

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Fish and Wildlife
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MAY 04 2016

Mr. John K. Bartow, Jr.
Executive Director
Empire State Forest Products Association
47 Van Alstyne Drive
Rensselaer, NY 12144

Dear John:

The purpose of this letter is to provide guidance regarding measures that must be taken to ensure that forest management activities are protective of the northern long-eared bat (NLEB) and do not result in an incidental take pursuant to 6NYCRR Part 182.

The NLEB was listed as "threatened" by the United States Fish and Wildlife Service (USFWS) under the federal Endangered Species Act on April 2, 2015. The listing was the result of population declines caused by white-nose syndrome (WNS). On January 14, 2016, USFWS issued its Final 4(d) Rule for the NLEB, imposing two specific conservation measures: a 0.25 mile buffer around known occupied northern long-eared bat hibernacula and a 150-foot buffer around known occupied maternity roost trees during the pup season (June 1 through July 31). On April 27, 2016, USFWS announced its determination that it would not designate critical habitat for the NLEB because "Northern long-eared bat summer habitat is not limited or in short supply and summer habitat loss is not a range-wide threat to the species."

The Department concurs with the conclusion of the USFWS that the NLEB population decline is not the result of habitat loss. However, the Department is requiring additional conditions on tree cutting in order to protect any bats that may be roosting in the trees in the vicinity of the hibernacula and roost trees. Therefore, ***in addition to the requirements of USFWS Final 4(d) Rule for the NLEB¹***, all forest management activities must comply with the following conditions in areas of known occupied habitat. Forest management activities that incorporate the following requirements do not need a permit from the Department under 6 NYCRR Part 182 because cutting of live trees under the prescribed conditions will not result in an incidental take of NLEB.

November 1 to March 31: during this period of time, the NLEB are inactive and are within the hibernacula.

- Cutting of any trees may occur outside of the ¼ mile buffer around a hibernaculum.

¹ Nothing in this letter should be construed as providing a determination concerning compliance with federal law. Questions concerning federal compliance should be directed to USFWS.

April 1 to October 31: during this period of time, the NLEB are active and will be found outside the hibernacula.

- Within 5 miles of known hibernacula and within 150' of known roost trees the following cutting restrictions apply:
 - Leave uncut all snag and cavity trees unless their removal is necessary for protection of human life and property. "Snag trees" are defined as standing dead trees that are at least 20 feet tall (DEC Program Policy ONR-DLF-2 Retention on State Forests).
 - Leave uncut all known and documented roost trees, and any trees within a 150 foot radius of a known roost tree.
 - If any bats are observed flying from a tree, or on a tree that has been cut, forestry activities in the area should be suspended and DEC Wildlife staff notified as soon as possible.

- Within a ¼ mile of a hibernaculum, leave all trees uncut unless their removal is necessary for protection of human life and property.

Outside of the 5-mile buffer around known hibernacula and the 150-foot buffer around known roost trees, there are no cutting restrictions.

If you or your members have questions about the above conditions or need assistance in identifying hibernacula locations, please call the Division of Environmental Permits in the appropriate DEC regional office.

This letter is only intended to address NLEB protective measures. Additional regulations may apply to the land, including wetland and stream protection regulations and protective measures for other federal or state endangered species that may be present. Regional DEC staff in Division of Environmental Permits can help your members determine if any of these restrictions apply to their property and project.

I appreciate the efforts of New York's forest industry to manage our forests responsibly and sustainably. Protecting our wildlife in general, and endangered species in particular, is a critical element of responsible forestry management. I look forward to working with your members and others involved in forestry in New York to ensure that we protect our wildlife resources.

Sincerely,



Patricia Riexinger
Director
Division of Fish and Wildlife