[FR Doc. 2022–25946 Filed 11–29–22; 8:45 a.m.]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R3–ES–2021–0140; FF09E21000 FXES1111090FEDR 234]**

**RIN 1018–BG14**

# Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), reclassify the northern long-eared bat (*Myotis septentrionalis*), a bat species found in all or portions of 37 U.S. States, the District of Columbia, and much of Canada, as an endangered species under the Endangered Species Act of 1973, as amended (Act). Our review of the best available scientific and commercial information indicates that the northern long-eared bat meets the Act's definition of an endangered species. Because we are reclassifying the northern long-eared bat from a threatened to an endangered species, we are amending this species' listing on the List of Endangered and Threatened Wildlife to reflect its endangered species status and removing its species-specific rule issued under section 4(d) of the Act.

**DATES:** This rule is effective January 30, 2023.

**ADDRESSES:** This final rule is available on the internet at *https://www.regulations.gov.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *https://www.regulations.gov* at Docket No. FWS–R3–ES–2021–0140.

**FOR FURTHER INFORMATION CONTACT:** Shauna Marquardt, Field Supervisor, U.S. Fish and Wildlife Service, Minnesota Wisconsin Ecological Services Field Office, 4101 American Boulevard East, Bloomington, MN 55425; telephone 952–252–0092. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*Why we need to publish a rule.* Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. In 2015, we listed the northern long-eared bat as a threatened species under the Act, but we have since determined that the northern long-eared bat meets the Act's definition of an endangered species; therefore, we are reclassifying the species as an endangered species. We published a not-prudent determination for critical habitat for the northern long-eared bat on April 27, 2016 (81 FR 24707). Listing a species as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

*What this document does.* This rule reclassifies the northern long-eared bat (*Myotis septentrionalis*) from a threatened species to an endangered species under the Endangered Species Act (Act). It also removes the northern long-eared bat's species-specific rule issued under section 4(d) of the Act, because such rules apply only to species listed as threatened species under the Act.

*The basis for our action.* Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the foremost stressor impacting the northern long-eared bat is white nose syndrome (WNS; Factor C).

### Previous Federal Actions

Please refer to the proposed rule to reclassify the northern long-eared bat as an endangered species (87 FR 16442; March 23, 2022) for a detailed description of previous Federal actions concerning this species.

### Peer Review

A species status assessment (SSA) team prepared an SSA report for the northern long-eared bat. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the SSA report. As discussed in the proposed rule, we sent the SSA report to five independent peer reviewers and received three responses. The peer reviews can be found at *https://regulations.gov* Docket No. FWS–R3–ES–2021–0140. In preparing the proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which was the foundation for the proposed rule and this final rule.

### Summary of Changes From the Proposed Rule

To comply with the January 4, 2012, Office of Management and Budget (OMB) memo title, *Clarifying Regulatory Requirements: Executive Summaries* and the Department of the Interior's Departmental Handbook on Preparing **Federal Register** Documents, we added an executive summary to this rule.

During the public comment period, we received comments from several public commenters and one State commenter expressing concerns that the Service was not able to identify actions that would not likely result in a violation of section 9 of the Act (16 U.S.C. 1531 *et seq.*). After evaluating all the information we received during the public comment period and other available information, we created a list of actions that are not likely to result in a violation of section 9 of the Act, if these activities are carried out in accordance with existing regulations and permit requirements. The provided list is not comprehensive and does not absolve any individual or organization from legal liability if a northern long-eared bat is taken. Although we have determined take is unlikely, any take resulting from the actions listed below

under Available Conservation Measures will still result in a violation of section 9 of the Act.

We updated the number of States and Canadian provinces with confirmed or suspected presence of *Pseudogymnoascus destructans* (*Pd*) to 43 States and 8 provinces (including States in the range of the northern long-eared bat) in the Summary of Biological Status and Threats section. The presence of *Pd* has expanded further into these areas since the March 23, 2022 proposed rule for the northern long-eared bat published.

**Summary of Comments and Recommendations**

In our March 23, 2022, proposed rule (87 FR 16442), we requested that all interested parties submit written comments on the proposal by May 23, 2022. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. A newspaper notice inviting general public comment was published in the USA Today. We conducted a public informational meeting and a public hearing on April 7, 2022. All substantive information we received during the comment period has either been incorporated directly into this final determination or is addressed below.

*Peer Reviewer Comments*

As discussed in Peer Review above, we received comments from three peer reviewers. We reviewed their comments for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final SSA report. We incorporated peer reviewer comments into the final SSA report as appropriate.

*Public Comments Related to the SSA Report*

*(1) Comment:* One commenter noticed an error in the SSA report's table 4.2. We described the scope of wind energy impacts as ''Pervasive,'' when it should in fact be ''Large.''

*Our Response:* We have corrected this error and will make available an updated version of the SSA report at *https://www.regulations.gov* under Docket No. FWS–R3–ES–2021–0140 when this final rule publishes. The error does not change the overall outcome of the analysis where the current impact from wind is ''Medium.''

*(2) Comment:* Two commenters felt that, in calculating wind energy's impacts, our SSA report appeared to assume that the species composition of northern long-eared bat in ''all-bat'' fatalities from wind remained constant over time even though the report acknowledges this to be biologically unlikely and is contradicted by a robust set of real-world data.

*Our Response:* We explored developing pre- and post-WNS species composition rates (the percent of all wind energy-related bat fatalities that are northern long-eared bat); however, there was no statistically significant difference in northern long-eared bat species composition rates pre- and post-WNS, likely due to a small sample size. Although we are able to detect differences in pre- and post-WNS species composition rates in other bat species (tricolored bat (*Perimyotis subflavus*) and little brown bat (*Myotis lucifugus*), these species have larger data sets. We acknowledge that constant species composition rates for northern long-eared bat may be biologically unlikely; however, the best available science at this time shows constant rates pre- and post-WNS.

One of the commenters provided a different species composition rate for consideration during the public comment period but did not provide the dataset used to calculate the differing rate nor the methods and results used to calculate this alternate rate. It is possible that this different species composition rate would result in the wind impact changing from medium to low in the species status assessment. We will update our SSA report for the northern long-eared bat if we receive substantive new data in the future. However, we are not able to compare our results to the commenter's results because their dataset, methodologies, analytical approach, and inclusion criterion were not available to us. Even if the impact of wind on the northern long-eared bat is low, we would likely list the species as an endangered species because the status is primarily driven by WNS.

*(3) Comment:* A commenter stated that they did not think it was reasonable to assume northern long-eared bats remain a constant percentage of bat fatalities at wind farms rangewide.

*Our Response:* We evaluated wind-related mortality across the range of the northern long-eared bat in the United States and did not detect a difference in fatality rate by region. However, we used different bat fatality rates for the United States and Canada because we had different fatality rates between the two countries. We were able to detect differences in fatality rates by region for the other two species (tricolored bat and little brown bat), which have larger data sets than the northern long-eared bat. The commenter provided alternate values to those used in the SSA but did not provide the underlying data or the technical memo describing the methods or results, so we were unable to verify these alternative values.

*(4) Comment:* One commenter stated that the Service's assumptions and demographic modeling tool results differ drastically from real-world experience. The commenter says the contradictory, real-world results found in the Service's calculation for wind energy impacts to northern long-eared bat in Iowa, as shown in figure 4.7 of the SSA report. The commenter noted that no northern long-eared bat mortality has been documented at wind facilities in Iowa, post-WNS. The commenter stated that this an example of how the Service's results differ dramatically from real-world results.

*Our Response:* In response to this comment, we updated figure 4.7 in the SSA report to more accurately show where the model predicts bat fatality will occur. The previous figure included wind turbine locations beyond the northern long-eared bat's migration range from known hibernacula, while the caption explained that the mortality depicted in the figure included locations that were not incorporated into the model. We have revised the figure to include locations and mortality that were incorporated into the model only. To the commenter's specific point about Iowa, the updated figure continues to depict some mortality at Iowa wind facilities given their proximity to known northern long-eared bat hibernacula in neighboring States. Detection probability associated with post-construction mortality monitoring is typically low and always under 1; thus, the reported number of mortalities are likely an underestimate of the actual number of northern long-eared bats killed by wind turbines. For these reasons, we determined that the fatality rate used in our model is reasonable and supported by the best available science.

*(5) Comment:* Another commenter felt that the Service did not fully explain the methods used to arrive at ''no detectable difference'' conclusion between pre- and post-WNS species composition rates at wind facilities; therefore, our decision was not clear.

*Our Response:* We compared pre- and post-WNS composition rates for three bat species in separate SSAs using the same analytical framework. Only the northern long-eared bat had no detectable difference due to limited data

for the species. We explain more fully our process below.

Northern long-eared bat percent species composition is very small to start (0.2 percent). As such, declines in percent species composition will necessarily be small. As a result, the difference in the total amount of take (killed bats) pre- and post-WNS will be small; however, this does not mean the take will be insignificant. Furthermore, northern long-eared bat data are very limited and thus erratic. For example, northern long-eared bat post-WNS percent species composition varies from 0.2 percent pre-WNS to 0.09 percent during the invasion stage and increases to 0.4 percent in the epidemic stage (where we would expect to see the highest decline in percent species composition to 0 percent in the establishment stage). However, we would expect percent species composition to decline over the invasion, epidemic, and establishment stages. Given the limited pre- and post-WNS data sample sizes and subsequent inconclusive results and the small number of bats killed overall, the most efficient and defensible approach was to consolidate the pre- and post-WNS data (*i.e.,* assume no change in percent species composition) for the northern long-eared bat (rather than further derive pre- and post-WNS values from even smaller sample sizes). Given the above, the data were too limited to calculate a pre- and post-WNS percent species composition value. Instead, we used all data to calculate a single percent species composition value.

*(6) Comment:* A few commenters stated that they believe the Service relied on an insufficient peer review that is contrary to agency policy. The commenters contended that the Service had only the northern long-eared bat SSA report peer reviewed but should have had the other bat SSA reports peer reviewed as well. Some commenters also expressed concern that the analysis presented in the northern long-eared bat report was not publicly available or peer reviewed; therefore, the Service did not rely on the best available data.

*Our Response:* The Service's peer review policy states that we will solicit review of, and comment on, such listing and recovery actions from three or more objective and independent reviewers with expertise relevant to the scientific questions. In general, we will attempt to solicit from the reviewer whether: (1) We have assembled and considered the best available scientific and commercial information relevant to our decision; (2) our analysis of this information is correct and properly applied to our decisions; and (3) our scientific conclusions are reasonable in light of the information.

To the commenter's point, we solicited peer review from five (more than the required three) independent peer reviewers for the northern long-eared bat SSA report as per the requirement of the guidance. We evaluated three bat species concurrently using the same analytical approach; however, we developed individual reports for each species, and each report was peer reviewed by a separate set of peer reviewers.

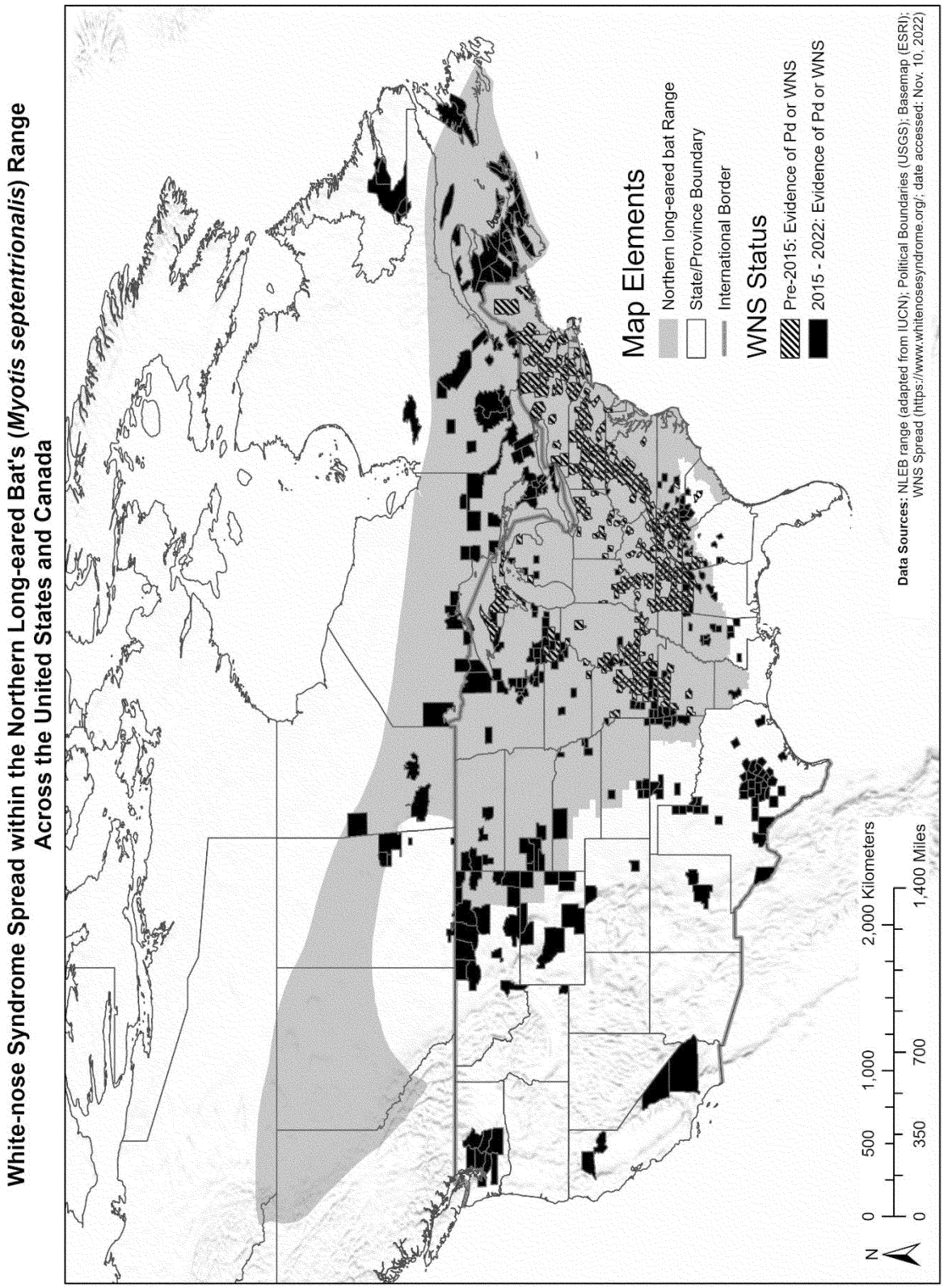
Additionally, the supplementary analytical reports mentioned by the commenter that were not publicly available at the time of peer review have become publicly available since the time that the proposed rule published (87 FR 16442; March 23, 2022). The analyses used in support of the northern long-eared bat SSA report have also been independently peer reviewed since that time (though not required by our peer review policy). The reports were published by the U.S. Geological Survey and followed their Fundamental Science Practices for peer review. This process included receiving peer review from two independent peer reviewers for each chapter of the reports. Accordingly, we have exceeded the requirements of the Service's peer review guidelines and policies.

*Public Comments Related to the Reclassification of the Northern Long-Eared Bat*

*(7) Comment:* Some commenters believe there has been no significant status change since the northern long-eared bat was listed as threatened in 2015 and that maintaining the threatened status is more appropriate.

*Our Response:* The status of the northern long-eared bat has changed since we listed the species as a threatened species under the Act (see 80 FR 17974; April 2, 2015), and it now meets the Act's definition of an endangered species. The primary threat affecting northern long-eared bats continues to be WNS, and the disease has spread significantly since 2015, at which time it was present in approximately 60 percent of the species' range and in 25 of the 37 States in the U.S. range of the species. As WNS spreads, its impact on northern long-eared bats is severe. WNS caused estimated population declines of 97–100 percent across 79 percent of northern long-eared bat's range and WNS is now likely present in every State within the U.S. range of the northern long-eared bat (Cheng et al. 2021, entire; Service 2022, pg. 34; see figure 1, below). WNS is likely to affect bats across 100 percent of the northern long-eared bat's range by the end of the decade. As a result, we are finalizing the listing for the northern long-eared bat as an endangered species.

**BILLING CODE 4333–15–P**




BILLING CODE 4333–15–C

Figure 1. Counties/districts with evidence of WNS or the WNS-causing fungus (*Pd*) as of 2015 (hashed polygons) and 2022 (solid black polygons), respectively, throughout the range of the northern long-eared bat (grey polygon). WNS spread data were obtained from *http://www.whitenosesyndrome.org* (accessed October 27, 2022).

*(8) Comment:* Several commenters encouraged the Service to conduct a more extensive literature review and incorporate more threats to individual bats into the northern long-eared bat SSA report. They provided citations for relevant literature not included in the report.

*Our Response:* We have reviewed the literature provided by commenters and incorporated this information into the SSA report, where appropriate. The purpose of an SSA is to present the best available scientific information regarding a species' status that focuses on the likelihood that the species will sustain populations into the future. The SSA is not designed to conduct an exhaustive literature review on all aspects of the species' life history. As a result, we did not incorporate all information in the SSA regarding individual actions that may result in the harm or loss of a single bat; instead, we focused on science that elucidates what is happening to the species at the population and species level to inform our determination regarding the danger of extinction for the species.

*(9) Comment:* Several commenters stated that hibernacula survey data are too unreliable to determine the species' status because northern long-eared bats are often overlooked in winter surveys due to their cryptic nature, and that instead, the Service should base its listing decision on summer survey data. Further, some commenters stated that this means that the Service was not basing its decision on the best available data.

*Our Response:* Northern long-eared bats are often difficult to observe during winter hibernacula surveys due to their tendency to roost deep in cracks and crevices within hibernacula. Despite the difficulties in observing or counting northern long-eared bats, hibernacula survey counts are regularly relied on since they are consistently available over time. Winter counts are conducted in mid- to late winter when bats are expected to be predominantly inactive and occupying known locations. Surveying known locations regularly allows for accurate observation of trend data over time. Across the eastern half of North America, where many bat species aggregate (including the northern long-eared bat) during hibernation, counts of bats during hibernation provide the best available data for estimating changes in abundance related to the invasion and progression of WNS (Frick et al., 2010, 2015; Turner et al., 2011; Langwig et al., 2012; Thogmartin et al., 2012 as cited in Cheng et al. 2021, pp. 1588–1589) For these reasons, we conclude that hibernacula surveys are considered the best available data for cave-dwelling bats. However, the SSA made use of several forms of ''summer data'' in acoustic call (mobile and stationary) and mist-net data in our analysis (Service 2022, entire). Together, these data represent the best scientific and commercial data available to us.

*(10) Comment:* The North Dakota Game and Fish Department requested that the Service consider a recently finalized report (Gillam 2021, entire) that recommends the range of the northern long-eared bat in North Dakota be modified to only include the badlands habitats of extreme western North Dakota. The final report also states that the most appropriate categorization of this species is rare in western North Dakota and absent in the remainder of the State. The North Dakota Department of Agriculture (NDDA), the North Dakota Public Service Commission (NDPSC) and several North Dakota commenters also echoed these comments. The NDDA and NDPSC indicate that scattered woodlands comprise less than 1.8 percent of the total lands in North Dakota, while the remaining 98.2 percent of the State is non-wooded lands and does not contain any suitable or potentially suitable habitat for the northern long-eared bat.

*Our Response:* We thank the commenters for providing the recently completed Gillam (2021, entire) report. Although the report provides recent bat data, we determined that the limited number of survey sites does not provide sufficient information for us to assess Statewide occupancy for the northern long-eared bat. The methods used in the report are not designed to determine presence/probable absence for individual species, such as northern long-eared bat. It is unclear if the acoustic detectors used in the survey were deployed in areas with potential suitable habitat for northern long-eared bat and if specific habitat requirements for northern long-eared were considered in the selection of individual mist-net sites. Mist-net locations were selected only in the western part of the State, as the author stated that eastern North Dakota is a very difficult area to capture bats due to a lack of known roosts and the predominance of agriculture, which is primarily open and lacks natural flyways in which bats can be effectively captured using mist nets.

However, Haugen et al. (2009, p. 16) considered forests to be more abundant in eastern North Dakota than in the western half of the State, as conditions become less favorable to the west. The report's author states that ''given issues with distinguishing the calls of this species from other *Myotis* species'' in the State, these results ''support the finding that this species is rare to absent'' in North Dakota. However, it is also possible that there were northern long-eared bat calls that were missed by the acoustic identification software, as a high number of high-frequency calls that could possibly have been northern long-eared bats were recorded at several locations. Further, it is unclear if the qualitative analysis was conducted on those calls classified as northern long-eared bat calls or high frequency. To conclusively determine presence/probable absence of the northern long-eared bat, we recommend use of the rangewide Indiana bat and northern long-eared bat survey guidelines (*https://www.fws.gov/library/collections/range-wide-indiana-bat-and-northern-long-eared-bat-survey-guidelines*). Overall, we do not find that this single study provides conclusive evidence of absence of the northern long-eared bat in the eastern portion of North Dakota or Statewide.

We also reviewed the North Dakota Forest Service Forest Action Plan presented by NDDA and NDPSC. Northern long-eared bats predominantly are found in forest habitat (outside of hibernation), but when foraging they have also been observed in other habitat, such as over small forest clearings and water and along roads (van Zyll de Jong 1985, p. 94). In areas where forested habitat is scattered, such as North Dakota, remaining patches of habitat are increasingly important for the species where it is still present. We are currently developing a comprehensive current range map for the northern long-eared bat, which will incorporate the best available information on habitat feature requirements for the species. This map will be subject to revision over time as the quality of our scientific information improves.

*(11) Comment:* The Kansas Department of Wildlife and Parks (KDWP) commented that since the northern long-eared bat's range is known to occur in only a small portion of the State, the KDWP requests that Kansas be exempt from the endangered species status and maintain the species' threatened status with the current 4(d) rule remaining in effect throughout the State.

*Our Response:* The Service has found that the northern long-eared bat meets the Act's definition of an endangered species, rather than a threatened species, throughout all of its range. Therefore, it is not possible for a portion of the species' range to maintain threatened species status with the current 4(d) rule remaining in effect.

*(12) Comment:* Several commenters requested that the Service identify activities for which take is not reasonably certain to occur. Several State commenters (Massachusetts

Division of Fisheries and Wildlife and Iowa Department of Natural Resources) requested guidance on how activities, such as habitat management, habitat restoration, and forest management, can continue in a streamlined manner. These commenters all expressed their desire for regulatory predictability and the need for the Service to provide a list of activities that are likely to result in a violation of Section 9 of the Act and a list of activities that are not likely to result in a violation of section 9 in the Act (which the commenters referred to as ''no-take guidance'').

*Our Response:* We recognize the need expressed from commenters to provide regulatory predictability by identifying those activities for which take is not reasonably certain to occur. Due to the northern long-eared bat's extensive range with a variety of habitat conditions, we are unable to provide a comprehensive list of activities that would not be considered to result in a violation of section 9 of the Act. However, we have added a condensed list of activities that are not likely to result in a violation of section 9 of the Act, if these activities are carried out in accordance with existing regulations and permit requirements (see Available Conservation Measures, below).

Further, we continue to develop tools to allow projects compatible with the species' conservation to move forward. We are developing streamlining tools and guidance to help project proponents identify what types of activities may result in ''take'' under the Act. When available, these resources will be accessible on the Service's northern long-eared bat website (*https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis*). One tool in development intended to streamline consultation is the rangewide northern long-eared bat determination key (DKey). The DKey will address many project scenarios in which adverse effects to the species would be unlikely. The DKey will help streamline section 7 consultations for Federal agencies and their designated non-Federal representatives and will help proponents of non-Federal actions determine whether their action may cause incidental take of the northern long-eared bat.

*(13) Comment:* Many commenters requested the Service pursue programmatic section 7 consultations under the Act and cited as an example the Federal Highway Administration (FHWA), Federal Railroad Administration, and Federal Transit Administration's section 7 rangewide consultation for Indiana bat and northern long-eared bat.

*Our Response:* We are fortunate to have experience in developing streamlined consultations under the Act and compliance processes for this and other listed bat species. The Service will look to build on those example programmatic consultations and to work proactively with other Federal agencies to develop other similar streamlined consultations to ensure efficiency in compliance with the requirements in the Act.

*(14) Comment:* Commenters encouraged the Service to develop regional or industry-wide habitat conservation plans (HCPs) with associated incidental take permits (ITPs) or general conservation plans (GCPs) to avoid potential delays to projects. Commenters also encouraged the Service to accept financial contributions toward research into preventing and reversing the effects of white-nose syndrome as a valid option for compensatory mitigation in HCPs.

*Our Response:* We recommend applying for an ITP when incidental take is reasonably certain to occur. For some non-Federal activities, there may not be reasonable certainty of take for northern long-eared bats. The decision to pursue a permit rests with the applicant based on their environmental risk assessment. The Service continues to develop tools and templates to streamline regulatory processes (see our response to *(12) Comment,* above). The Service has developed a short-term HCP template for wind facility impacts to northern long-eared bats and Indiana bats. State or regional forestry HCPs have been issued or are in development for Missouri, Pennsylvania, Minnesota, Michigan, and Wisconsin. A regional GCP is in development for projects in the Northeast Region. We will continue to work with industry in developing effective mitigation measures for the northern long-eared bat.

The latest information on these tools is available on our northern long-eared bat website: *https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis.*

*(15) Comment:* Commenters expressed concerns over the Service's rangewide Indiana bat and northern long-eared bat survey guidelines and recommended that the Service separate survey guidelines for the Indiana bat and northern long-eared bat. Also, commenters recommended that the Service consider identifying ''block clearance'' zones (area that is free of value to northern long-eared bats) within the species' range.

*Our Response:* The team that developed the rangewide Indiana bat and northern long-eared bat survey guidelines (guidelines) considered the best available information in developing survey recommendations for both the northern long-eared bat and Indiana bat. The Service's white paper (Niver et al. 2014, entire) and 2018 addendum (Niver et al. 2018, entire) outline the methods used to determine the minimum Indiana bat level of effort (LOE). Our 2022 addendum (Armstrong et al. 2022, entire) provides the rationale for the northern long-eared bat minimum LOE for acoustic and mist-net surveys (previously we deferred to LOE used for the Indiana bat). The guidelines take into consideration the differences between the two species' ranges and habitat requirements, and they provide separate recommendations for each species for survey level of effort and survey equipment placement. See *https://www.fws.gov/library/collections/range-wide-indiana-bat-and-northern-long-eared-bat-survey-guidelines* for more information. We may consider identifying ''block clearance'' zones as suggested. We may identify areas where take is unlikely to occur as areas with extensive surveys that demonstrate the absence of northern long-eared bat and in areas with no suitable habitat (see definition in SSA report (Service 2022, Chapter 2) and guidelines); however, the northern long-eared bat is a highly mobile species, which presents challenges to confirming absence from large ''blocks'' of suitable habitat.

*(16) Comment:* One commenter stated that the Service did not rely on the best available data in the SSA by not fully considering the impact of WNS in each portion of the species' range, particularly in the mid- to southern Atlantic Coast where the species may remain viable. Also, this and other commenters state that the SSA did not fully consider the benefit of positive actions, such as habitat management, in the analysis of threats to the species.

*Our Response:* The SSA assessed the current and future impacts to the species from WNS, not only rangewide but separately for each representation unit (*i.e.,* areas of unique adaptive diversity) throughout the range. Five representation units were identified in the SSA: Eastern Hardwoods, Southeast, Midwest, Subarctic, and East Coast. All current and future hibernacula abundances and probability of persistence either have already declined or are projected to decline precipitously throughout all representation units, including the East Coast unit, which includes the mid- to southern Atlantic Coast portion of the species' range.

As for considering all positive actions in the assessment of influences on the species, we considered all relevant

potential influences on the species (positive and negative), and we included in our analysis only those that were ecologically significant at the population level or species level and for which we had adequate qualitative or quantitative information (WNS, wind energy mortality, effects from climate change, habitat loss, and conservation efforts).

*(17) Comment:* Several commenters sought clarification to ensure that specific activities or projects will not constitute harassment or harm or both of potential (summer) roosting northern long-eared bats.

*Our Response:* For information on impacts to northern long-eared bats from specific activities or projects, we recommend contacting your respective field office(s) where the activity or project will occur for further guidance (see *https://www.fws.gov/our-facilities?program=%5B%22Ecological%20Services%22%5D*).

*(18) Comment:* One commenter recommended that the final rule state that any threats or stresses to cave-dwelling bats from the operation of offshore wind energy have not been documented.

*Our Response:* For offshore wind development, assessment of potential impacts to bats is complicated due to a broader lack of data on bat use of offshore environments. North American bats have been observed offshore along the Atlantic coast, mainly within the extent of the continental shelf, although there are also several observations of bats found farther offshore. Most observations are of migratory species (*e.g.,* hoary bat (*Aeorestes cinereus*), eastern red bat (*Lasiurus borealis*), silver-haired bat (*Lasionycteris noctivagans*)), with records of *Myotis* species, tricolored bats, and big brown bats being relatively rare. It is possible that individual northern long-eared bats may be killed by wind turbines offshore. However, at this time, data are lacking to project the potential for substantive impacts of offshore wind development on populations of northern long-eared bats.

*(19) Comment:* One commenter stated they were opposed to listing the bat as an endangered species because of the restrictions that will be placed on farmers and ranchers. They were concerned that the listing would affect a significant amount of land and practices that are otherwise beneficial to animal and plant species. The commenter expressed that listing the northern long-eared bat would create hardship for food producers when they did not cause the issue (*i.e.,* white nose syndrome).

*Our Response:* We appreciate the commenters' concerns. The Act does not allow us to consider these impacts from a listing, when making a determination that a species meets the definition of a threatened or endangered species. When a species is listed as endangered, the species receives protections that are outlined in section 9 of the Act. These protections include a prohibition of take of the listed species. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Ranching and farming activities are not prohibited under section 9 of the Act, unless they result in take of the northern long-eared bat.

We understand there may be concern about the effect of listing the northern long-eared bat as an endangered species under the Act. We encourage any landowners with a listed species present on their property and who think they carry out activities that may negatively impact that listed species to work with the Service. We can help those landowners determine whether a habitat conservation plan (HCP) or safe harbor agreement (SHA) may be appropriate for their needs. These plans or agreements provide for the conservation of the listed species while providing the landowner with a permit for incidental take of the species during the course of otherwise lawful activities.

*(20) Comment:* Several commenters stated that they believed the definition of ''take'' had been amended and the Service should explain that the revised ''take'' definition recognizes that actual death or injury of a protected animal is necessary for a violation of section 9 of the Act. To support their argument, commenters point to the definition of harm in our regulations (see 50 CFR 17.3), which states that ''harm'' means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

*Our Response:* The Act defines ''take'' as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The Act's definition of ''take'' has been supplemented by the Service with regulatory definitions of the terms ''harm'' and ''harass,'' and these terms have been redefined several times. As the commenters stated, ''harm'' means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (see 50 CFR 17.3). ''Harass'' is defined in our regulations (see 50 CFR 17.3) as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Therefore ''take'' is broader than just ''harm'' and includes other actions besides those that result in death or injury of a northern long-eared bat.

*(21) Comment:* Several commenters stated that the Service should state that forest management activities that comply with the existing 4(d) rule are not likely to cause take.

*Our Response:* When this final rule goes into effect (see **DATES**, above), the species-specific rule issued under section 4(d) of the Act (''4(d) rule'') that was associated with the northern long-eared bat's threatened species status will be null and void and will be removed from the Code of Federal Regulations. The 4(d) rule for the northern long-eared bat did not prohibit take that may occur during certain tree removal activities in certain locations, provided the activities complied with the conservation measures in the 4(d) rule. Although the 4(d) rule did not prohibit this take, the Service did not determine that take is not likely to occur during such activities. Many of the actions excepted by the 4(d) rule may actually cause take, so we are unable to do what the commenter requested. For example, it is possible that tree removal activities could result in take if an unknown but occupied roost tree is cut down while northern long-eared bats are present. If any private entity is concerned that they may be engaging in an activity that will result in take of a northern long-eared bat, they should coordinate with their respective Service field office.

*(22) Comment:* Several commenters argued that the proposed reclassification rule did not satisfy the ''best scientific and commercial data available'' and a commenter provided alternative results to parts of our analysis using a different dataset.

*Our Response:* We find that we did comply with this standard. We collected data and information during a multi-month data collection period and throughout the SSA process. The Service considered and incorporated all data relevant to our analysis. The

Service coordinated with Federal agencies, Tribal nations, 47 States, academia, and many nongovernmental organizations during the SSA process. No information that we received was overlooked. The Service used multiple data sets (*e.g.,* hibernacula count, mist-net captures, mobile and stationary acoustic data) in its modeling effort and the report was reviewed by independent peer reviewers and many experts selected from across the range of the species. No one data stream was prioritized or weighted more heavily than another. We also conducted a qualitative analysis of the threats considered in the SSA. All data submitted to the Service (multiple analyses and data streams) provided the scientific bedrock for this decision. Although one commenter provided alternative results to our analysis, the commenter did not provide us the underlying data they used; therefore, we could not fully evaluate their analysis. Therefore, we considered the best scientific and commercial data available when determining that the northern long-eared bat meets the definition of an endangered species.

*(22) Comment:* One commenter was concerned with the effect of the listing on wildlife control officers, private citizens, or both with regard to actions that may be classified as ''take'' when conducting bat removal or exclusion activities in buildings or other artificial structures. Specifically, the commenter mentioned concern about the cost, feasibility, or both of identifying whether bats being considered for exclusion were northern long-eared bats, whether exclusions can occur if northern long-eared bats are present, and whether northern long-eared bats can be submitted for disease testing in accordance with State/local Department of Health guidelines.

*Our Response:* The reclassification of the northern long-eared bat to an endangered species will not prevent citizens from removing bats from dwellings or other structures, but additional coordination with the Service may be needed. The Act's implementing regulations include a take exception for the defense of human life (see 50 CFR 17.21(c)(2)). The regulations require that any person taking, including killing, endangered wildlife in the defense of human life under this exception must report that take as set forth at 50 CFR 17.21(c)(4). It is important to note that Federal regulations do not supersede State or local laws that are more restrictive than those mentioned here. Please consult your local Service field office (*https://www.fws.gov/our-facilities?program=%5B%22Ecological%20Services%22%5D*) or State wildlife conservation agency with any questions or concerns.

When the presence of a bat or bat colony is not imminently endangering human safety, we recommend contacting the local Service field office for assistance. We encourage the bat removal to be conducted safely and humanely by a trained professional, such as a wildlife or pest exclusion company or a State-certified bat rehabilitator. Additionally, we recommend the White-nose Syndrome Response Team's acceptable management practices (AMPs) for nuisance wildlife control operators (available at *https://www.whitenosesyndrome.org/mmedia-education/acceptable-management-practices-for-bat-control-activities-in-structures-a-guide-for-nuisance-wildlife-control-operators*). The AMPs were developed in concert with wildlife control operators, State and Federal agencies, private conservation organizations, and the Centers for Disease Control. The AMPs are recommended for use with all structure-dwelling bat species, regardless of their conservation status. Again, these recommendations do not supersede or replace any existing, valid State or local government laws regarding the handling of bats in homes and artificial structures.

*(23) Comment:* Several commenters pointed out several potential stressors (for example, hibernacula collapse and vandalism, pesticide use, disease (other than WNS), and road related mortalities) to the northern long-eared bat that were not analyzed in the SSA.

*Our Response:* We considered all relevant population- and species-level potential stressors to the species (positive and negative) and only those for which we had substantial qualitative or quantitative information (WNS, wind energy mortality, effects from climate change, and habitat loss) were included our analysis. We did not include every known source of mortality to individuals of the species.

*(24) Comment:* Some commenters requested that the Service delay the effective date of the final rule to allow more time for coordination and preparations for the effect of reclassifying the northern long-eared bat and removing its species-specific 4(d) rule.

*Our Response:* We have set an effective date of 60 days after this rule publishes so that the Service can finalize consultation tools for the northern long-eared bat (*e.g.,* a determination key and an interim consultation framework). A delay in effective date will have little to no effect on the northern long-eared bat because it will still be protected under the previous final listing rule. Additionally, the species will be hibernating throughout most of its range during this time and we anticipate few projects occurring between this final rule publication and the bat's active season in 2023.

*(25) Comment:* One commenter requested that emergency work (*e.g.,* hazard tree removal, storm restoration), that was allowed under the 4(d) rule, should continue to be allowed.

*Our Response:* A 4(d) rule is a tool provided by the Act to allow for flexibility in the Act's implementation and to tailor prohibitions to those that make the most sense for protecting and managing at-risk species. This rule, which may be applied only to species listed as threatened, directs the Service to issue regulations deemed ''necessary and advisable to provide for the conservation of threatened species.'' The Act does not allow application of 4(d) rules for species listed as endangered; thus, the 4(d) rule will be nullified.

However, Section 7 regulations recognize that a Federal action agency's response to an emergency may require expedited consultation and such provisions are provided at 50 CFR 402.05.

We recommend coordinating with your respective Service field office (see *https://www.fws.gov/our-facilities?program=%5B%22Ecological%20Services%22%5D*) as soon as practicable after the emergency is under control.

## I. Final Listing Determination

### Background

A thorough review of the taxonomy, life history, and ecology of the northern long-eared bat is presented in the SSA report (Service 2022, entire).

The northern long-eared bat is a wide-ranging bat species found in 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), the District of Columbia, and 8 Canadian provinces. The species typically

overwinters in caves or mines and spends the remainder of the year in forested habitats. As its name suggests, the northern long-eared bat is distinguished by its long ears, particularly as compared to other bats in its genus, *Myotis.* The bat is medium to dark brown on its back, with dark brown ears and wings, and tawny to pale-brown fur on its ventral side. Its weight ranges from approximately 5 to 8 grams (0.2 to 0.3 ounces). Female northern long-eared bats produce a maximum of one pup per year; therefore, loss of one pup results in missing one year of recruitment for a female.

The individual, population-level, and species-level needs of the northern long-eared bat are summarized below in tables 1 through 3. For additional information, please see the SSA report (Service 2022, chapter 2).

TABLE 1—THE ECOLOGICAL REQUISITES FOR SURVIVAL AND REPRODUCTIVE SUCCESS OF NORTHERN-LONG-EARED BAT INDIVIDUALS

| LIFE STAGE | SEASON | | | |
|---|---|---|---|---|
| | Spring | Summer | Fall | Winter |
| Pups (non-flying juveniles). | | Roosting habitat with suitable conditions for lactating females and for pups to stay warm and protected from predators while adults are foraging. | | |
| Juveniles ..... | | Other maternity colony members (colony dynamics, thermoregulation), and suitable roosting and foraging habitat near abundant food and water resources. | Suitable roosting and foraging habitat near abundant food and water resources. | Habitat with suitable conditions for prolonged bouts of torpor and shortened periods of arousal. |
| All adults ..... | Suitable roosting and foraging habitat near abundant food and water resources, and habitat connectivity and open-air space for safe migration between winter and summer habitats. | Summer roosts and foraging habitat near abundant food and water resources. | Suitable roosting and foraging habitat near abundant food and water resources, cave and/or mine entrances or other similar locations (for example, culvert, tunnel) for conspecifics to swarm and mate, and habitat connectivity and open-air space for safe migration between winter and summer habitats. | Habitat with suitable conditions for prolonged bouts of torpor and shortened periods of arousal. |
| Reproductive females. | | Other maternity colony members (colony dynamics), a network of suitable roosts (i.e., multiple summer roosts in close proximity) near conspecifics, and foraging habitat near abundant food and water resources. | | |

TABLE 2—POPULATION-LEVEL REQUISITES FOR A HEALTHY NORTHERN LONG-EARED BAT POPULATION

| Parameter | Requirements |
|---|---|
| Population growth rate, $\lambda$ ..... | At a minimum, $\lambda$ must be $\geq 1$ for a population to remain stable over time. |
| Population size, N ..... | Sufficiently large N to allow for essential colony dynamics and to be adequately resilient to environmental fluctuations. |
| Winter roosting habitat ..... | Safe and stable winter roosting sites with suitable microclimates. |
| Migration habitat ..... | Safe space to migrate between spring/fall habitat and winter roost sites. |
| Spring and fall roosting, foraging, and commuting (i.e., traveling between habitat types) habitat. | A matrix of habitat of sufficient quality and quantity to support bats as they exit hibernation (lowest body condition) or as they enter hibernation (need to put on body fat). |
| Summer roosting, foraging, and commuting habitat ..... | A matrix of habitat of sufficient quality and quantity to support maternity colonies. |

TABLE 3—SPECIES-LEVEL ECOLOGY: REQUISITES FOR LONG-TERM VIABILITY

[Ability to maintain self-sustaining populations over a biologically meaningful timeframe]

| 3 Rs | Requisites for long-term viability | Description |
|---|---|---|
| Resiliency (populations able to withstand stochastic events). | Healthy populations across a diversity of environmental conditions. | Self-sustaining populations are demographically, genetically, and physiologically robust, and have enough suitable habitat. |
| Redundancy (number and distribution of populations to withstand catastrophic events). | Multiple and sufficient distribution of populations within areas of unique variation (representation units). | Sufficient number and distribution of populations to guard against population losses. |
| Representation (genetic and ecological diversity to maintain adaptive potential). | Maintain adaptive diversity of the species | Populations maintained across a range of behavioral, physiological, ecological, and environmental diversity. |
| | Maintain evolutionary processes | Maintain evolutionary drivers—gene flow, natural selection—to mimic historical patterns. |

**Regulatory and Analytical Framework**

*Regulatory Framework*

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR parts 17 and 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020 and 84 FR 44752; August 27, 2019). At the same time, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (collectively, the 2019 regulations).

As with the proposed rule, we are applying the 2019 regulations for this final rule because the 2019 regulations are the governing law just as they were when we completed the proposed rule. Although there was a period in the interim—between July 5, 2022, and September 21, 2022—when the 2019 regulations became vacated and the pre-2019 regulations therefore governed, the 2019 regulations are now in effect and govern listing and critical habitat decisions (*see Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (N.D. Cal. July 5, 2022) (CBD v. Haaland) (vacating the 2019 regulations and thereby reinstating the pre-2019 regulations)); *In re: Cattlemen's Ass'n,* No. 22–70194 (9th Cir. Sept. 21, 2022) (staying the district court's order vacating the 2019 regulations until the district court resolved a pending motion to amend the order); *Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–5206–JST, Doc. Nos. 197, 198 (N.D. Cal. Nov. 16, 2022) (granting plaintiffs' motion to amend July 5, 2022 order and granting government's motion for remand without vacatur).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make

reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

*Analytical Framework*

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the northern long-eared bat's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found under Docket No. FWS–R3–ES–2021–0140 at *https://www.regulations.gov* and at *https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis.*

**Summary of Biological Status and Threats**

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. For a full description, see the SSA report (Service 2022, entire).

Although there are other stressors affecting the northern long-eared bat, the primary factor influencing its viability is white-nose syndrome (WNS), a disease of bats caused by a fungal pathogen. Some of the other factors that influence the northern long-eared bat's viability (although to a far lesser extent than the influence of WNS) include wind energy mortality, effects from climate change, and habitat loss. These stressors and their effects to the northern long-eared bat are summarized below:

- WNS has been the foremost stressor on the northern long-eared bat for more than a decade. The fungus that causes the disease, *Pd,* invades the skin of bats. Infection leads to increases in the frequency and duration of arousals during hibernation and eventual depletion of fat reserves needed to survive winter and results in mortality. Since its discovery in New York in 2006, *Pd* has been confirmed (or presumed) in 43 States and 8 Canadian provinces. There is no known mitigation or treatment strategy to slow the spread of *Pd* or to treat WNS in bats. WNS has caused estimated northern long-eared bat population declines of 97–100 percent across 79 percent of the species' range.
- Wind energy-related mortality of the northern long-eared bat is a stressor at local and regional levels. In 2020, northern long-eared bats were at risk from wind mortality in approximately 49 percent of their range, based on the areas where wind turbines were in place and operating (using known northern long-eared bat occurrences, average migration distance, and the spatial distribution of wind turbines) (Service 2022, p. iv). Most bat mortality at wind energy projects is caused by direct collisions with moving turbine blades.
- Climate change variables, such as changes in temperature and precipitation, may influence the northern long-eared bat's resource needs, such as suitable roosting habitat for all seasons, foraging habitat, and prey availability. Although a changing climate may provide some benefit to the northern long-eared bat, overall negative impacts are anticipated, especially at local levels.
- Habitat loss (including, but not limited to, forest conversion or hibernacula disturbance or destruction) may include loss of suitable roosting or foraging habitat, resulting in longer flights between suitable roosting and foraging habitats due to habitat fragmentation, fragmentation of maternity colony networks, and direct injury or mortality. Loss or modification of winter roosts (*i.e.,* making hibernaculum no longer suitable) can result in impacts to individuals or at the population level. However, habitat loss alone is not considered to be a key stressor at the species level, and habitat does not appear to be limiting.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and

replaces a standalone cumulative effects analysis.

Current Condition

In evaluating current conditions of the northern long-eared bat, we used the best available data. Winter hibernacula counts provide the most consistent, long-term, reliable trend data and provide the most direct measure of WNS impacts. We also used summer data in evaluating population trends, although the availability and quality of summer data varies temporally and spatially.

Available evidence, including both winter and summer data, indicates northern long-eared bat abundance has and will continue to decline substantially under current demographic and stressor conditions, primarily driven by the effects of WNS. As part of our assessment of the current condition of northern long-eared bat's representation, we identified and delineated the variation across the northern long-eared bat's range into geographical representation units (RPUs) using the following proxies: variation in biological traits, genetic diversity, peripheral populations, habitat niche diversity, and steep environmental gradients.

Winter abundance (from known hibernacula) has declined rangewide (49 percent) and declined across all but one RPU (declines range from no decline to 90 percent). The number of extant winter colonies also declined rangewide (by 81 percent) and across all RPUs (40–88 percent). There has also been a noticeable shift towards smaller colony sizes, with a 96–100 percent decline in the number of large hibernacula (≥100 individuals) across the RPUs (see figure 2, below). Continued declines are anticipated, with projections indicating rangewide abundance declining by 95 percent and the spatial extent declining by 75 percent from historical conditions (under current threat conditions), by 2030 (Service 2022, Chapter 5). Declines continue to be driven by the catastrophic effects of WNS.

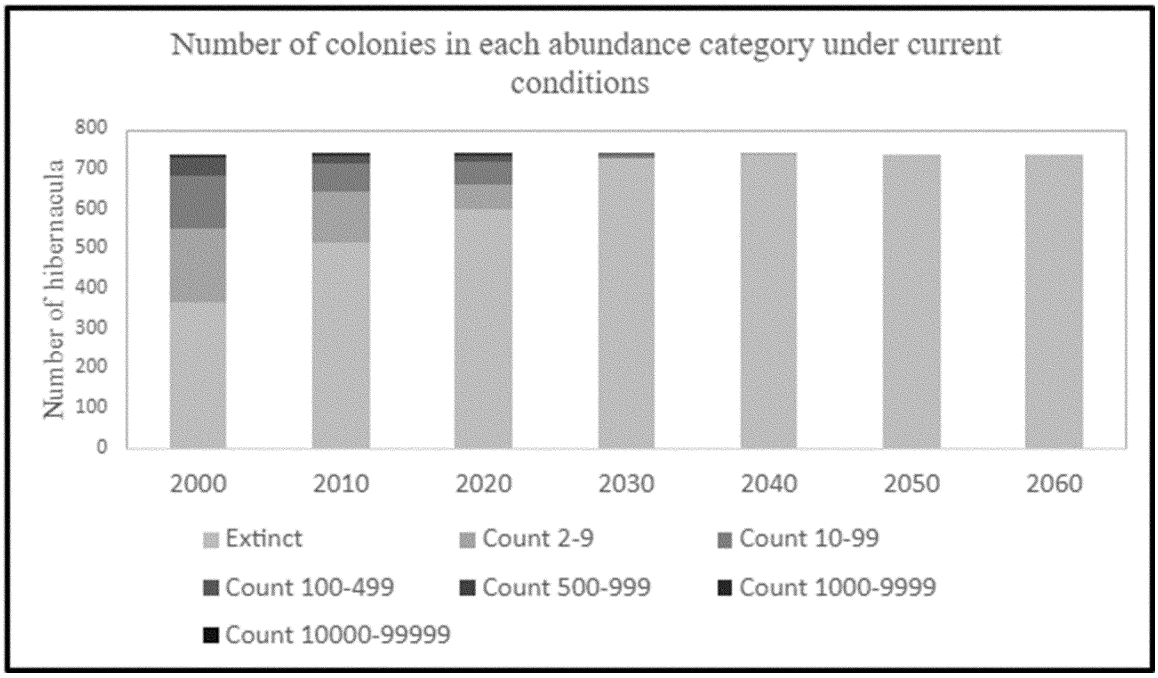



Figure 2. The number of hibernacula in each colony abundance category under current conditions.

Declining trends in abundance and extent of occurrence are also evident across much of the northern long-eared bat's summer range. Rangewide occupancy has declined by 80 percent from 2010–2019. Data collected from mobile acoustic transects found a 79 percent decline in rangewide relative abundance from 2009–2019, and summer mist-net captures declined by 43–77 percent (across RPUs) compared to pre-WNS capture rates.

As discussed above, multiple data types and analyses indicate downward trends in northern long-eared bat population abundance and distribution over the last 14 years, and the best available information indicates that this downward trend will continue. Northern long-eared bat abundance (winter and summer), number of occupied hibernacula, spatial extent, and summer habitat occupancy across the range and within all RPUs are decreasing. Since the occurrence of WNS, northern long-eared bat abundance has steeply declined, leaving populations with small numbers of individuals. At these low population sizes, colonies are vulnerable to extirpation from stochastic events and the deleterious effects of reduced population sizes, such as limiting natural selection processes and decreased genetic diversity. Furthermore, small populations generally cannot rescue one another from such a depressed state because of the northern long-eared bat's low reproduction output (one pup per year) and its high philopatry (tending to return to a particular area). These inherent life-history traits limit the ability of populations to recover from low abundances. Consequently, effects of small population sizes exacerbate the effects of current and future declines due to continued exposure to WNS, mortality from wind turbines, and impacts associated with habitat loss and climate change.

Therefore, the northern long-eared bat's resiliency is greatly compromised in its current condition. Because the northern long-eared bat's abundance and spatial extent have so dramatically declined, it has also become more vulnerable to catastrophic events. In other words, its redundancy has also declined dramatically. The steep and

continued declines in abundance have likely led to reductions in genetic diversity, and thereby reduced the northern long-eared bat's adaptive capacity, and a decline in the species' overall representation. Moreover, at its current low abundance, loss of genetic diversity will likely accelerate. Consequently, limited natural selection processes and decreased genetic diversity will further lessen the species' ability to adapt to novel changes and exacerbate declines due to continued exposure to WNS, mortality from wind turbines, and impacts associated with habitat loss and climate change. Thus, even without further WNS spread and additional wind energy development (northern long-eared bat's current condition), its viability is likely to continue to rapidly decline over the next 10 years.

Future Condition

As part of the SSA, we also developed two future condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the northern long-eared bat. Our scenarios included a plausible highest impact scenario and a plausible lowest impact scenario for each primary threat. Because we determined that the current condition of the northern long-eared bat is consistent with an endangered species (see Determination of Northern Long-eared Bat's Status, below), we are not presenting the results of the future scenarios in this rule. Please refer to the SSA report (Service 2022, entire) for the full analysis of future scenarios.

*Conservation Efforts and Regulatory Mechanisms*

Below is a brief description of conservation measures and regulatory mechanisms currently in place. Please see the SSA report for a more detailed description (Service 2022, appendix 4).

Multiple national and international efforts are underway to try to reduce the impacts of WNS. Despite these efforts, there are no proven measures to reduce the severity of impacts of WNS. More than 100 State and Federal agencies, Tribes, organizations, and institutions are engaged in this collaborative work to combat WNS and conserve affected bats. Partners 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 preparation for or response to WNS.

To reduce bat fatalities, some wind facilities ''feather'' turbine blades (*i.e.,* pitch turbine blades parallel with the prevailing wind direction to slow rotation speeds) at low wind speeds at times when bats are more likely to be present. The wind speed at which the turbine blades begin to generate electricity is known as the ''cut-in speed,'' and this can be set at the manufacturer's recommended speed or at a higher threshold, typically referred to as curtailment. The effectiveness of feathering below various cut-in speeds differs among sites and years (Arnett et al. 2013, entire; Berthinussen et al. 2021, pp. 94–106); nonetheless, most studies have shown all-bat (based on dead bats detected from all bat species) fatality reductions of greater than 50 percent associated with raising cut-in speeds by 1.0–3.0 meters per second (m/s) above the manufacturer's cut-in speed (Arnett et al. 2013, entire; USFWS unpublished data). The effectiveness of curtailment at reducing fatality rates specifically for the northern long-eared bat has not been documented.

All States have active forestry programs with a variety of goals and objectives. Several States have established habitat protection buffers around known Indiana bat hibernacula that will also serve to benefit other bat species by maintaining sufficient quality and quantity of swarming habitat. Some States conduct some of their forest management activities in the winter within known listed bat home ranges as a measure that would protect maternity colonies and non-volant (non-flying) pups during summer months. Depending on the type and timing of activities, forest management can be beneficial to bat species (for example, maintaining or increasing suitable roosting and foraging habitat). Forest management that results in heterogeneous (including forest type, age, and structural characteristics) habitat may benefit tree-roosting bat species such as northern long-eared bat (Silvis et al. 2016, p. 37). Silvicultural practices can meet both male and female northern long-eared bats' roosting requirements by maintaining large-diameter snags in early stages of decay, while allowing for regeneration of forests (Lacki and Schwierjohann 2001, p. 487).

Many State and Federal agencies, conservation organizations, and land trusts have installed bat-friendly gates to protect important hibernation sites. All known hibernacula within national grasslands and forestlands of the Rocky Mountain Region of the U.S. Forest Service (USFS) are closed during the winter hibernation period, primarily due to the threat of WNS, although this will reduce disturbance to bats in general inhabiting these hibernacula (USFS 2013, unpaginated). Because of concern over the importance of bat roosts, including hibernacula, the American Society of Mammologists developed guidelines for protection of roosts, many of which have been adopted by government agencies and special interest groups (Sheffield et al. 1992, p. 707). Also, regulations, such as the Federal Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*), protect caves on Federal lands by limiting access to some caves, thereby reducing disturbance. Finally, many Indiana bat hibernacula have been gated, and some have been permanently protected via acquisition or easement, which provides benefits to other bats that also use the sites, including the northern long-eared bat.

The northern long-eared bat is listed as endangered under Canada's Species at Risk Act (COSEWIC 2013, entire). In addition, the northern long-eared bat receives varying degrees of protection through State laws, which designate the species as endangered in 9 States (Arkansas, Connecticut, Delaware, Indiana, Maine, Massachusetts, Missouri, New Hampshire, and Vermont); as threatened in 10 States (Georgia, Illinois, Louisiana, Maryland, New York, Ohio, Pennsylvania, Tennessee, Virginia, and Wisconsin); and as a species of special concern in 10 States (Alabama, Iowa, Michigan, Minnesota, Mississippi, Oklahoma, South Carolina, South Dakota, West Virginia, and Wyoming).

**Determination of Northern Long-Eared Bat's Status**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

*Status Throughout All of Its Range*

WNS has been the foremost stressor on the northern long-eared bat for more than a decade and continues to be currently. The fungus that causes the disease, *Pd,* invades the skin of bats and leads to infection that increases the frequency and duration of arousals during hibernation that eventually deplete the fat reserves needed to survive winter, resulting in mortality. There is no known mitigation or treatment strategy to slow the spread of *Pd* or to treat WNS in bats. WNS has caused estimated northern long-eared bat population declines of 97–100 percent across 79 percent of the species' range (Factor C). Winter abundance (from known hibernacula) has declined rangewide (49 percent) and declined across all but one RPU (declines range from 0 to 90 percent), and the number of extant winter colonies also declined rangewide (81 percent) and across all RPUs (40–88 percent). There has also been a noticeable shift towards smaller colony sizes, with a 96–100 percent decline in the number of large hibernacula (≥100 individuals). Rangewide summer occupancy has declined by 80 percent from 2010–2019. Summer data collected from mobile acoustic transects found a 79 percent decline in rangewide relative abundance from 2009–2019, and summer mist-net captures declined by 43–77 percent (across RPUs) compared to pre-WNS capture rates. We created projections for the species using its current condition and the current rates of mortality from WNS effects and wind energy. Rangewide abundance is projected to decline by 95 percent and the spatial extent is projected to decline by 75 percent from historical conditions by 2030.

As a result of these steep population declines, the northern long-eared bat's resiliency is greatly compromised in its current condition. Because the northern long-eared bat's abundance and spatial extent substantially declined, its redundancy has decreased such that northern long-eared bats are more vulnerable to catastrophic events. The northern long-eared bat's representation has also been reduced, as the steep and continued declines in abundance have likely led to reductions in genetic diversity, and thereby reduced the northern long-eared bat's adaptive capacity. Further, the projected widespread reduction in the distribution of occupied hibernacula under current conditions will lead to losses in the diversity of environments and climatic conditions occupied, which will impede natural selection and further limit the northern long-eared bat's ability to adapt to changing environmental conditions. Moreover, at its current low abundance, loss of genetic diversity via genetic drift will likely accelerate. Consequently, limiting natural selection process and decreasing genetic diversity will further lessen the northern long-eared bat's ability to adapt to novel changes (currently ongoing as well as future changes) and exacerbate declines due to continued exposure to WNS and other stressors. Thus, even without further *Pd* spread and additional pressure from other stressors, the northern long-eared bat's viability has declined substantially and is expected to continue to rapidly decline over the near term.

Current population trends and status indicate this species is currently in danger of extinction. The species continues to experience the catastrophic effects of WNS and the compounding effect of other stressors from which extinction is now a plausible outcome under the current conditions. Therefore, the species meets the Act's definition of an endangered species rather than that of a threatened species. Thus, after assessing the best available information, we determine that the northern long-eared bat is in danger of extinction throughout all of its range.

*Status Throughout a Significant Portion of Its Range*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the northern long-eared bat is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portions of its range. Because the northern long-eared bat warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020), which vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (Final Policy) (79 FR 37578, July 1, 2014) providing that if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

*Determination of Status*

Our review of the best available scientific and commercial information indicates that the northern long-eared bat meets the definition of an endangered species. Therefore, we are reclassifying the northern long-eared bat as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate

their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis*), or from our Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Funding for recovery actions is available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of 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 will continue to be eligible for Federal funds to implement management actions that promote the protection or recovery of the northern long-eared bat. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Please let us know if you are interested in participating in recovery efforts for the northern long-eared bat. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species. If a Federal action may affect a listed species, the responsible Federal agency must enter into consultation with us.

Federal agency actions within the species' habitat that may require consultation include, but are not limited to, management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Land Management, National Park Service, and other Federal agencies; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that will or will not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Minimal tree removal and vegetation management activities that occur any time of the year outside of suitable forested/wooded habitat and more than 5 miles from known or potential hibernacula. We define suitable forested/wooded habitat as containing potential roosts (*i.e.,* live trees or snags greater or equal to 3 inches in diameter at breast height that have exfoliating bark, cracks, crevices, or cavities), as well as forested linear features such as wooded fencerows, riparian forests, and other wooded corridors. Individual trees may be suitable habitat when they exhibit characteristics of potential roost trees and are within 1,000 feet (305 meters) of other forested/wooded habitat (USFWS 2022, pp.16–17). We broadly define hibernacula as caves (or associated sinkholes, fissures, or other karst features), mines, rocky outcroppings, or tunnels.

(2) Insignificant amounts of suitable forested/wooded habitat removal provided it occurs during the hibernation period and the modification of habitat does not significantly impair an essential behavior pattern such that it is likely to result in the actual killing or injury of northern long-eared bats after hibernation.

(3) Tree removal that occurs at any time of year in highly developed urban areas (*e.g.,* street trees, downtown areas; USFWS 2022, p. 17).

(4) Herbicide application activities that adhere to the product label, occur outside of suitable forested/wooded habitat, and are more than 5 miles from known or potential hibernacula.

(5) Prescribed fire activities that are restricted to the inactive (hibernation) season, provided they are more than 0.5

miles from a known hibernacula and do not result in changes to suitable forested/wooded habitat to the extent that the habitat becomes unsuitable for the northern long-eared bat.

(6) Activities that may disturb northern long-eared bat hibernation locations, provided they are restricted to the active (non-hibernation) season and could not result in permanent changes to suitable or potential hibernacula.

(7) Activities that may result in modification or removal of human structures provided: (a) the structure does not provide roosting habitat for northern long-eared bats, or (b) the results of a structure assessment indicate no signs of bats.

(8) Wind turbine operations at facilities following a Service-approved avoidance strategy (such as curtailment, deterrents, or other technology) documented in a letter specific to the facility from the appropriate Ecological Services field office.

(9) All activities (except wind turbine operation) in areas where a negative presence/probable absence survey result was obtained using the most recent version of the rangewide northern long-eared bat survey guidance and with Service approval of the proposed survey methods and results.

(10) Livestock grazing and routine ranch maintenance.

(11) Residential and commercial building construction, exterior improvements or additions, renovation, and demolition in urban areas.

(12) Mowing of existing (non-suitable forested/woodland habitat) rights-of-way.

(13) Maintenance, repair, and replacement activities conducted completely within existing, maintained utility rights-of-way provided there is no tree removal or tree trimming.

(14) Maintenance and repair activities conducted completely within existing road or rail surface that do not involve tree removal, tree trimming, or blasting or other percussive activities.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Incidental take of the species without authorization pursuant to section 7 or section 10(a)(1)(B) of the Act.

(3) Disturbance or destruction (or otherwise making a hibernaculum no longer suitable) of known hibernacula due to commercial or recreational activities during known periods of hibernation.

(4) Unauthorized destruction or modification of suitable forested habitat (including unauthorized grading, leveling, burning, herbicide spraying, or other destruction or modification of habitat) in ways that kill or injure individuals by significantly impairing the species' essential breeding, foraging, sheltering, commuting, or other essential life functions.

(5) Unauthorized removal or destruction of trees and other natural and manmade structures being used as roosts by the northern long-eared bat that results in take of the species.

(6) Unauthorized release of biological control agents that attack any life stage of this taxon.

(7) Unauthorized removal or exclusion from buildings or artificial structures being used as roost sites by the species, resulting in take of the species.

(8) Unauthorized building and operation of wind energy facilities within areas used by the species, which results in take of the species.

(9) Unauthorized discharge of chemicals, fill, or other materials into sinkholes, which may lead to contamination of known northern long-eared bat hibernacula.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## Required Determinations

### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We solicited information, provided updates, and invited participation in the SSA process in emails sent to Tribes, nationally, in April 2020 and November 2020. We will continue to work with Tribal entities during the recovery planning for the northern long-eared bat.

## References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Minnesota Wisconsin Ecological Services Field Office.

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

## Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

# PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, in paragraph (h) amend the table ''List of Endangered and Threatened Wildlife'' by revising the entry for ''Bat, northern long-eared'' under MAMMALS to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Common name | Scientific name | Where listed | Status | Listing citations and applicable rules |
|---|---|---|---|---|
| MAMMALS | | | | |
| * * | * | * | * | * * |
| Bat, northern long-eared | *Myotis septentrionalis* | Wherever found | E | 80 FR 17974, 4/2/2015; 87 FR [Insert **Federal Register** page where the document begins], 11/30/22. |
| * * | * | * | * | * * |

**§ 17.40 [Amended]**

■ 3. Amend § 17.40 by removing and reserving paragraph (o).

**Stephen Guertin,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2022–25998 Filed 11–29–22; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**[Docket No. 220523–0119; RTID 0648–XC483]**

## Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category December Quota Transfer

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS is transferring a total of 57.5 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from both the Reserve category and the Harpoon category to the General category for the remainder of the 2022 fishing year. With this transfer, the adjusted General category December subquota, Reserve category quota, and Harpoon category quota will be 50.1 mt, 6 mt, and 76.4 mt respectively. This action accounts for the accrued overharvest from previous 2022 General category time period subquotas, and will further opportunities for General category fishermen to participate in the December General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action would affect Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

**DATES:** Effective December 1, 2022, through December 31, 2022.

**FOR FURTHER INFORMATION CONTACT:** Becky Curtis, *becky.curtis@noaa.gov,* 301–427–8503, Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, or Nicholas Velseboer, *nicholas.velseboer@noaa.gov,* 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The baseline General, Reserve, and Harpoon category quotas are 587.9 mt, 29.5 mt, and 48.7 mt respectively. The General category baseline quota is further suballocated to different time periods. Relevant to this action, the baseline subquota for the December time period is 30.6 mt. On December 23, 2021 (86 FR 72857), NMFS transferred 19.5 mt of BFT quota from the December 2022 subquota time period to the January through March 2022 subquota time period, resulting in an adjusted subquota of 9.4 mt for the December 2022 time period. This adjusted subquota was subsequently adjusted to 11.1 mt via a final rulemaking that adjusted the overall quota (87 FR 33049, June 1, 2022).

To date for 2022, NMFS has published several actions that adjusted the Reserve and Harpoon category quotas, including the allowable carryover of underharvest from 2021 to 2022 (87 FR 5737, February 2, 2022; 87 FR 33049, June 1, 2022; 87 FR 43447, July 21, 2022; 87 FR 54910, September 8, 2022; 87 FR 60938, October 7, 2022). The current adjusted Reserve and Harpoon category quotas are 61.2 mt and 78.7 mt, respectively. Per § 635.27(a)(5), the Harpoon category fishery closed for the year on September 5, 2022 (87 FR 54912, September 9, 2022). At that time, 2.3 mt of the Harpoon category quota remained unharvested.

### Quota Transfer Calculations

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the determination criteria provided under § 635.27(a)(8). This section focuses on the various calculations involved in transferring quotas; the consideration of the determination criteria can be found below after this section.

To date, preliminary landings data indicate that the General category landed 836.8 mt through November 30, 2022. This amount exceeds the cumulative adjusted quota available through November 30 (818.3 mt) by 18.5 mt (836.8 mt − 818.3 mt = 18.5 mt).

As stated above, the adjusted Reserve category quota is 61.2 mt. The quota in the Reserve category is held in reserve for inseason or annual adjustments and research. Under § 635.24(a)(7), NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota. Transferring 55.2 mt from the Reserve category would account for the 18.5 mt accrued overharvest from the prior time periods. This transfer would result in 36.7 mt being available for the General category December subquota time period (55.2 mt − 18.5 mt = 36.7 mt). Transferring 55.2 mt out of the Reserve category would leave 6 mt in the Reserve category (61.2 mt − 55.2 mt = 6 mt), which could be used to account