

Compliance Bulletin

Threatened Northern Long-eared Bat



west virginia department of environmental protection

On April 2, 2015, the United States Fish and Wildlife Service (USFWS) finalized the listing determination for the northern long-eared bat (*Myotis septentrionalis*) (NLEB); the species was designated as “threatened” under the Endangered Species Act (ESA) with a 4(d) status. This letter, in accord with the 1996 Biological Opinion and Conference Report ('96 BO) provided by the USFWS to the United States Office of Surface Mining (OSM) and the Endangered Species Act of 1973 (ESA), concerns “take” of threatened and endangered species on mine sites. Further, **the following directives apply only to permitted and proposed areas containing suitable habitat for the NLEB.**

- If the permitted activity has been initiated, prior to the final listing date stated above, the permittee must consider the potential impacts to remaining NLEB suitable habitat posed by completion of the permitted activity. However, WVDEP/DMR recognizes that retroactive preparation of a project-wide Protection and Enhancement Plan (PEP) for this species (or a surrogate species) is neither possible nor practical as these PEPs are required to consider the entire permitted area rather than remaining portions of suitable habitat. Therefore, WVDEP/DMR requests that the permitted activity be considered at this time in regard to potential impacts to the NLEB and requests that you submit information within 30 days indicating and quantifying areas within your permit area containing suitable habitat or areas forested with trees ≥ 3 " diameter at breast height (dbh), listing the location and information regarding caves/portals, and specifying the project's post-mining land use (PMLU). If it is determined that suitable northern long-eared bat habitat exists on the site (i.e., known habitat), all timber clearing of this habitat (i.e., trees ≥ 3 " dbh) must adhere to the following restrictions: clearing is only allowed from October 15 through March 31; or, in areas within a known hibernaculum buffer, timber clearing is further restricted to November 15 through March 31.

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- If these protective timber clearing restrictions are employed, in conjunction with reclamation practices, WVDEP/DMR finds that timber clearing associated with the permitted activity will not elicit “take” of the NLEB, either directly or incidentally. Further, due to the abundance of adjacent, suitable summer roosting and foraging habitat available to the species, WVDEP/DMR finds that the short-term habitat needs of the NLEB are adequately met. Additionally, if the post-mining landuse reclamation requirements result in $\geq 70\%$ reforestation of the remaining forested area, the long-term habitat needs for summer roosting and foraging of the species are also considered adequately met. If the approved PMLU precludes reforestation of the remaining forested areas, suitable habitat will be maintained using artificial habitat features (e.g., bat boxes or BrandenBark™ roosts), at manufacturer’s recommended densities, or other features representing the best available technology addressing the species’ long-term habitat requirements. As such, the WVDEP/DMR will evaluate the project and determine if the execution of the permitted activity will jeopardize the continued existence of the NLEB or impact the NLEB’s designated critical habitat; although, a formal determination of jeopardy or impacts to critical habitat must be performed by the USFWS. The WVDEP/DMR will also provide a closure letter to inform the permittee regarding their proposal evaluation as well as a quantification of take. The record of this finding and all aforementioned correspondence will be incorporated into the permit file and shall constitute consideration of the NLEB at locations with existing permits.
- If the proposed activity had not yet been permitted or if the approved permitted activity had not yet been initiated at the time of the final listing date (stated above), the permittee must consider the potential impacts to NLEB habitat and a formal PEP must be completed and approved before any mining activities may commence, including timber clearing. As per the '96 BO and the ESA, the USFWS and state regulatory authorities (RAs), like WVDEP/DMR, are required to work together to develop and implement species-specific conservation measures to help ensure protection of ESA-listed species and their designated critical habitats. As species-specific protective measures for the NLEB have not yet been developed, WVDEP/DMR recommends that permittees complete a Northern Long-eared Bat Protection and Enhancement Plan, which incorporates information regarding the species’ life history requirements and considers the proposed activity’s potential impacts to the species. Guidance on completion of a PEP for mining projects potentially affecting the NLEB may be found at:

[Northern Long-Eared Bat Protection and Enhancement Plan for mining Activities in West Virginia](#)

In facilitation of exemption from the Section 9 requirements of the ESA, WVDEP/DMR must comply with the specific terms and conditions of the '96 BO. The WVDEP/DMR’s coal regulatory program provides several references regarding the protection of threatened and endangered species and their habitats in the West Virginia Surface Mining Reclamation Rules 38 CSR 2 § 3.18, 38 CSR 2 § 8. The PEP requirement for the NLEB must be met to comply with the Section 9 requirements of ESA.

Please submit all information electronically to WVDEP/DMR at: EndSpecies.Coal@wv.gov