



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Asheville Field Office
160 Zillicoa Street Suite B
Asheville, North Carolina 28801



January 26, 2023

Mr. James Melonas
National Forests in North Carolina
160 Zillicoa Street, Suite A
Asheville, North Carolina 28801

Subject: U.S. Forest Service (USFS) revised Land and Resource Management Plan (Revised Forest Plan) for the Pisgah and Nantahala National Forests (Forests)

Dear Mr. Melonas:

On January 20, 2023, we received (via email) your letter which identifies changes to the Revised Forest Plan related to the management of federally threatened and endangered species. The letter also acknowledges the uplisting of northern long-eared bat (*Myotis septentrionalis*) from threatened to endangered, which published on November 30, 2022, and will become effective March 31, 2023.

On December 28, 2022, we, jointly with the USFS, received a letter from the Southern Environmental Law Center proposing a rationale for the necessity of the USFS and the U.S. Fish and Wildlife Service (Service) to re-initiate consultation on the Revised Forest Plan. The following addresses both letters.

The Forests issued a final Environmental Impact Statement (FEIS) and draft Record of Decision (ROD) and initiated the objection filing process on January 21, 2022. Interested and affected parties were provided an opportunity to raise objections to USFS leadership regarding the final Revised Forest Plan, FEIS, and draft ROD and utilize a collaborative process to work toward resolving any outstanding concerns. An independent team of national USFS specialists participated in the objection process, reviewed objections, and then provided instructions to the Forests, including changes needed prior to the finalization of the Revised Forest Plan and ROD. Updates and modifications to the Revised Forest Plan included:

- Reinstatement of Plant and Animal Diversity-Standard-2 (PAD-S-2) related to recovery and persistence of species.
- Modification of Plant and Animal Diversity-Standard-5 (PAD-S-5) to not identify specific user groups related to species management.
- The addition of a Revised Forest Plan management approach to "Collaborate with the climbing and recreational community on peregrine monitoring and seasonal closures."

The USFS has indicated that none of the updates and modifications to the FEIS, ROD, or Revised Forest Plan change their analysis in the January 20, 2022 Biological Assessment (BA). We agree. The BA documented that the Revised Forest Plan is likely to adversely affect northern long-eared bat (NLEB) (*Myotis septentrionalis*). At the time of review, NLEB was listed as threatened with a 4(d) rule and was proposed for uplisting to endangered. The NLEB analysis in the BA and BO used the best available scientific and commercial data, did not consider or rely on the 4(d) rule, and concluded that the Revised

Forest Plan was “likely to adversely affect” but was “not likely to jeopardize the continued existence of” the species. Nothing in the final listing rule changes these determinations.

Implementing regulations for section 7 define “jeopardize the continued existence of” as “to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” The definition of “jeopardize the continued existence of” analyzes the effects of the action on the species and is not altered by the publication of the final rule listing the NLEB as endangered because as noted above the analyses used the available best scientific and commercial data. This data included the most up to date information for NLEB on the Forests and not just the information available at the time the 4(d) rule was enacted in 2016.

Six months have passed since we issued the BO for the Revised Forest Plan, therefore, we have re-reviewed the NLEB Species Status Assessment, and the proposed and final rules listing the NLEB as endangered. We also reviewed the updates and modifications to the FEIS, ROD, and Revised Forest Plan. We have determined that any new information does not alter our prior determinations and the updated and modified USFS documents do not change the analysis of effects or our biological opinion (June 2, 2022) that the proposed action will not jeopardize the continued existence of the NLEB. Neither the BA nor the BO relied on the 2016 NLEB 4(d) rule for their analyses and conclusions and, therefore, these conclusions will not be affected by the elimination of the 4(d) rule upon the effective date of the rulemaking.

As a reminder, the BO does not provide an analysis for effects of specific actions. Rather, the effects analysis is a broad-scale examination of the types of projects and activities conducted under the Revised Forest Plan that could potentially occur in listed species habitat and result in effects on listed species. This broad-scale analysis was then used to determine the potential for the Revised Forest Plan direction to jeopardize the affected populations of listed species.

Additionally, the Forests retain their responsibility under the Endangered Species Act to consult on future projects (conducted under the Revised Forest Plan) that may affect listed species regardless of the project’s consistency with the Proposed Action considered in the BO. Future projects and their potential to adversely affect a listed species, or critical habitat, will be analyzed at the project level and a separate jeopardy/adverse modification determination will be made at that time.

We believe the requirements under section 7 of the Act are fulfilled for federally listed species. However, obligations under section 7 of the Act must be reconsidered if: (1) new information reveals impacts of the identified action may affect listed species or critical habitat in a manner not previously considered, (2) the identified action is subsequently modified in a manner that was not considered in this review, or (3) a new species is listed, or critical habitat is determined that may be affected by the identified action.

The U.S. Fish and Wildlife Service appreciates the opportunity to provide these comments. Please contact Ms. Rebekah Reid of our staff at rebekah_reid@fws.gov, if you have any questions. In any future correspondence concerning this project, please reference Log Number 4-2-22-399.

Sincerely,

Janet Mizzi
Field Supervisor