



March 17, 2015

Public Comments Processing Unit
Attn: FWS-R5-ES-2011-0024
Division of Policy and Directives Management
U.S. Fish and Wildlife Service, MS: BPHC
5275 Leesburg Pike
Falls Church, VA 22041-3803

RE: Comment to include Abandoned Mine Land (AML) projects in the list of activities to be included in the proposed 4(d) rule for the potential listing of the Northern Long-Eared Bat.

To the Public Comments Processing Unit:

The Pennsylvania Department of Environmental Protection (PADEP), Office of Active and Abandoned Mine Operations, Bureau of Abandoned Mine Reclamation (Bureau) is writing in response to the U.S. Fish and Wildlife Service's (USFWS, Service) proposal (78 Federal Register 61046-61080; Proposal) to list the Northern Long-Eared Bat (*Myotis septentrionalis*; NLEB) as an endangered species under the Endangered Species Act (ESA) of 1973, as amended. We appreciate and understand the importance of the work the USFWS has done to make a recommendation on this species. We also understand that the USFWS is proposing a 4(d) rule under the ESA for the NLEB. We would also like to thank the USFWS for extending the comment period to March 17, 2015 and extending the final listing decision six months to allow the Bureau to provide comment.

It is the understanding of the Bureau that the USFWS is considering options that include: listing the bat as endangered, listing as threatened, listing as threatened with a 4(d) rule, and withdrawing the proposal to list. For areas of the country affected by white-nose syndrome, the measures provided in the proposed 4(d) rule exempt take from activities such as forest management practices, other land management practices and limited tree removal projects, provided these activities protect known maternity roosts and hibernacula. The proposed 4(d) rule also exempts take as a result of removal of hazardous trees. In parts of the country not affected by white-nose syndrome, the proposed rule recognizes activities that result in incidental take of bats are not imperiling the species and will be exempt from the act's protections.

The Bureau feels that the USFWS has the most reliable data on which to make the appropriate determination and final listing decision. Therefore, the Bureau does not wish to comment on that portion of the proposal. The Bureau, however, does feel that the activities it implements through the AML program should be included in and covered by the 4(d) rule if the USFWS decides to implement it concurrently with their final determination.

Office of Active and Abandoned Mine Operations

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AML Program Overview

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977 establishes grants to states to address AML problems. In response to SMCRA, the Bureau administers both a state and a federal AML program that provide funds to investigate, design and construct projects to address the highest priority environmental, public health and safety problems related to abandoned mines which include but are not limited to: mine openings, highwalls, gob piles/erosion, acid mine drainage and subsidence.

It is our understanding that the Ohio Department of Natural Resources has provided detailed comments to the USFWS regarding their Reclamation Program and the proposal to list the NLEB as an endangered species. PADEP's Reclamation Program is almost identical to Ohio's and therefore would request the same final determination requested by the Ohio AML Program.

NLEB/Indiana Bat (IBAT) Avoidance and Minimization Measures

For each AML project, the Bureau takes the following measures to avoid and/or minimize any adverse effects to NLEB/IBAT populations during construction:

- A Pennsylvania Natural Diversity Inventory (PNDI) evaluation is conducted to determine if bats or any other endangered species are known to exist within the proposed project area.
- Seasonal Mine Entry Closures/ "Bat Friendly" Bat Gate Installation: AML sites may have underground mines that provide suitable winter hibernacula habitat. Where possible, "Bat-Friendly" designed gates are installed in all mine openings with suitable habitat. The bat gate design was based on the Bat Conservation International manual. If these mines exist and need to be closed to abate AML issues, mine entry closure dates are restricted to May 15th to August 30th.
- Avoid tree removal: Where possible, the Bureau allows existing trees to remain, especially trees suitable for roosting or use as a potential maternity roost.

Analysis of AML Project Impact to Bat Habitat

Construction of AML public health and safety projects and acid mine drainage remediation projects can potentially impact bat habitat. Reclamation of the environmental hazards left from pre-SMCRA coal mining often requires the clearing and grubbing of abandoned mine sites, substantial earthwork, installation of wetlands and sediment ponds, temporary access roads, re-grading, and stream channel reconstruction. Volunteer vegetation growth on these sites can range in age from 35 years old to approximately 100 years old depending on when the area was mined. Given this, a variety of vegetation cover types can be encountered on each project that can include barren ground, gob piles, grassland, shrub/scrub and extremely young to medium aged forests.

AML project reclamation is limited to previously disturbed areas. Short-term impacts to wildlife and habitat are offset by long-term benefits. The intention of the Bureau's reclamation process is to re-establish the site, making the site conditions significantly better than what currently exists.

Potential AML Project Threats to NLEB

- Modification or destruction of potential roosting habitat
- Modification or destruction of potential foraging habitat
- Modification or destruction of potential maternity roosts
- Modification of or destruction of potential hibernacula habitat
- Disturbance of hibernating bats

Potential AML Project Benefits to NLEB

- Increasing insect populations for bat foraging
- Converting barren/toxic ground to productive grasslands
- Improving water quality and thus improving aquatic insect larvae populations. This is accomplished by eliminating sedimentation, and decreasing acid and metal loadings
- Protection of hibernacula habitat
- Installation of “Bat Friendly” designed gates at mine entries
- Creation of foraging habitat
- Construction of stream channels, sediment ponds, and wetlands
- Replacing volunteer growth with grasses and shrubs that provide better wildlife habitat
- Creation of future roosting habitat
- Most sites have the potential to reforest through natural succession on newly reclaimed ground with much better topsoil
- Some sites will reforest more quickly due to the application of the Forestry Reclamation Approach and other reforestation techniques

Recommended 4(d) Rule for Pennsylvania AML Projects

Under authority of section 4(d) of the ESA, the USFWS can create a species-specific rule that provides measures to provide for the conservation of the NLEB. The Bureau requests that the Service create a 4(d) rule for the Pennsylvania AML program should the Service determine the NLEB warrants listing as a threatened species under the Act. This 4(d) rule should identify the role of AML abatement in conserving NLEB populations, and exempt AML construction activities that utilize the avoidance and minimization measures described in this letter.

Summary

The PADEP AML program is essential for remediating public health and safety and environmental hazards caused by pre-law coal mining. Background research and field habitat suitability surveys for IBAT, NLEB and other threatened and endangered species are conducted during project development. Existing avoidance and minimization measures are adhered to during construction. The overall impact to potential foraging and roosting habitat that AML projects have is extremely small when compared to the available potential habitat within a mile of all AML projects and have been since the AML programs inception. Impacts caused by AML projects are not permanent because most have the potential to become forested through natural succession after project completion or through the

March 17, 2015

application of the Forestry Reclamation Approach and other reforestation techniques. The potential benefits to NLEB outweigh the potential impacts resulting from AML projects. Given this, the 4(d) rule should exempt take resulting from AML construction activities from the prohibitions of Section 9 of the Act.

Respectfully,

A handwritten signature in black ink, appearing to read "John J. Stefanko". The signature is written in a cursive style with a large, looping initial "J".

John J. Stefanko
Deputy Secretary

cc: Eric Cavazza, Director – BAMR
Brian Bradley, Chief – Project Development
Gerald Jackson, Civil Engineer Manager – Project Development