



May 23, 2022

Public Comments Processing  
Attn: FWS-R3-ES-2021-0140  
U.S. Fish and Wildlife Service  
MS: PRB/3W  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

**Re: Docket No. FWS-R3-ES-2021-0140, Endangered and Threatened Wildlife and Plants;  
Endangered Species Status for Northern Long-Eared Bat.**

Today I respectfully offer comments on the U.S. Fish and Wildlife Service's (FWS) March 23 proposed rule to list the northern long-eared bat ("the bat") as endangered under the Endangered Species Act (ESA).

Introduction

The current FWS proposal adds another chapter to a regulatory saga which began in late 2013. At that time, FWS also considered listing the bat as endangered. Two years later, in 2015, the agency reconsidered and chose to categorize the bat as threatened, rather than endangered. Now, having been directed to revisit the issue through a 2020 court order, the ESA proposes to declare the bat as endangered.

Regardless of FWS' shifting position, the underlying facts have remained unchanged. The bat faces a disease called "white nose syndrome" (WNS), which infects its skin and can cause death. As in 2013, FWS still does not know for certain what causes WNS or how to alleviate it. Additionally, there is no known link between WNS and any human activity regulated by the ESA.

While these circumstances remain unfortunate, a classification as endangered could disrupt transportation improvement projects across the country, as is explained below. For these reasons, ARTBA remains opposed to classifying the bat as an endangered species.

Listing the Bat as Endangered Could Severely Impact Transportation Construction Projects  
in a Majority of the United States

In the proposal, FWS specifically lists "construction of roads or highways by the Federal Highway Administration" as an area that would see increased regulatory burdens from the listing decision. By proposing to list the bat as endangered, FWS would trigger the ESA's critical habitat provisions. That habitat, in this case, would be the environment that FWS determines is necessary for the bat to subsist. FWS would impose these requirements despite the fact FWS has determined "habitat loss alone is not considered to be a key stressor" for the bat.

In this instance, FWS has determined the habitat of the bat to span 37 states (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), as well as the District of Columbia. Thus, under FWS' determination, the bat's potential "critical habitat" accounts for the majority of the land in the continental United States.

Proper determination of critical habitat designation is a very important issue for both state and local governments as well as businesses located in areas impacted by ESA concerns. The FWS' determination of critical habitat can make large areas ineligible for any type of development, including transportation improvements. In that area of public policy, states promulgate transportation plans years, if not decades, in advance. If the agency suddenly declares an area "off limits" through an overly-broad critical habitat designation, then it can jeopardize carefully-designed state and local plans for improved mobility, congestion reduction, economic development and job creation.

The Infrastructure Investment and Jobs Act (IIJA), which President Biden signed into law in November, features historic increases in federal transportation investment across all modes. This funding should be a major catalyst for our nation's economic growth. Regrettably, listing the bat as endangered will hinder this recovery in 37 out of 50 states, with little certainty of improving the bat's circumstance. Without more information about the causes of and cure for WNS, listing the bat as endangered becomes an "all risk, no reward" proposition for the 37 states impacted by the decision.

#### FWS Does Not Have Enough Information to Classify the Bat as Endangered

According to FWS, WNS is causing "bat population declines of 97-100 percent across 79 percent of the species range." Unfortunately, beyond these impacts, FWS knows little else about WNS. As FWS further explains, "[p]artners 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 preparations for or response to WNS." Despite these efforts, "[t]here is no known mitigation treatment or strategy" to slow the spread of WNS.

Without knowing what causes or how to mitigate WNS, it is simply impossible for FWS to conclude that listing the bat as endangered – or any other regulatory action for that matter – will have a demonstrable impact on the bat's fate. (Conversely, as described above, we can state with greater certainty that this action could delay, limit or cancel numerous transportation improvement projects nationwide.)

Given this cost-benefit disparity, FWS should redouble its efforts to determine the exact cause of WNS, then work with its partners to take more appropriate and targeted action.

## FWS Should Consider All Comments When Deciding to List the Bat as Endangered

In its proposal, FWS states “submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination.” As justification for this position, FWS points to the ESA’s requirement that listing decisions must be made “solely on the basis of the best scientific and commercial data available.”

While ARTBA agrees with making ESA decisions on the basis of the best available science and data, FWS does not meet that requirement here. In this instance, the agency is proposing regulatory action for a disease with an unknown cause and unknown cure. Moreover, there is currently no documented beneficial link between the proposed regulatory burdens and alleviating WNS. If the agency cannot provide data on WNS to justify this listing, then it should not insist the regulated community provide data opposing it. Furthermore, given the scarcity of information about WNS, it is exceedingly difficult to prove or disprove the impacts any action (regulatory or otherwise) will have on the bat’s population.

We intend ARTBA’s comments to show the severe impact FWS’ endangered species listing could have on the transportation infrastructure system and larger economic issues in much of the continental United States. We believe these concerns are fully worthy of the agency’s careful consideration.

### Conclusion

The proposed endangered species listing for the long-eared bat could have significant negative consequences – whether intended or not – for the Biden administration’s commitment to rebuilding the nation’s transportation infrastructure. Until FWS gathers additional and credible information about the cause and prevention of WNS, there is no justification for listing the bat as endangered and potentially limiting future transportation projects in 37 states plus the District of Columbia.

Thank you for considering these views.

Sincerely,



David Bauer  
President & CEO