

# Northern Long-eared Bat Guidance for Non-WisDOT Actions Occurring On/Adjacent to WisDOT Right-of-Way

## **1. What changes are occurring for northern long-eared bat (NLEB)?**

The northern long-eared bat has been listed as threatened under the federal Endangered Species Act since 2015. The NLEB's threatened 4(d) rule has allowed for some types of non-prohibited incidental take from activities such as tree clearing. U.S. Fish and Wildlife Service (USFWS) has announced the northern long-eared bat will be reclassified to **endangered**. This change is in response to continued population declines, primarily due to white nose syndrome. The threatened 4(d) rule and associated consultation will be nullified once NLEB is endangered.

## **2. When will the endangered listing change be effective?**

USFWS originally planned for the endangered status to be effective on January 30, 2023, but they were not able to sufficiently prepare for the transition. They delayed the effective date to **March 31, 2023**.

## **3. What are the new NLEB requirements for *federal* actions under the Endangered Species Act?**

Actions that receive federal funding/authorization/permits in whole or in part may require the federal lead agency for those actions to conduct Endangered Species Act (ESA) Section 7 consultation with USFWS if the action *may affect* a listed or proposed species. This includes northern long-eared bat.

Many activities funded or authorized by the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and/or Federal Transit Administration (FTA) are eligible to use the *FHWA, FRA, FTA Range-wide Programmatic Consultation for Transportation Projects Affecting NLEB or Indiana Bat*. WisDOT is utilizing this process for its federal improvement projects when possible. This process has pre-determined avoidance and minimizations, which include restricting tree clearing in suitable habitat from April 1 – October 31 and conducting bridge/culvert/human-use structure bat inspections.

At this time, USFWS has not released NLEB guidance for other federal actions occurring outside of the framework of the FHWA/FRA/FTA range-wide NLEB programmatic consultation process. USFWS has indicated in [a news release](#) that they intend to have guidance and consultation tools available in early March.

To minimize risk, federal project proponents can implement avoidance and minimization measures similar to those required by the FHWA/FRA/FTA range-wide NLEB programmatic consultation process, but they may or may not be required by USFWS. WisDOT encourages these project proponents to work with their lead federal agency and USFWS to understand what their specific requirements will be.

## **4. What are the new NLEB requirements for *non-federal* actions under the Endangered Species Act?**

At this time, USFWS has not released NLEB guidance for non-federal actions. USFWS has indicated in [a news release](#) that they intend to have guidance and consultation tools available in early March.

Proponents of non-federal actions have the responsibility under the ESA Section 9 to ensure their actions will not result in prohibited take of northern long-eared bats unless they have received a Section 10 incidental take permit from USFWS. Take means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

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For consistency, WisDOT is implementing the avoidance and minimization measures from FHWA/FRA/FTA range-wide NLEB programmatic consultation process on its non-federal actions. This includes restricting tree clearing in suitable habitat from April 1 – October 31 and conducting bridge/culvert/human-use structure bat inspections.

To minimize risk, other non-federal project proponents can implement avoidance and minimization measures similar to those required by the FHWA/FRA/FTA range-wide NLEB programmatic consultation process, but they may or may not be required by USFWS. WisDOT encourages these project proponents to contact USFWS to understand what their specific requirements will be.

### **5. What are WI Department of Natural Resources (WDNR) requirements for NLEB?**

The northern long-eared bat is listed as **threatened** under the WI Endangered Species Law. WDNR has not indicated they intend to reclassify the NLEB at this time.

Project proponents should continue to use the [WDNR Natural Heritage Inventory Public Portal](#) and/or have an [Endangered Resources Review](#) conducted for the project to understand state NLEB requirements/recommendations. Some actions may be covered under [WDNR cave bat broad incidental take permit/authorization](#).

Receiving clearance for NLEB under state regulations/requirements does not obviate the need for compliance under the federal Endangered Species Act.

### **6. What conditions related to NLEB will be placed on WisDOT highway right-of-way (ROW) permits?**

WisDOT highway ROW permits include driveways, road/street connections, utilities, and other work on highway ROW actions. Permittees are responsible for compliance with all applicable federal, state, local and tribal laws, codes, regulations, and ordinances. WisDOT's permit approval does not relieve a permittee from compliance and shall not be construed as superseding any other governmental agency's more restrictive requirements.

At this time, WisDOT is not placing uniform, broad tree clearing restrictions on every highway ROW permit. WisDOT expects that permittees follow all federal and state required tree clearing restrictions as well as any other protective measures required for NLEB, such as bat inspections. WisDOT may condition permits with tree clearing restrictions that are more restrictive than required by state/federal requirements (e.g., clearing prohibited April 1 – October 31). This would be done when there is an increased need to protect the NLEB and its habitat.

### **7. What trees are considered suitable summer habitat for NLEB?**

Suitable summer habitat for NLEB may be subject to tree clearing restrictions, which can be as broad as April 1 – October 31.

Per USFWS guidance: suitable summer habitat consists of a wide variety of forested/wooded habitats where NLEB roost, forage, and travel and may also include some adjacent and interspersed non-forested habitats such as emergent wetlands and adjacent edges of agricultural fields, old fields and pastures. This includes forests and woodlots containing potential roosts (i.e., live trees and/or snags  $\geq 3$  inches dbh

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that have exfoliating bark, cracks, crevices, and/or cavities), as well as linear features such as fencerows, riparian forests, and other wooded corridors. These wooded areas may be dense or loose aggregates of trees with variable amounts of canopy closure. NLEB seem to prefer intact mixed-type forests with small gaps (i.e., forest trails, small roads, or forest-covered creeks) in forest with sparse or medium vegetation for foraging and commuting rather than fragmented habitat or areas that have been clear cut. Individual trees may be considered suitable habitat when they exhibit characteristics of suitable roost trees and are within 1,000 feet of other forested/wooded habitat.

Examples of unsuitable habitat:

- Individual trees that are greater than 1,000 feet from forested/wooded areas;
- Trees found in highly-developed urban areas (e.g., street trees, downtown areas); and
- A pure stand of less than 3-inch dbh trees that are not mixed with larger trees

### **8. What type of manmade structures does NLEB use?**

Northern long-eared bat may use bridges and culverts as roosts. NLEB may also utilize buildings and human-use structures such homes, rest areas, offices, sheds, outbuildings, barns and parking garages. This is not an exhaustive list.

Compliance with federal and/or state regulations may require a bat inspection prior to structure demolition. See the [WDNR cave bat broad incidental take permit/authorization](#) for state requirements.

Per WDNR, NLEB is unlikely to use billboards and signs as roosts in Wisconsin. There are presently no requirements to inspect these elements for bats prior to removal.

### **9. What other resources are available?**

USFWS is currently preparing new guidance and tools for project proponents and materials project proponents to help understand ESA requirements once NLEB is endangered. USFWS indicated in [a news release](#) that they intend to have guidance and consultation tools available in early March. Currently available resources are linked below:

**USFWS NLEB Guidance:** <https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis>

**USFWS Endangered Listing FAQ:**

[https://www.fws.gov/sites/default/files/documents/FINAL.FWS\\_FAQs\\_NLEB%20final%20rule%20FAQs.11222022%20%281%29.pdf](https://www.fws.gov/sites/default/files/documents/FINAL.FWS_FAQs_NLEB%20final%20rule%20FAQs.11222022%20%281%29.pdf)

**WDNR NLEB Guidance:**

<https://dnr.wi.gov/topic/EndangeredResources/Animals.asp?mode=detail&SpecCode=AMACC01150>

<https://dnr.wi.gov/files/PDF/pubs/er/ER0700.pdf>