

Endangered Species Act Section 7(d) Determination
for the Continued Implementation of
Forest Plans and Associated Projects within the Known Range
of Northern Long-eared Bat in the Forest Service Southern Region

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April 23, 2015

The regulations of 50 CFR Part 402.09 pursuant to the Endangered Species Act (ESA), prohibit irreversible and irretrievable commitments of resources that foreclose the formulation or implementation of reasonable and prudent alternatives during the Section 7 consultation process.

Consultation/conferencing on the Continued Implementation of Forest Plans and Associated Projects as it affects the threatened northern long-eared bat (NLEB) is currently in progress and will extend beyond the anticipated effective listing date of May 4, 2015. Until completion of this consultation, our agency must not make irreversible and irretrievable commitments of resources that foreclose the formulation or implementation of reasonable and prudent alternatives.

I have assessed whether the continued implementation of Forest Plans and Associated Projects, as identified in the attached Biological Assessment (BA) dated December 22, 2014, will make such a irreversible and irretrievable commitment of resources. Each forest plan has standards and guides that serve as design criteria for individual projects, to protect and enhance habitat conditions for bats (Appendix C in BA). In addition, on July 31, 2014, I prepared a "no jeopardy" interim conference report for the Continued Implementation of Forest Plans and Associated Projects (attached). Although not required, we sent the determination to Fish and Wildlife Service (FWS) and requested concurrence. On August 27, 2014, FWS responded that concurrence on our "no jeopardy" determination is not required; however, under 50 CFR 402.10(b), the Service may request a conference with a Federal agency if, after a review of available information, it is determined that a conference is required (attached). FWS in essence concurred with our determination when they stated, "Based on our review of your determination and our current understanding of the biology and conservation needs of the NLEB, we have determined that a conference is not required...."

On April 2, 2015, the FWS published the final rule listing NLEB as a threatened species and also published an interim 4(d) rule exempting several activities from the prohibitions of take under the ESA. These activities include Forest management activities (subject to certain time restrictions) including prescribed fire; maintenance and minimal expansion of existing rights-of-way and transmission corridors, also subject to certain restrictions; prairie management; other projects resulting in minimal tree removal; hazard tree removal; removal of bats from and disturbance within human structures; and capture, handling, attachment of radio transmitters, and tracking northern long-eared bats for a 1-year period following the effective date of this interim 4(d) rule. For such take to be excepted, the activity must: Occur more than 0.25 mile (0.4 kilometer) from a known, occupied hibernacula; Avoid cutting or destroying known, occupied roost trees during the pup season (June 1–July 31); and Avoid clearcuts (and similar harvest methods, *e.g.*, seed tree, shelterwood, and coppice) within 0.25 mile (0.4 kilometer) of known, occupied roost trees during the pup season (June 1–July 31). A review of all ongoing even-aged regeneration harvests (clearcut, seedtree, shelterwood, or coppice) indicate there are no such activities occurring within 0.25 miles of known occupied roost trees or known occupied hibernacula.

Reasonable and prudent alternative measures are only developed for projects that are likely to jeopardize the continued existence of a species. Given FWS in the published interim 4(d) rule for NLEB exempted from take prohibitions forest management activities, it is clear FWS does not believe forest management activities will jeopardize the NLEB.

Based on the above documentation and analysis in the "no jeopardy" interim conference report, BA for formal consultation, correspondence from FWS, and interim 4(d) rule for the NLEB, it is my determination that Continued Implementation of Forest Plans and Associated Projects within the Known Range of Northern Long-eared Bat in the Forest Service Southern Region will not result in the irreversible and irretrievable commitment of resources that foreclose the formulation or implementation of reasonable and prudent alternatives during the Section 7 consultation process.

Dennis L. Krusac

A handwritten signature in black ink, appearing to read "Dennis L. Krusac", with a horizontal line extending to the right.

Endangered Species Specialist
4 May 2015