets the Act's definition of an endangered species rather than of a threatened species. Thus, after assessing the best available information, we

determine that the northern long-eared bat is in danger of extinction throughout all of its range.

#### *Status Throughout a Significant Portion of Its Range*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the northern long-eared bat is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the northern long-eared bat warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity v. Everson*, 2020 WL 437289 (D.D.C. Jan. 28, 2020), because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

#### *Determination of Status*

Our review of the best available scientific and commercial information indicates that the northern long-eared bat meets the Act's definition of an endangered species. Therefore, we propose to list the northern long-eared bat as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and

threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline, and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened ("downlisting") or removal from protected status ("delisting"), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (<https://www.fws.gov/species/northern-bat-myotis-septentrionalis>), or from our Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (for example, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

For listed species, funding for recovery actions is available from a

variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming will continue to be eligible for Federal funds to implement management actions that promote the protection or recovery of the northern long-eared bat. Information on our grant programs that are available to aid species recovery can be found at: <https://www.fws.gov/grants>.

Please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include, but are not limited to, management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and

Wildlife Service, U.S. Forest Service, Bureau of Land Management, National Park Service, and other Federal agencies; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing.

At this time, we are unable to identify specific activities that would not be considered to result in a violation of section 9 of the Act because the northern long-eared bat occurs in a variety of habitat conditions across its

range and it is likely that site-specific conservation measures may be needed for activities that may directly or indirectly affect the species.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Incidental take of the species without authorization pursuant to section 7 or section 10(a)(1)(B) of the Act.

(3) Disturbance or destruction (or otherwise making a hibernaculum no longer suitable) of known hibernacula due to commercial or recreational activities during known periods of hibernation.

(4) 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 kills or injures individuals by significantly impairing the species' essential breeding, foraging, sheltering, commuting, or other essential life functions.

(5) 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.

(6) Unauthorized release of biological control agents that attack any life stage of this taxon.

(7) Unauthorized removal or exclusion from buildings or artificial structures being used as roost sites by the species, resulting in take of the species.

(8) Unauthorized building and operation of wind energy facilities within areas used by the species, which results in take of the species.

(9) Unauthorized discharge of chemicals, fill, or other materials into sinkholes, which may lead to contamination of known northern long-eared bat hibernacula.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).



### Effects of This Rule

If this rule is adopted as proposed, it would reclassify the northern long-eared bat from a threatened species to an endangered species on the List of Endangered and Threatened Wildlife. It would also remove the species-specific section 4(d) rule for the northern long-eared bat, because 4(d) rules apply only to species listed as threatened species under the Act. The Act's full suite of prohibitions and exceptions to those prohibitions for endangered species (see sections 9 and 10 of the Act) would then apply to the northern long-eared bat.

### Public Hearings

We have scheduled a public informational meeting with a public hearing on this proposed rule for the northern long-eared bat. We will hold the public informational meeting and public hearing on the date and time listed above under *Public informational meeting and public hearing in DATES*. We are holding the public informational meeting and public hearing via the Zoom online video platform and via teleconference so that participants can attend remotely. For security purposes, registration is required. To listen and view the meeting and hearing via Zoom, listen to the meeting and hearing by telephone, or provide oral public comments at the public hearing by Zoom or telephone, you must register. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit <https://www.fws.gov/species/northern-bat-myotis-septentrionalis>. Registrants will receive the Zoom link and the telephone number for the public informational meeting and public hearing. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials (<https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials>) prior to the public informational meeting and public hearing.

The public hearing will provide interested parties an opportunity to present verbal testimony (formal, oral comments) regarding this proposed rule. While the public informational meeting will be an opportunity for dialogue with the Service, the public hearing is not: It is a forum for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking

Portal, or U.S. mail (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to make an oral statement at the public hearing must register before the hearing <https://www.fws.gov/species/northern-bat-myotis-septentrionalis>. The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

### Required Determinations

#### Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

#### Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive

Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We solicited information, provided updates, and invited participation in the SSA process in emails sent to Tribes, nationally, in April 2020 and November 2020. We will continue to work with Tribal entities during the development of the northern long-eared bat final listing determination.

### References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### Authors

The primary authors of this proposed rule are staff members of the Fish and Wildlife Service's Species Assessment Team and the Minnesota Wisconsin Ecological Services Field Office.

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

### PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11, in paragraph (h), by revising the entry for “Bat, northern long-eared” under MAMMALS in the



List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

(h) \* \* \*

\* \* \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
*	*	*	*	*
Bat, northern long-eared.	<i>Myotis septentrionalis</i>	Wherever found .....	E	80 FR 17973, 4/2/2015; [Federal Register citation when published as a final rule].
*	*	*	*	*

**§ 17.40 [Amended]**

■ 3. Amend § 17.40 by removing and reserving paragraph (o).

**Signing Authority**

The Director, U.S. Fish and Wildlife Service, approved this document and

authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the U.S. Fish and Wildlife Service. Martha Williams, Director, approved

this document on March 18, 2022, for publication.

**Madonna Baucum,**  
*Regulations and Policy Chief, Division of Policy, Risk Management, and Analytics of the Joint Administrative Operations, U.S. Fish and Wildlife Service.*

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