AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

THE NORTHERN LONG-EARED BAT: THE FEDERAL ENDANGERED SPECIES ACT AND IMPACTS OF A LISTING ON PENNSYLVANIA AND 37 OTHER STATES

OVERSIGHT FIELD HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

Monday, September 8, 2014, in Harrisburg, Pennsylvania

Serial No. 113–85

Printed for the use of the Committee on Natural Resources

Available via the World Wide Web: http://www.fdsys.gov
or
Committee address: http://naturalresources.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

89–831 PDF WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON NATURAL RESOURCES

DOC HASTINGS, WA, *Chairman*
PETER A. DEFAZIO, OR, *Ranking Democratic Member*

Don Young, AK
Louie Gohmert, TX
Rob Bishop, UT
Doug Lamborn, CO
Robert J. Wittman, VA
Paul C. Broun, GA
John Fleming, LA
Tom McClintock, CA
Glenn Thompson, PA
Cynthia M. Lummis, WY
Dan Benishek, MI
Jeff Duncan, SC
Scott R. Tipton, CO
Paul A. Gosar, AZ
Raúl R. Labrador, ID
Steve Southerland, II, FL
Bill Flores, TX
Jon Runyan, NJ
Markwayne Mullin, OK
Steve Daines, MT
Kevin Cramer, ND
Doug LaMalfa, CA
Jason T. Smith, MO
Vance M. McAllister, LA
Bradley Byrne, AL

Eni F. H. Faleomavaega, AS
Frank Pallone, Jr., NJ
Grace F. Napolitano, CA
Rush Holt, NJ
Raúl M. Grijalva, AZ
Madeleine Z. Bordallo, GU
Jim Costa, CA
Gregorio Kilili Camacho Sablan, CNMI
Niki Tsongas, MA
Pedro R. Pierluisi, PR
Colleen W. Hanabusa, HI
Tony Cárdenas, CA
Jared Huffman, CA
Raul Ruiz, CA
Carol Shea-Porter, NH
Alan S. Lowenthal, CA
Joe Garcia, FL
Matt Cartwright, PA
Katherine M. Clark, MA
Vacancy

Todd Young, *Chief of Staff*
Lisa Pittman, *Chief Legislative Counsel*
Penny Dodge, *Democratic Staff Director*
David Watkins, *Democratic Chief Counsel*

CONTENTS

	Page
Hearing held on Monday, September 8, 2014	1
Statement of Members:	
Hastings, Hon. Doc, a Representative in Congress from the State of Washington	2
Prepared statement of	3
Perry, Hon. Scott, a Representative in Congress from the State of Pennsylvania	6
Thompson, Hon. Glenn, a Representative in Congress from the State of Pennsylvania	4
Statement of Witnesses:	
Biggica, Russ, Director, Government and Regulatory Affairs, Pennsylvania Rural Electric Association, Harrisburg, Pennsylvania	13
Prepared statement of	14
Brubaker, Jim, Board Member, Pennsylvania Farm Bureau, Union County Farmer, Buffalo Valley Farms, Lewisburg, Pennsylvania	31
Prepared statement of	33
D'Amico, Louis, President and Executive Director, Pennsylvania Independent Oil and Gas Association, Wexford, Pennsylvania	15
Prepared statement of	17
Lyskava, Paul, Executive Director, Pennsylvania Forest Products Association, Harrisburg, Pennsylvania	56
Prepared statement of	58
Matteson, Mollie, Senior Scientist, Center for Biological Diversity, Richmond, Vermont	49
Prepared statement of	50
Melville, Martin, Owner, Melville Forestry Services, Centre Hall, Pennsylvania	54
Prepared statement of	55
Pyle, Honorable Jeff, Representative, District 60, Pennsylvania House of Representatives, Armstrong, Indiana and Butler Counties	9
Prepared statement of	10
Stilley, John, Owner and President, Amerikohl Mining, Inc., Butler, Pennsylvania	36
Prepared statement of	38
Additional Materials Submitted for the Record:	
Juniata Valley Audubon, Stan Kotala, M.D., Conservation Chair, Letter submitted for the record	82
McCarter, Steve, State Representative, Pennsylvania's 154th Legislative District, September 5, 2014, Letter submitted for the record	83

OVERSIGHT FIELD HEARING ON THE NORTHERN LONG-EARED BAT: THE FEDERAL ENDANGERED SPECIES ACT AND IMPACTS OF A LISTING ON PENNSYLVANIA AND 37 OTHER STATES

Monday, September 8, 2014
U.S. House of Representatives
Committee on Natural Resources
Harrisburg, Pennsylvania

The committee met, pursuant to call, at 10:00 a.m., at the Pennsylvania State Capitol Complex, North Office Building, Hearing Room 1, Harrisburg, Pennsylvania, Hon. Doc Hastings [Chairman of the Committee] presiding.

Members present: Representatives Hastings, Thompson, and Perry.

The CHAIRMAN. The House Natural Resources Committee will come to order. The committee meets today to hear testimony on a hearing entitled "The Northern Long-Eared Bat: The Federal Endangered Species Act and Impacts of a Listing on Pennsylvania and 37 Other States."

By way of introduction, I am Congressman Doc Hastings, and I represent that 4th District in Washington State, and also have the privilege to serve as Chairman of the House Natural Resources Committee. I am joined here by two of my colleagues; Mr. Thompson from Pennsylvania, who is a member of the committee, and Mr. Perry, in whose district we are meeting, who is not, so I—without objection, I will ask unanimous consent that Mr. Perry be able to join the hearing, and I know nobody is going to object because I am not and neither is G.T., so I know that.

So since we are in Mr. Perry's district, I am going to yield to him to begin as we normally begin our day in Washington, DC, and I will yield to Mr. Perry.

Mr. PERRY. Well, thanks, Mr. Chairman, and welcome to the 4th Congressional District. Being that this is a congressional hearing that we are about to begin, as we do with every session of the House of Representatives, with the posting of the colors and the Pledge of Allegiance, and keeping with flag code, it is customary to stand and place your hand over your heart every time the flag is in motion, and remain standing for the Pledge of Allegiance.

I now recognize Major Bruce Youngblood, U.S. Marine Corps retired, to lead the Harrisburg High School NJROTC to post the colors.

[Pledge of Allegiance recited.]

Mr. PERRY. As a token of our appreciation, we graciously give and offer this flag flown over the United States Capitol, and I am going to walk down and hand it to the——

The CHAIRMAN. I thank the gentleman for that, and I thank the Color Guard.

We will proceed as we normally proceed on congressional hearings in Washington, DC, and those hearings are all started where Members will make an opening statement, and then after that, we will hear from our witnesses, and then following that will be questions that I know will arise coming from the three of us up here, and—well, I will get into that detail when we get to that part.

I will now recognize myself for my opening statement.

STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

The CHAIRMAN. Today is the final in a series of field hearings the House Natural Resources Committee has held over the past 4 years on The Endangered Species Act, or ESA. The goal of this effort has been to find common ground on the need to improve and update a 40-year-old Federal law so that we can help protect species and people in the 21st century. There are ways to do both, beginning with data transparency and utilizing the expertise of local, state and private efforts in fulfilling the goal of species recoveries.

These hearings have taken us from Fresno, California; Longview, Washington; Billings, Montana; Casper, Wyoming; and Batesville, Arkansas, and now here to the great Commonwealth of Pennsylvania.

Because of the mega settlement that will be alluded to many times, the ESA is now no longer primarily a western issue. It is now affecting the eastern parts of the United States, and that is what this hearing in Pennsylvania is all about. And I am pleased to have two of my colleagues here today in this beautiful state capitol to examine one of the most sweeping ESA listing proposals that has arisen out of the Obama administration's 2011 mega settlement, with the Center for Biological Diversity, and the proposed endangered listed of the Northern Long-Eared Bat, which was in that mega settlement. These regulations, if culminated, could impact a wide swath of the country, and the map shown above you illustrates how broad of an area is affected.

You know, what is kind of disturbing, although 38 states are affected, the Fish and Wildlife Service has not yet held even a single public hearing on its proposal or its nexus to other regulations that would directly impact the millions of acres of local, state and private lands, and that would cause the restriction or shutdown of the activities on those lands.

Now, I mentioned that I am from Washington State, so on a parochial note, I just want to point out that it has been over 20 years since the Federal Government listed the Northern Spotted Owl in the Pacific Northwest. The resulting ESA policies of that decision have now resulted over 20 years, to where more than 80 percent of the timber industry there is off-limits and 9 million acres of forest are off-limits, and as a result of that, if you have read in the paper this year a number of wildfires that have happened in the West, and I attribute much of that because of lack of good management as a result of that listing.

Now, back to the issue at hand. The Center for Biological Adversity, the group that is seeking to list the bat under ESA, ac-

knowledge, and I will quote directly, "little is known about the population trends" of the bat, and that a small amount of population level data, and I quote again, "makes any conclusion provisional at best." Now, this gray area led to a settlement, yet this group is blaming farming, forest management and other manmade activities as a cause for the bat decline. Ironically, the likely primary cause for any documented decline of the bats is not caused by any human-related activity, but rather by a disease transmitted mostly from bats, called the White Nose Syndrome. It seems to me that efforts should focus on that issue, rather than creating a Federal Endangered Species solution in search of a problem. Yet, that is what may happen with the Fish and Wildlife Service arbitrary settlement—with this mega settlement.

Now, the result of that could pave the way for Federal designation as early as next year. This, despite many natural resource state directors who raised concerns that they were shut out of the Federal planning process, and that these Federal bat guidelines are overly restrictive, they are based on insufficient data, and would have a crippling effect on hundreds of thousands of landowners and the forest industries.

So I will conclude by saying this. Everyone—every hearing that we have had with the Natural Resources Committee, nobody, nobody has said a species should go extinct. And we—and I certainly share that, and I think most people share that, but the passion—but the question in this particular case is the best way to help the bat population. Federal edicts that ignore state efforts and data, and impose one-size-fits-all solutions are not the most realistic way to achieve, I think, the objective of saving any species.

[The prepared statement of Mr. Hastings follows:]

PREPARED STATEMENT OF THE HON. DOC HASTINGS, CHAIRMAN, COMMITTEE ON NATURAL RESOURCES

Today is the final in a series of field hearings the House Natural Resources Committee has held over the past 4 years on the Endangered Species Act (ESA). The goal of this effort has been to find common ground on the need to improve and update the 40-year-old Federal law so that we can help protect species and people in the 21st century. There are ways to do both, beginning with data transparency and utilizing the expertise of state, local and private efforts while fulfilling the worthwhile goal of species recovery.

These hearings have taken us from Fresno, California; Longview, Washington; Billings, Montana; Casper, Wyoming; Batesville, Arkansas to the great Commonwealth of Pennsylvania. As we have witnessed, the ESA is no longer just a western issue—it is now affecting the eastern United States and that's what this hearing is about.

I am pleased to join several House colleagues here today in the State Capitol to examine one of the most sweeping ESA listing proposals arising out of the Obama administration's 2011 mega-settlements with the Center for Biological Diversity: the proposed endangered listing of the Northern Long-Eared Bat. These Federal regulations could impact a wide swath of the country.

This map illustrates just how broad of an area is affected. Unfortunately, although 38 states are affected, the Fish and Wildlife Service has not held even a single public hearing on its proposal or its nexus to other regulations that would directly impact millions of acres of private, local, state, and Federal lands and restrict or shut down a host of activities on them. I might add, it has been over 20 years since the Federal Government listed the Northern Spotted Owl in the Pacific Northwest, and the resulting ESA policies of that decision have shut down more than 80 percent of the timber industry there, placed more than 9 million acres of forests off limits, and decimated hundreds of thousands of acres of forests and owl habitat from catastrophic wildfires due to poor management every year.

The Center for Biological Diversity, the group seeking to list the bat under ESA, acknowledges that "little is known about population trends" for the bat, and that the small amount of population-level data "makes any conclusion provisional at best." Yet, they blame farming, forest management and other man-made activities as the cause of bat decline.

Ironically, however, the likely primary cause for any documented decline of the bats is not caused by any human-related activity, but rather from a disease transmitted mostly from bats to other bats called "White Nose Syndrome." It seems to me that efforts should focus on that issue, rather than creating a Federal endangered species solution in search of a problem.

Yet, that is what may happen with the Federal Fish and Wildlife Service's arbitrary settlement with the Center for Biological Diversity, which has paved the way for a Federal designation as soon as early next year. This is despite State Natural Resource Department Directors who raised strong concerns that they were shut out of the Federal planning process, and that these Federal bat guidelines are overly restrictive, based on insufficient data, and would have a "crippling effect" on hundreds of thousands of landowners and the forest industry.

I will conclude by saying that everyone wants to protect bats because they are good for the environment and good for people because of how many insects they can devour. But, the question is over the best way to help the bat population. Federal edicts that ignore state efforts and data and impose one-size-fits-all solutions are not the most cooperative way to achieve this objective. We have expert witnesses here today to help find solutions that will protect bats and Pennsylvania's economy. I look forward to their testimony and thank my colleagues Congressman Thompson and Congressman Perry for hosting this hearing.

The CHAIRMAN. So today we have in front of us expert witnesses to offer solutions that will protect bats and Pennsylvania's economy, and so I look forward to hearing your testimony.

With that, I will recognize the gentleman from the 5th District in Pennsylvania, Mr. Thompson, for his opening statement.

STATEMENT OF THE HON. GLENN THOMPSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. THOMPSON. Well, Mr. Chairman, thank you so much. I want to thank you for holding this important hearing today. Welcome, everyone, to this hearing. Thank you to our witnesses who are here to testify and share your experience, your observations, your thoughts.

Mr. Chairman, I want to thank you also as you finish up in your final term, and we have lots of work to do between now and the end of that, but I also want to thank you for all of your extensive work in the House of Representatives, especially as Chairman of the Natural Resources Committee over these past few years, which I have had an honor to serve under your leadership. You have been a great mentor and a great leader on these issues for the American people.

Under your chairmanship, you have shown real leadership on so many issues, and this is especially true on the topic of the Endangered Species Act with a creation of the ESA Working Group and the numerous bills the committee has reported out.

I just want to remark a little bit about, you know, if this administration—it struck me, we had a unique perspective here, looking out at all of you when we were honoring our Nation's flag and colors and we were unified today; if this administration would bring a team together and, quite frankly, respect everybody's opinion in a way that unites the way this room was united at the start of this hearing, we wouldn't be having this hearing today because

everybody's input would be welcome and would be considered on important issues such as this—the Northern Long-Eared Bats, but it is that, quite frankly, that lack of leadership that has kind of led us to this point.

Let me say that the goals of the Endangered Species Act are noble and worthy. You know, we have a responsibility to protect our environment and promote species conservation, but as we have seen over the past few decades, the ESA is far from perfect, and has generated many unintended consequences. As a result, we are at a point now where the law desperately needs to be improved and modernized. In fact, I think the last time that the ESA was updated was 1984.

VOICE. 1989.

Mr. THOMPSON. 1989. Under the Chairman's leadership, through work at the committee level, and efforts by the Congressional ESA Working Group, we put forward a thoughtful analysis of some of the key areas of the law that need the most urgent attention. Now, these efforts are focused on making the law more transparent, ensuring that listing determinations are based on sound science and proper data, and most importantly, that local communities and stakeholders are provided a voice in the process. Furthermore, we have sought to build consensus around better solutions, which isn't always easy in the current political climate.

Now, as many here know, and as we have seen countless times around the country, listing a species as endangered under the ESA can have significant consequences on private property, land use, resource management and our economy. As frequently required by ESA, limiting or prohibiting land use can impact any number of economic activities in the communities that rely on the land. This includes activities such as agriculture, mining, as well as energy production and distribution. This also includes forestry and all forest management activities, which can be precluded under an ESA listing. Now, forestry is particularly troubling because even management activities to promote forest health can be restricted under ESA. This is interesting because it is also contrary to Pennsylvania Department of Community and Natural Resources findings that forest management activities including removing timber and proscribed burns help create foraging habitat that is beneficial to bats.

While the economic and land management impacts are troubling enough, another major concern I have with this proposed listing is that limiting land use activities fundamentally will not solve the problem in the case of the Northern Long-Eared Bat. The underlying problem with the species is the spread of the White Nose Syndrome, rather than habitat loss due to human activities. And no one can deny population losses due to the White Nose Syndrome, but furthermore, there is a consensus that we must know more about this disease, and to improve partnerships at all levels to improve science-based efforts to slow its spread.

Unfortunately, at the current time, there is no casual connection between the land use being regulated under the proposed designation and harm to the species in question. The best that we have heard repeatedly from a variety of interests, the science and data are inconclusive at this time to warrant an ESA listing. In fact, as

is the service—forest—the Fish and Wildlife Service acknowledges, and I quote, "even if all habitat-related stressors were eliminated or minimalized, the significant effects of White Nose Syndrome on the Northern Long-Eared Bat would still be present."

The Fish and Wildlife Service recently granted a 6-month extension of public comment period, which I appreciate, referencing the substantial disagreement regarding the scientific data used to support determination.

Listing the Northern Long-Eared Bat as endangered, potentially, will have enormous impacts up and down the East Coast because the species is found not just in the Keystone State of Pennsylvania, but, obviously, 38 states. So, therefore, it is imperative that we get the science right, and strategically address the root problem of the apparent population losses, rather than restrict large areas of the economy and activities that would have no bearing on slowing or reversing the White Nose Syndrome.

Again, thank you, Mr. Chairman, for being here today and for hosting this important hearing. I thank you to my good friend and colleague, Mr. Perry, for having this in his congressional district, and to all the panelists, thank you for your time and efforts, and we look forward to hearing your testimonies.

Mr. Chairman, I yield back.

The CHAIRMAN. I thank the gentleman for his statement and now recognize our host today, the gentleman from, as we say in Washington, DC, the gentleman from the 4th District of Pennsylvania, Mr. Perry, for his statement.

STATEMENT OF THE HON. SCOTT PERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. PERRY. Thank you, Chairman, and thank you for selecting the 4th District, beautiful Pennsylvania, to hold this hearing, and I must let you know that I have really grown, in a short period of time, very fond of Chairman Hastings, Doc, as we call him, and let him know how saddened I am to know that he is departing the U.S. Congress, and I have really enjoyed my time with him, and find him to be one of the most professional and well-read and articulate Members of Congress, and I think his leadership in that regard will be dearly missed. I would also like to thank G.T. for coming and participating, and allowing me to participate as well.

As the Chairman mentioned, the House Natural Resources Committee has held several hearings on the Endangered Species Act with the goal of finding common ground with respect to this, what many believe is an outdated Federal policy. We are here today to better understand the Endangered Species Act and the potential consequences to the Commonwealth that a recent Obama administration proposed listing under the ESA of the Northern Long-Eared Bat. The proposed listing affects Pennsylvania as well as 37 other states, and it will directly impact hundreds, if not thousands, of acres in Pennsylvania and business activities on them.

It is my concern that the Federal listing of this scope and magnitude should not be driven by arbitrary court settlement deadlines, or be based upon unpublished or sketchy data or personal opinions by Federal bureaucrats. It is vitally important that these decisions are carefully and openly scrutinized and sound, scientific

data is used. It is also my understanding that the Center for Biological Diversity, the group seeking to list the bat under the ESA, acknowledges that they do not know much about the current population trends, yet they suggest the root cause is farming, coal mining and natural gas exploration. With that said, it has recently come to light that the primary cause in the decline of the bat population is the result of White Nose Syndrome, a disease transmitted through other bats. Because this is a relatively newly discovered disease, it is too soon to tell from the little currently available Federal, state and other scientific research what the extent of the disease's impact has on long eared bats. With only the data from about half of the states where the disease has been found, isn't it a bit premature for the Fish and Wildlife Service to conclude that the bat is endangered in 38 states? Instead of first focusing on mitigating the bat-caused disease, the Service issued guidance which focused on ensuring that every human-related activity that could possibly interfere or disturb hibernating bats is regulated or restricted. For example, the Service's guideline recommends no trees be cleared during certain times of the year within a 5-mile radius of bats; no noise disturbances be allowed within a 1-mile radius; no impacting water resources flow into bat hibernating areas during winter; no proscribed burning; no removal of bats from occupied homes or structures. And I just want to highlight that, if anyone has ever had a bat in their house, no removal of bats from occupied homes or structures. So if you have one flying around your living room, or your bedroom, if you ever woke up that way, and I have, you——

VOICE. So have I.

Mr. PERRY [continuing]. Turn the light back off and roll back over and go to sleep, you and the bat are going to coexist in your house. No use of pesticides or herbicides, and no wind turbine operations that could harm the bats. Additionally, many state entities have not been included in the administration's review process, and I believe that the proposed listing may go too far. Our own Pennsylvania Game Commission recently stated the measure would inhibit many forest management activities, and have major adverse impacts to the state's ability to manage our lands for the diversity of wildlife species under our jurisdiction. That is our own Game Commission, and the diversity of all wildlife species under their jurisdiction. I hope we can simply take a closer look at the Endangered Species Act and ensure that all proposed decisions to list a species be met with scientific data and not a knee jerk reaction. The proposed listing could mean significant changes to Pennsylvania's economy and energy industry and jobs, while most importantly doing little, if absolutely anything, to help the declining population of Long Eared Bats.

I look forward to hearing the expert witnesses, and thank Chairman Hastings and Mr. Thompson for bringing this important issue right to Pennsylvania. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman for his statement. And for those of you that—and I thank both of you for your sentiments on my leaving Congress. I am finishing 10 terms in Congress and not seeking reelection, but I just want to remind my colleagues I am not dead yet, and I have until—I think I have until 11:59 on

January 3 before my term is completely over, so I intend to be active until that time.

I want to welcome the panelists in front of us, and just kind of lay the ground rules. You see this timing light up here. I assume you can read that on the other side, is that correct? Can you read that on the other side? Yes. Well, is that showing on the other side?

VOICE. Yes.

The CHAIRMAN. OK, you can see it? All right, what that simply means is that we have—ask all of you to keep your oral opening remarks within a 5-minute time period. Now, your written remarks are part of the statement, so your full written remarks are there, and if you could summarize or whatever you want to highlight within that, we appreciate that very much. And for those of you in the audience that aren't on the panel, and obviously, those of you in the audience aren't on the panel, there are comment forms at the entrance to this room, and you can comment on that and send that in, or you could go to our Web site which is www.naturalresources.house.gov, under "Contact Us," and make a statement. So we would like to hear from you in that regard.

Now, we do have a distinguished—and by the way, the way that 5-minutes works is, if the green light is on, then that means, boy, you are just doing swimmingly well. And then the yellow light comes on, and that means you are down to a minute. And it is kind of like a traffic light; when the red light comes on, you need to speed up or stop, one or the other. So that is how that whole—all works. Now, obviously, we want you to make sure you complete your statement, but that is kind of the ground rules.

Now, we do have a distinguished panel. Let me introduce all of you and then we will go and introduce each of you for your statement. We have The Honorable Jeff Pyle who represents the 60th District in the House of Representatives, and I understand that is Armstrong, Indiana and Butler Counties. Mr. Russ Biggica. Did I say that correct? I did? Director of Government and Regulatory Affairs with the Pennsylvania Rural Electric Association. Mr. Louis D'Amico, President and Executive Director of the Pennsylvania Independent Oil and Gas Association. Mr. Jim Brubaker, Board Member for the Pennsylvania Farm Bureau, Union County Farmer out of Lewisburg, Pennsylvania. Mr. John Stilley, Owner and President of Amerikohl Mining in Butler, Pennsylvania. Ms. Mollie Matteson, Senior Scientist for the Center for Biological Diversity out of Richmond, Vermont. Mr. Martin Melville, Owner of Melville Forest Services in Centre Hall, Pennsylvania, and Mr. Paul Lyskava, Executive Director of the Pennsylvania Forest Products Association here in Harrisburg.

And with that, let me recognize Representative Pyle, I knew I would get that, I—see how fleeting time is? You just never know. Mr. Pyle, you are recognized for 5 minutes, and once again, your full statement will appear in the record.

STATEMENT OF THE HONORABLE JEFF PYLE, REPRESENTATIVE, DISTRICT 60, PENNSYLVANIA HOUSE OF REPRESENTATIVES, ARMSTRONG, INDIANA AND BUTLER COUNTIES

Mr. PYLE. Thank you very much, Chairman, and don't let that confusion bother you. Us House Reps guys normally don't get invited into Senate hearing rooms, so thanks for that.

I am going to summarize my written remarks and try to be quick and draw directly from them.

My name is Jeff Pyle, I represent the 60th Legislative District of Pennsylvania. As the Chairman pointed out—Armstrong, Butler and Indiana Counties, which is roughly 200 miles west of here. Our county is bisected directly in half by the Allegheny River which is a whole other ESA issue, but not for now.

At hand is an increase in the protections and classifications of the Northern Long-Eared Bat, and as all three of the congressmen present beautifully summarized, they are being slain by White Nose Syndrome in things that can be roughly likened to a Biblical plague. The mortality rates are in the upper nineties. Here is the weird part about it. The White Nose Syndrome is transmitted only by actual physical touch. Well, if you know how bats conserve heat in their hibernacula, in their cage or in their dwellings, they huddle together because there is almost no fat on a bat, and when they do this huddling, this White Nose Syndrome transmits one to another throughout the entire colony of bats in very little time. What I am telling you is they instinctively pass this back and forth between each other and can't stop.

Now, we have looked at White Nose Syndrome in this Commonwealth for a good 10 years. I suppose why I am here is because of our experiences with the Indiana Bat. A few years ago, Ford City and Kittanning, which are both towns in Armstrong County, decided to consolidate high schools, and I kid you not, after 100 years of Ford City being in existence. A family stepped up, donated a whole bunch of land up in the perfect location on a mountaintop separating two towns that have had a blood feud reminiscent of the Hatfield and McCoys for a very—how Dad from Kittanning met Mom from Ford City was just—nobody can figure it out. Anyway, we go up to build this school, and the next thing we know, there are people from U.S. Fish and Wildlife Service and they said, well, you can't build right there, you are in a bat range, and we said, what do we have to do, and they had us hang the gigantic mist nets for hundreds and hundreds of yards in the trees, and they stayed up there, I know my testimony says weeks, but upon further review it was actually months, and they didn't catch any bats. So we are figuring that is great, let's get this school built. This is kind of cool. My eldest daughter will be the last graduating class from Ford City High School, and my youngest will be the first graduating class from the new Armstrong High School. I think this is a great opportunity, but that wasn't meant to be.

Apparently, for us to be able to put up our new school, which is paid for by taxpayer money, this is not coming out of a private company or a big evil corporation, these are taxpayers, for us to be able to get a permit to move ground up on top of that hill they said that is fine, give us $60,000 so we can go buy offset acreage somewhere else so the bats can play and reproduce and frolic and do what bats

do; eat bugs. And as a side note, Mr. Chairman, my cousin, Kenny, used to eat bugs, but that is neither here nor there.

Here is the crux of the matter. Take this the right way, and I mean no disrespect. You have created a government within a government. These people are self-regulating through the use of promulgated rules. You don't even know when they are coming. I will give you an example. A couple of years ago here in Pennsylvania, with our own Game Commission, there was talk of them classifying the Little Brown Bat on this list. Most people know that as the Common House Bat, and as was brought up in the early intros, I have had bats in my houses, and as I told this gentleman, I haven't played tennis for 20 years, but that old Wilson is still in the corner because we have had a lot of bats come through the house. And when your wife is sleeping with your 6-month-old, everything else pales except getting that bat out of the room.

I see the yellow light on so I am going to try to get it very closely wound down here.

Here is the deal, boys. Until you change ESA, they can pretty much do whatever they want to do, and that big green blotch up there represents about one-third of North America, if I am not mistaken. At what point does homo sapien start to matter? They are telling people who have owned family land for over 200 years in Armstrong County that they can't take down their own timber for 5 months a year, that happened to be right over the heart of summer when you can go cut timber. Are you kidding? Sir, at some point—and I love the animals as much as anybody. Some I find cute and cuddly, and some I find delicious, but—and I see the red light on, so thank you very much for your time.

I would love to answer any questions. Thank you, Mr. Chairman.

[The prepared statement of Mr. Pyle follows:]

PREPARED STATEMENT OF THE HON. JEFFREY PYLE, STATE REPRESENTATIVE, PENNSYLVANIA HOUSE OF REPRESENTATIVES, 60TH LEGISLATIVE DISTRICT

Good morning. My name is Jeffrey Pyle. For the last 10 years I have served the good people of the 60th Legislative District (Armstrong, Indiana and Butler Counties) in the Pennsylvania State house. During this tenure, I have served on our Environmental Resource and Energy Committee for a decade and currently chair its subcommittee on mining and as the majority member on the Mining Reclamation Advisory Board. From these roles and others I have become quite familiar with today's topic and hope that my time here is seen by the esteemed panel as informative and helpful.

I'm told the purpose of this hearing is a change in listing for the Northern Long-Eared bat. I suppose I've been called because of my experience with another federally endangered bat, the Indiana bat. Before I can fully explain this, a bit of background is necessary. My home is Armstrong County which lies roughly 200 miles west of Harrisburg, northeast of Pittsburgh. Armstrong County is bisected almost in half lengthwise by one of the rivers that forms the Ohio in Pittsburgh, the Allegheny River. The Allegheny is a global oddity—one of only two gravel bottom rivers in the World due to its role as a main drainage channel for the retreating glaciers during the last Ice Age. The County is blessed by abundant agriculture, ample water supplies, broad blanket forests, tremendous coal, shallow gas, shale gas, various rock aggregates and 70,000 of the most red, white and blue Americans you will ever meet. We are former rust belt that has not recovered but are doing our best with what we've got. A huge part of our citizens' employment is in natural resource recovery of the aforementioned. It is not an exaggeration to say that a few years ago, before the Clean Air Act killed our power plant, we heated the East Coast and never failed to make the lights come on. The county seat and largest town is Kittanning (pop. 4600) and its second largest is Ford City (pop. 3400) just 3 miles away. Two years ago, a new school board voted to close each town's high school and

build a new combined one for both towns' students on a location high upon a mountain separating both towns and gazing over miles of the Allegheny and the first new school for Kittanning since 1955 and Ford City since 1908. A generous donation of hundreds of acres of land by a family dedicated to education would be the site. That's when I learned about the Environmental Protection Agency's federally protected endangered Indiana bat.

When the architects and engineers first entered the site to survey and what not, they were informed the building site was in a zone inhabited by federally protected Indiana bats and that special procedures would be needed at, of course, the school district's expense. This entailed doing a bat study in which finely meshed mist nets would need to be hung over hundreds of yards from the trees to accurately measure the presence on the property of Indiana bats and determine the remediation efforts that would be required. A few weeks after the nets were hung, they were studied and it was found that there were no bats BUT because the building site was located in their presumed feeding range, there would have to be considerations made by the school district to the EPA so that we could build the school. It seemed to matter not that no bats were found; for us to build our school, it would cost us a little over $60,000 so that the EPA could go purchase and set aside land somewhere else for the Indiana bats since our new school building apparently disturbed their ability to frolic and prosper even though they weren't there at the time. No bats, no problem—pony up $60K and you can fire up the dozers. That's how it went down.

All bat populations in the Commonwealth are currently experiencing their own Ebola-like plague called White Nose Syndrome. It is viral in nature and thus defies and escapes our ability to cure it. From what we know of it, it started up in New England and worked its way down the Appalachians to us. It is not harmful to humans but does a real number on bats who, instinctively, huddle very close together to conserve body heat. Therein is the transmission point of the virus. Like Ebola, it is instinctual direct huddling and touch of an infected bat to another and after that, they're going to die in amazingly high percentages. We've seen it here in Pennsylvania and cannot stop it. We've had researchers at our universities look for a cure and they haven't found it yet. White Nose Syndrome will continue to work its way down the mountains until roughly 85 percent of all the bat population on the East Coast is decimated. To sum up, their instincts encourage them to transmit an incurable virus among themselves and they are going to be nearly wiped out and we can do almost nothing about it. That's the straight hard facts.

If the EPA's classification of the Northern Long-Eared bat rises, there will be changes to how you live your lives. As I learned from a former PA Department of Environmental Protection administrator who now holds a prestigious position in Pittsburgh with an environmental lobbying group, it's not whether the bats live there or not (as happened to us), it's about habitat—could the endangered bat in question utilize the area to re-establish itself and come back to a healthy population. It is rhetorical in nature as the White Nose Syndrome will do exactly as has been described but it has not deterred neither the EPA nor the PA Game Commission (who administers our endangered species program and tells everyone it's the DEP) who, nonetheless, have drawn the "supposed" ranges of the bats in large outlines all over a map of the Commonwealth. Within those boundaries, those ranges, anyone wishing to perform seemingly any kind of outdoor activity must submit to the conditions prescribed by our various rule promulgating agencies because of being located in the bat's yard. Great trouble is encountered in that bats, being airborne creatures, move over great distances and create immense outlines where human activity is highly regulated. To compound the great range, the roosting of the various bat species takes place in abandoned homes, trees and just about anywhere that's got a half-inch crack that will let them stay dry. Those are also protected places which puts our ability to tear down urban blighted properties. To limit human activity within a 3 to 10 mile radius of every pine tree (where little Brown bats roost) in Pennsylvania covers just about the whole place and again, it's not whether or not you find the endangered creature there, it's could they live there? If my testimony has angered any of these agencies enough for them to take a closer look at Armstrong County, they will find that our abundant food and water sources, coupled with a rugged hill and valley strata covered by dense forest, would be an ideal habitat for Bigfoot. Using the "we don't have to actually find them, just call it habitat and extort huge fees that jeopardize jobs" approach currently in use, they could do it and the part with which you should concern yourselves with is how you, the House of the people, can't stop them.

EPA is a rule promulgating agency just like the Pennsylvania Game Commission and Fish and Boat Commission. In short, they can make rules that hold the force of law without you even knowing unless you monitor and read the correct bulletins. Executive directors execute these rules at the behest of the appointed EPA adminis-

trator or game commissioners. In Pennsylvania, these game commissioners are chosen by the Governor's nomination and our Senate's confirmation. At no time does that House of Reps have any role in any of the process. Of interest to this discussion is that our game commissioners are non-elective yet hold the power to make rules that hold the force of law. To point, in addition to the Federal EPA's endangered list, the Commonwealth maintains an additional list of threatened or endangered species that they consider endangered. I say "they" because none of the listings are ever subjected to a governmental OR public vote. They can just do it and they do. As a personal note, I see no salient logic as to why the state snake of Arizona (the massasauga rattlesnake) is a protected species in Pennsylvania. Using the same logic, we better get cracking on designating the Timber Wolf and Buffalo because I'm sure both lived here a long, long time ago.

I recently offered legislation that would have required the Commonwealth's handling of species of concern in a more open manner. One of the things my bill would have done was require our Game Commission and Fish and Boat Commissions to open up their confidential database of identified species locations to allow interested developers to learn whether or not the land being considered for development hosted endangered species that would require additional financial investment to establish the dictated remediations. I felt it served the spirit of caveat emptor—the buyer beware—and allow them to do their due diligence of quantitative and qualitative data from a confidential protected database PRIOR to the execution of sale on the property. It struck me as innately fair—one does not buy a car without kicking the tires. The measure was strongly opposed by mainly west coast environmental groups and their Pennsylvanian chapters who emailed with vengeance that this part of the bill made me a genocidal maniac and once created a picture of me in a Batman costume standing in front of scorched Earth (not buff Batman—the Adam West batman). Apparently I struck a nerve as their goal, as a rulemaking agency that holds force of law without accountability to the public in any shape or fashion, was to protect their ability to "ambush" developers with financial demands but these couldn't be made until after the purchase was finalized. Being a genocidal maniac I can't really speak from authority, but that's just how the 10-year observation appears.

Panel, my family has lived in Armstrong County since before it was Armstrong County (1803). We have farmed its fields, dug its coal, made its steel and taught its kids for over 200 years. Whenever our Nation called us to go fight we did and often spilled blood the whole way from Germantown and Antietam to Kuwait. To think that a distant unelected body can dictate to us when we can and cannot cut our standing timber on our own land according to a bat's mating schedule is simply preposterous. It wouldn't be so bad if there was some kind of recourse to protest these rulings made so far away by people who have never been here who really don't give a hoot whether the citizens of Armstrong County have jobs is wholly and comprehensively unacceptable. The ESA encourages us, who have such a dynamic and deep grasp of patriotism, to become lawbreakers in the Nation we've gone to fight for. It has to stop. That folks who don't live here can profess to know what's best for us is ridiculous and exposes to me only one thing: ideological positioning and defense for animals that don't affect the area and people who live around them exposes only their hollow "supremacy" that they cannot justify when questioned. Seriously, do you think Philadelphia would shut down Independence Mall if they found an endangered bat there? I think not.

It defies logic that our care for one animal has become so trivial. We know we cannot cure white nose syndrome yet nonetheless, we advance a ruling on yet another species that means more than homo sapien.

Thank you for your time and attention and I eagerly await your questions should you have any.

The CHAIRMAN. Thank you very much, Representative Pyle. We appreciate your testimony.

Mr. Biggica, you are recognized for 5 minutes.

STATEMENT OF RUSS BIGGICA, DIRECTOR, GOVERNMENT AND REGULATORY AFFAIRS, PENNSYLVANIA RURAL ELECTRIC ASSOCIATION, HARRISBURG, PENNSYLVANIA

Mr. BIGGICA. Thank you, Mr. Chairman, and good morning to you and to the committee members. My name is Russ Biggica and I am the Director of Legislative and Regulatory Affairs at the Pennsylvania Rural Electric Association, and I appreciate the opportunity to address you today.

The National Rural Electric Association has submitted comments to the U.S. Fish and Wildlife Service, which I have submitted to the committee, and we, the Pennsylvania Rural Electric Association, appreciate this opportunity.

Let me first quickly explain our organizational chart. NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives that provide electricity to 42 million people in 47 states. As for us in Pennsylvania and New Jersey, we supply electricity and distribution services to more than 230,000 rural households and businesses, representing more than 600,000 consumers. The 13 rural electric cooperatives in Pennsylvania alone own and maintain 13 percent of the electric distribution lines in the state, covering nearly one-third of the Commonwealth's land area in 42 of 67 counties in Pennsylvania. Cooperatives in Pennsylvania average about 7 consumers per mile, while investor-owned utilities, as an example, average anywhere from 30 to 40 customers per mile.

As a side point, rural electric cooperatives have the lowest electricity rates in both states.

PREA and NRECA understand the Fish and Wildlife's concerns for the Northern Long-Eared Bat presented by the disease, the White Nose Syndrome, as outlined in this proposal. While there may be compelling reasons for listing the bat as threatened and endangered, all rural electric cooperatives affected have concerns regarding the guidelines for its compliance as it relates to the proposed listing. Our concern centers on electric cooperatives' obligations to public safety, maintaining electrical reliability, and legal requirements under the Energy Policy Act of 2005 and NERC's vegetation management standards, which I have outlined in our submitted comments.

To summarize our concerns, the bat's habitat, including suitable roost trees, may occur in or near electric utility rights-of-way posing a risk to power lines. Electric cooperatives identify and remove these danger trees that are growing into power lines, or at risk of falling into a power line, every year, often on an emergency basis. Co-ops remove danger trees throughout the spring, summer and fall months, when access is possible and some of the heaviest demands on our electric system occur. Unfortunately, Committee, this is the same time that the bats occupy them as well.

If the Fish and Wildlife Service lists the Northern Long-Eared Bat as endangered, rural cooperatives have concerns that the prohibitions of the unauthorized take of listed species and habitat will be at odds with electric cooperatives' public and legal obligations to remove danger trees in order to maintain the safety and reliability of power lines. NRECA, our national, believe this listing will affect potentially 650 distribution co-ops and G&Ts within the bat's 39 or

38-state range. The importance instead of this problem requires a national solution for electric cooperatives.

Because of what we see as a potential conflict between requirements to maintain reliable power by removing certain trees or other vegetation that threatens transmission and distribution lines, and the requirement to protect listed species and their habitat, rural electric cooperatives are committed to working with the Fish and Wildlife Service and other immediate stakeholders to develop such a result.

In closing, I wish to thank the committee for allowing PREA to comment and offer dialogs toward a solution. The Pennsylvania and New Jersey cooperatives and its members believe that rural electric cooperatives must do their part in protecting the environment, while at the same time ensuring for safe and reliable electric service to the rural communities they serve. We believe this commitment may continue by actively working with the Fish and Wildlife Service to develop and ensure that an effective commonsense approach is taken for the overall protection of the Northern Long-Eared Bat, at the same time, allowing cooperatives the opportunity to protect and serve their consumers.

Thank you, Mr. Chairman.

[The National Rural Electric Cooperative Association comments submitted for the record by Mr. Biggica follow:]

LETTER SUBMITTED FOR THE RECORD BY MR. BIGGICA

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION,
ARLINGTON, VA 22203,
AUGUST 29, 2014.

Public Comments Processing
ATTN: FWS–R5–ES–2011–0024
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 Fairfax Drive, MS 2042–PDM
Arlington, VA 22203

Submitted Electronically via eRulemaking Portal to FWS–R5–ES–2011–0024

SUBJECT: Comments on Listing the Northern Long-Eared Bat as an Endangered Species; Proposed Rule, 78 Fed. Reg. 36698 (June 30, 2014), Docket No. FWS–R5–ES–2011–0024

The National Rural Electric Cooperative Association (NRECA) respectfully submits the following comments in response to the above-referenced notice and request for comment from the U.S. Fish and Wildlife Service (FWS). We appreciate the opportunity to submit comments on the proposed rule to list the Northern Long-Eared Bat (NLEB) as an endangered species under the Endangered Species Act of 1973, as amended (ESA).

NRECA is the national service organization dedicated to representing the national interests of cooperative electric utilities and the consumers they serve. NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to over 42 million people in 47 states or 12 percent of electric customers. The vast majority of NRECA members are not-for profit, consumer-owned cooperatives. NRECA's members also include approximately 65 generation and transmission cooperatives, which generate and transmit power to 668 of the 838 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. Remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. The typical distribution co-op is a small business that serves 13,000 consumers. Electric cooperatives own and maintain 2.5 million miles or 42 percent of the nation's electric distribution lines, covering 75 percent of the U.S. landmass. Both distribution and G&T coopera-

tives were formed to provide reliable electric service to their owner-members at the lowest reasonable cost.

NRECA understands the FWS's concerns for the NLEB presented by the disease white-nose syndrome as outlined in the proposed listing. While we agree that there are compelling reasons for listing the NLEB as threatened or endangered, NRECA has concerns regarding the guidelines for compliance with the "Northern Long-eared Bat Interim Conference and Planning Guidance," and with the proposed listing of the species as endangered. Our concern centers on the electric cooperatives obligations to public safety, maintaining electric reliability, and legal requirements under the Energy Policy Act of 2005 and the North American Electric Reliability Corporation Transmission Vegetation Management standards (FAC–003–3).[1]

NLEB habitat, including suitable roost trees, may occur in or near electric utility rights-of-way posing a risk to power lines. Electric cooperatives identify and remove these *danger trees*—any trees that are growing into a power line or at risk of falling into a power line—every year, often on an emergency basis. Co-ops remove danger trees throughout the summer months when access is possible and the heaviest demands on the electrical system occur, unfortunately at the same time as NLEB potentially occupy them. Many of the trees are dead or dying, and must be quickly removed to maintain safe and reliable electrical power. When conditions are dry, trees near power lines also can cause serious fires.

If the FWS lists the NLEB as endangered, NRECA has concerns that the ESA section 9 prohibition of the unauthorized "take" of listed species will be at odds with electric cooperatives' public and legal obligations to remove danger trees in order to maintain the safety and reliability of power lines, both transmission and distribution. Illegal take can give rise to criminal enforcement, civil administrative penalties and civil judicial action for injunctive relief.

A final listing of the NLEB appears to immediately trigger this double jeopardy issue with one regulatory agency requiring a utility to trim or remove vegetation (NERC) and another regulatory agency preventing a utility from doing so (FWS). NRECA believes this listing will affect potentially 650 distribution co-ops and G&Ts within the NLEB's 39-state range. The importance and extent of this problem requires a national solution for electric cooperatives.

Because of what we see as a potential conflict between two legal requirements—the requirement to maintain reliable power by removing certain trees or other vegetation that threaten transmission and distribution lines and the requirement to protect listed species and their habitat—NRECA recommends that FWS work with electric cooperatives to identify a means by which cooperatives will be able to meet both of these legal obligations simultaneously. NRECA is committed to working with the FWS and other immediate stakeholders to develop such a result.

Sincerely,

CAROL E. WHITMAN, PH.D.,
Senior Legislative Principal,
Environmental Issues.

The CHAIRMAN. Thank you very much, Mr. Biggica. I appreciate your testimony.

Mr. D'Amico, you are now recognized for 5 minutes.

STATEMENT OF LOUIS D'AMICO, PRESIDENT AND EXECUTIVE DIRECTOR, PENNSYLVANIA INDEPENDENT OIL AND GAS ASSOCIATION, WEXFORD, PENNSYLVANIA

Mr. D'AMICO. Thank you. Good morning and thank you, Chairman Hastings, Congressman Thompson and Congressman Perry.

My name is Lou D'Amico and I am President and Executive Director of the Pennsylvania Independent Oil and Gas Association, otherwise known as PIOGA. I appreciate the opportunity to be here today, and want to provide this brief statement concerning my written testimony——

[1] http://www.nerc.com/files/FAC-003-3.pdf

The CHAIRMAN. Mr. D'Amico, did you press the—turn the microphone on there?

Mr. D'AMICO. Yes.

The CHAIRMAN. It is on?

Mr. D'AMICO. Yes.

The CHAIRMAN. OK, you have to get a little bit closer.

Mr. D'AMICO. Is that better?

The CHAIRMAN. That is much better, thank you.

Mr. D'AMICO. All right. I will be the first to admit that our industry faces legitimate development issues, but the U.S. Fish and Wildlife Service's listing of the Northern Long-Eared Bat is not one of them.

I use the term fiasco intentionally because I am amazed that the Service continues down the path to endangered listing for this bat, in spite of its own conclusions that objectively point the other way. If I were a part of the Service's effort on this, I would be embarrassed that this matter has proceeded this far and that this hearing is even required.

Detailed in my written testimony, the Service admits that the White Nose Syndrome, which is a fungal disease discovered in New York in 2006, with currently no known cure, alone has led to dramatic and rapid population level effects on the NLEB. The Service also admits that oil and gas exploration and development activities do not have population-level effects on the bat, even when combined with the effects of all other land development activities throughout the Northern Long-Eared Bat's range. The Service also admits that the White Nose Syndrome Disease has spread to only a portion of the range of the Northern Long-Eared Bat. Significant impacts to the species from the disease have been reported only in a fraction of that portion of the range, and the Northern Long-Eared Bat continues to be prevalent in a majority of its broad 38-state range, regardless of the impacts of White Nose Syndrome, and of course, any impacts from land development activities including oil and gas development. Numerous state government commentators have already explained in their comments that White Nose Syndrome has little or no effect on the bat in many areas where it has been detected, and my written testimony explains why the NLEB's population outside of the limited areas where White Nose Syndrome reportedly has affected the species is more than sufficient to be resilient to White Nose Syndrome.

Finally, the Service's principle tool to aid the recovery of listed species is habitat protection. So, typically, the Service designates critical habitat when listing a species, but the Service has not designated critical habitat as part of this listing. The Service could hardly do otherwise in view of its admission that even if all habitat-related stressors were limited—eliminated or minimalized, the significant effects of White Nose Syndrome on the Northern Long-Eared Bat would still be present.

In closing, PIOGA urges the committee to do everything in its power and within the power of its individual members to correct the wrong course the Service is on, and require the Service to identify methods for the management of White Nose Syndrome and protection of the Northern Long-Eared Bat from its effects, other than listing the NLEB as endangered or even threatened.

Thank you for allowing me to speak today.

[The prepared statement of Mr. D'Amico follows:]

PREPARED STATEMENT OF LOU D'AMICO, PRESIDENT & EXECUTIVE DIRECTOR, PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION

My name is Lou D'Amico and I am the President and Executive Director of the Pennsylvania Independent Oil & Gas Association ("PIOGA"). I am grateful for the invitation to testify today before the committee regarding the proposed listing of the northern long-eared bat (NLEB) as endangered under the Endangered Species Act (ESA) by the U.S. Fish and Wildlife Service (FWS).

PIOGA is a non-profit trade association, with nearly 1,000 members, representing Pennsylvania independent oil and natural gas producers, marketers, service companies and related businesses, landowners and royalty owners. PIOGA members are subject to Federal and state laws for the protection of listed bat and other protected species. The association and our members have a direct interest in FWS's proposal to list the NLEB as an endangered species, given the oil and gas development and production operations that PIOGA's members are undertaking within the potential range of the NLEB in Pennsylvania. These operations, including clearing trees and building roads, are constrained and directed by environmental laws regarding permits and species protection, as well as by property and contract law.

The economic benefits from the oil and gas industry have been described as economically "transformative" for not only Pennsylvania communities, but for those across the country who are the beneficiaries of abundant and stable natural gas supplies. It is estimated that the oil and gas industry operating in the Marcellus Shale region employs 232,000 people with an average salary of $83,000 per year. Between 2010 and 2012, approximately $31.5 billion dollars were invested in the region as a result of industry activity, with $1.8 billion in state tax revenue generated since 2006.

In addition, the energy generated in the Marcellus Shale region is playing a pivotal role in what has been described as a manufacturing renaissance. A recent study from IHS Global Insight entitled, "America's New Energy Future: The Unconventional Oil and Gas Revolution and the Economy—Volume 3: A Manufacturing Renaissance," notes the revolutionary economic benefits that have accrued to households, communities, and manufacturers across the country as a result of this stable and plentiful supply of energy. The most recent update to the study includes the following significant national economic impacts of this development:

- Unconventional oil and gas will steadily increase U.S. competitiveness, contributing $180 billion to the U.S. trade balance by 2022.
- Increased disposable household income by $1,200 in 2012, rising to $3,500 in 2025;
- Generated $74 billion in government revenues in 2012, rising to $138 billion in 2025;
- Attracted U.S. capital investments totaling $121 billion in 2012, rising to $240 billion by 2025;
- Contributed $284 billion to the U.S. GDP in 2012, rising to $533 billion by 2025; and Supported $150 billion in earnings for U.S. workers in 2012, rising to $269 billion by 2025.

PIOGA believes this background of Marcellus Shale development and its driving role in creating tremendously significant economic benefits both regionally and nationally are an important context as the committee considers the potential impacts of a listing decision regarding the NLEB.

I. The proposed listing of the NLEB is not based on the best available scientific and commercial data.

PIOGA, together with the Pennsylvania Chamber of Commerce, commented on FWS's proposed listing of the NLEB. A copy of those comments is provided for the record as Attachment No. 1 to this testimony. In those comments, we expressed our deep concern that the proposal was not based on the best available scientific and commercial data, as the ESA requires. As we noted, the proposal is based on numerous unpublished studies and sources of data that have not been peer reviewed. We urge the committee to use its influence to ensure that this substantial deficiency in the proposal is corrected. The ESA's requirement that FWS base its listing decisions on the best available scientific and commercial data available is the most important check on FWS's authority and FWS should not be allowed to ignore it.

II. Section 7(a)(4) conferencing reviews and conferences should not be required.

In the meantime, even though the proposal is not based on the best available data and even though it has not been finalized, this committee should be aware that the proposal is already significantly adversely impacting the operations of our member companies. This is because FWS has instructed its field offices and other Federal action agencies to conduct—pending the finalization of its proposed listing—costly and time consuming ESA Section 7(a)(4) conferencing reviews for all activities proposed to take place within the NLEB's 39 state range (including D.C.) to determine if the proposed activity likely will jeopardize the continued existence of the NLEB, and to initiate a conference *even if the activity is not likely to jeopardize the NLEB*. This conferencing requirement—which requires coordination between at least two Federal agencies, evaluation of environmental studies and data, and legal and scientific analysis—has already needlessly and unlawfully imposed substantial expense and delays on oil and gas operators.

This conferencing requirement is also clearly contrary to FWS's regulations and guidance. FWS regulations define "jeopardize the continued existence of" to mean "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." 50 C.F.R. § 402.02. Moreover, FWS's Endangered Species Consultation Handbook (pp. 4–36) provides that jeopardy determinations must be based on the effects of the proposed action *to the entire population of a species range-wide:* "Adverse effects on individuals of a species . . . generally do not result in jeopardy determinations unless that loss, when added to the environmental baseline, is likely to result in significant adverse effects throughout the species' range." As explained below, FWS has already reached conclusions that preclude a "jeopardy determination."

In February of this year, PIOGA joined with eight other organizations in filing an emergency petition with FWS for an exemption for the oil and gas industry from the conferencing requirement. A copy of that petition, which requested action within 30 days and to which FWS has not responded, is provided for the record as Attachment No. 2 to this testimony.

In the petition, PIOGA and the other organizations made the following points:

1. Section 7(a)(4) requires conferences between a project proponent and FWS only if it is determined that the *proposed activity*—not just any cause, such as a disease—is likely to jeopardize the continued existence of a species proposed for listing, pending the finalization of the listing.
2. In the course of developing its listing proposal for the NLEB, FWS has already concluded that oil and gas exploration and development activities do not have population-level effects on the NLEB, even when combined with the effects of all other land development activities throughout the NLEB's range. As FWS explained in its proposed listing, it is the white-nose syndrome "alone [that] has led to dramatic and rapid population level effects on the" NLEB. 78 Fed. Reg. 61072. *Accordingly, it is beyond dispute* that the white-nose syndrome and not the effects of oil and gas activities is responsible for the decline of the NLEB.
3. In light of this conclusion, neither the FWS nor the other Federal action agencies can reasonably or lawfully determine that any proposed oil and gas activity will likely jeopardize the NLEB.
4. Therefore, the proponents of oil and gas activity should not be subjected to the section 7(a)(4) conferencing requirements before they can proceed with their projects.

Accordingly, PIOGA urges the committee to use its influence to get FWS to immediately issue a programmatic finding of "no jeopardy" for all oil and gas exploration and development activities to be undertaken within the NLEB's range before a final listing decision is made for the species. This action is necessary to put an end to the substantial costs that FWS is needlessly and unlawfully imposing on oil and gas operators and, ultimately, on the consumers of their products. Alternatively, FWS should grant the previously requested exemption, which would produce the same result.

The FWS's recently finalized (July 1, 2014) "rule" or "policy" interpreting the phrase "significant portion of its range" does not support listing the NLEB or requiring the Section 7(a)(4) conferencing reviews, even if the policy were applied here, which it shouldn't. The lone population level risk to the NLEB—WNS—is confined to only a portion of the species' range, and the species has reportedly incurred sig-

nificant effects from WNS *in only a fraction of that area*. Moreover, as numerous state government commentators have explained, WNS has had little or no effect on the NLE bat in many areas where it has been detected. Accordingly, the best available science demonstrates that the NLEB's population *outside of the limited areas where WNS reportedly has affected the species* is more than sufficient to be resilient to WNS or any other potential impact. For example, the administrative record makes clear that (i) the species' viability does not depend on the productivity of the population in any portion of the NLEB's range and (ii) the population in the remainder of its range can maintain a sufficient growth rate to persist on its own.

Nor does the segment of the NLEB population that has been affected by WNS contain important elements of genetic diversity without which the remaining population may not be genetically diverse enough to adapt to changing environmental conditions. If anything, the fact that NLEBs outside of the Northeast have *not* experienced significant impacts from WNS in areas where the disease is present suggests that the opposite is true. Put simply, there is no basis for the FWS to invoke its new "significant portion of its range" policy to support listing the NLEB or requiring Section 7(a)(4) conference reviews.

III. The ESA is ill-suited to deal with the threat to the NLEB's existence caused by the white-nose syndrome.

The principal tool provided to FWS to aid in the recovery of listed species is habitat protection. Typically, FWS will designate critical habitat for a species and all Federal activities in that habitat will then have to insure that they do not destroy or adversely modify that habitat. That conventional approach does not fit the challenge posed by white-nose syndrome to the NLEB.

Our members are concerned that if habitat protection is made the focus of a recovery plan for the NLEB, it will needlessly restrict their activities without benefiting the NLEB. As FWS has stated, the NLEB "is in danger of extinction, predominantly due to the threat of white nose syndrome" (emphasis added). 78 Fed. Reg. 61046. As FWS acknowledges, "[e]ven if all habitat-related stressors were eliminated or minimized, the significant effects of WNS on the northern long-eared bat would still be present." 78 Fed. Reg. at 61061. The key factor at issue is disease, not oil and gas operations or other activities. A listing that leads to a recovery plan which concentrates on the designation and protection of critical habitat as it relates to oil and gas development and other activities is contrary to the express purpose of [the] ESA, which is to conserve species.

We therefore urge the committee to require FWS to work with the wide range of public and private organizations that are concerned about the NLEB to identify methods other than the listing the NLEB or the designation of critical habitat for the management of white-nose syndrome and protection of the NLEB from its effects.

Summary

PIOGA and our member companies believe the proposed listing is unsupported by the facts and law and is not justified by the best available scientific and commercial data. We also believe that FWS must utilize its 6-month extension to subject the data to rigorous and transparent review by those in the scientific community, which will confirm the lack of scientific and legal justification for listing the NLEB.

Accordingly, we also urge the committee to require FWS to determine that Section 7(a)(4) conferencing reviews are unnecessary for oil and gas activities in light of the fact—documented by FWS no less—that oil and gas development activities will not place the NLEB in jeopardy anywhere, much less throughout its range.

Finally, PIOGA suggests that if any final rule resulting in the listing of the species is adopted, it may not lawfully restrict activities, such as oil and gas development, that have no casual connection to WNS or otherwise threaten or endanger the NLEB.

Attachments

ATTACHMENT 1

December 23, 2013

Via U.S. Mail and Docket Submittal at www.regulations.gov

Public Comments Processing
Attn: FWS–R5–ES–2011–024
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, MS 2042–PDM
Arlington, VA 22203

Re: Endangered and Threatened Wildlife and Plants; 12-Month Finding on Petition To List the Northern Long-Eared Bat and the Eastern Small-Footed Bat as Endangered or Threatened Species; Listing the Northern Long-Eared Bat as an Endangered Species—[Docket No. FWS–R5–ES–2011–0024]

The Pennsylvania Independent Oil & Gas Association (PIOGA) and the Pennsylvania Chamber of Business and Industry (PA Chamber) respectfully submit the following comments regarding the U.S. Fish and Wildlife Service's Status Review and request for comments on its 12-Month Finding on a Petition to List the Northern Long-Eared Bat as an Endangered Species but not to list the Eastern Small-Footed Bat as a Threatened or Endangered Species (the "Status Review"), as published in the October 2, 2013 Federal Register (78 Fed. Reg. 61046).

PIOGA is a nonprofit trade association, with nearly 1000 members, representing Pennsylvania independent oil and natural gas producers, marketers, service companies and related businesses, landowners and royalty owners. PIOGA members are subject to federal and state laws for the protection of listed bat and other protected species. The association and our members have a direct interest in the Service's proposal to list the northern long-eared bat as an endangered species, given the oil and gas development and production operations that PIOGA's members undertake within the potential range of the northern long-eared bat in Pennsylvania. These operations, including clearing trees and building roads, are constrained and directed by environmental laws regarding permits and species protection, as well as by property and contract law.

The PA Chamber is the largest broad-based business advocacy association in Pennsylvania. Its thousands of members throughout the Commonwealth of Pennsylvania employ greater than 50 percent of Pennsylvania's private workforce. Its membership ranges from Fortune 100 companies to sole proprietorships. Headquartered in Harrisburg, the PA Chamber serves as the frontline advocate for business on Capitol Hill by influencing the legislative, regulatory, and judicial branches of state government. Its mission is to improve Pennsylvania's business climate for PA Chamber members.

In summary, PIOGA and the PA Chamber believe that the Service does not have a legally or technically adequate basis to list the northern long-eared bat as endangered or threatened at this time. The listing proposal should be withdrawn or delayed until all current efforts to protect the species have been fully considered, and all of the assumptions, modeling, and uncertainties have been subject to peer review. We support and concur with the comments submitted in this matter by our other Pennsylvania extractive industry trade associations, the Marcellus Shale Coalition and the Pennsylvania Coal Alliance.

Comments

1. The Status Review and proposed listing *does not satisfy ESA section 4(b)(I)(A).*

Section 4(b)(1)(A) of the Endangered Species Act, 16 U.S.C. § 1533(b)(1)(A), requires listing determinations to be made on the basis of the "best scientific and commercial data available." As discussed below, the Service's Status Review for its proposal to list the northern long-eared bat as endangered is based on conflicting information, assumptions, unpublished data which has not been peer-reviewed, and suffers from numerous data gaps. The proposed listing is not supported by the best scientific and commercial data available and therefore does not meet the legal standard required by § 4(b)(1)(A) of the ESA.

Section 4(b)(1)(A) also prohibits ESA listing determinations until *after* all of the efforts made by states or other political subdivisions to protect such species are considered. Several states have created white-nose syndrome (WNS) action plans [1] and are in the "front lines" of bat management efforts. PIOGA and the PA Chamber believe the Service has not fully considered these efforts to protect and conserve the northern long-eared bat. The Service recognizes that its Status Review only "provides a few examples of such existing regulatory mechanisms, but is not a comprehensive list." *See* 78 Fed. Reg. at 61067–68. Worse, the Service actually misunderstands or misrepresents a bill pending in the Pennsylvania legislature, House Bill 1576 (the Endangered Species Coordination Act), which *does* specifically allow Pennsylvania administrative agencies to designate threatened and endangered species under Pennsylvania state law. *Id*. at 61068.

The Service must consider all current state and local efforts to protect the northern long-eared bat in order to comply with § 4(b)(1)(A). PIOGA and the PA Chamber recommend that the Service postpone making a final decision on the species listing so that it can fully review conservation and research programs underway in various states.

2. Peer review of significant amounts of unpublished data is missing; the *listing is not supported by the best scientific and commercial data available.*

The Service is "seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science." 78 Fed. Reg. at 61046. The Status Review lists over 20 unpublished studies and sources of data, including data reportedly supplied by the Pennsylvania Game Commission and other state agencies. Some studies anecdotally note northern long-eared bat population declines in Pennsylvania but only from winter cave surveys rather than multiple seasonal surveys. Some or all of these studies and data clearly warrant peer review because the Service obviously is relying on them for its proposed listing. It is not clear whether the scientific community has had a meaningful opportunity to review these sources, whether the sources have been peer-reviewed, or if so, which sources have been reviewed. PIOGA and the PA Chamber do not believe the Pennsylvania Game Commission data, for example, has been made available to the public and regulated community. We have not seen it.

Observations of multiple independent bat biologists that are summarized in the Marcellus Shale Coalition's and the Ohio Oil and Gas Association's comments on the Status Review indicate that the northern long-eared bat is the most common bat captured in surveys. Peer review would determine whether all appropriate factors to evaluate a listing, such as spring emergence counts, summer mist netting, fall swarming surveys, and winter hibernacula surveys, have been considered. The Service cannot meet its legal obligation to use the best scientific and commercial data available without subjecting its data to peer review.

3. The development of recovery plans that impose significant restrictions *on industry and the designation of critical habitat are not warranted.*

The Service makes two key findings regarding WNS and critical habitat. First, the northern long-eared bat "is in danger of extinction, *predominantly due to the threat of white nose syndrome*" (emphasis added). 78 Fed. Reg. 61046. Second, there is no designation of critical habitat,[2] although comments are invited on such a des-

[1] *See* White-nose Syndrome.org, www.whitenosesyndrom.org/white-nose-syndrom-planning, which provides links to action plans from ten states.

[2] "Critical habitat" is the habitat that is essential to the conservation of the species under Section 3 of the ESA. 16 U.S.C. § 1532(5).

ignation. The Status Review notes that "since information regarding the biological needs of the [long-eared bat] is not sufficiently well known to permit identification of areas as critical habitat, we conclude that the designation of critical habitat is not determinable for the northern long-eared bat at this time." 78 Fed. Reg. at 61079.

Those two findings compel the following conclusion: where disease rather than habitat loss is causing the species decline, additional restrictions on field activities such as tree clearing, well pad development, and similar activities will not significantly help preserve the northern long-eared bat or combat the spread of WNS. Nothing in the Status Review indicates that the proposed listing, the development of a recovery plan, and restricting potential habitat modification, including oil and gas development, will appreciably stop or reverse the northern long-eared bat's decline. As the Service acknowledges, "[e]ven if all habitat-related stressors were eliminated or minimized, the significant effects of WNS on the northern long-eared bat would still be present." 78 Fed. Reg. at 61061. The key factor at issue is disease, not oil and gas operations or other activities. A listing that leads to a recovery plan which concentrates on the designation and protection of critical habitat as it relates to oil and gas development and other activities is contrary to the express purpose of Section 2(b) of the ESA, which is to conserve species. 16 U.S.C. § 1531(b).

As the Service evaluates a listing decision based on the existing record, the Service must fully consider the fact that not enough information is known to designate critical habitat, and that WNS rather than the loss of critical habitat is the predominate reason for the bat's decline.

4. The Service must better understand the temporary nature of disturbance *from the oil and gas development before finalizing the proposed listing.*

The conventional and unconventional (i.e., shale gas development) oil and gas industry develops natural resources responsibly by, for example, using existing access roads where feasible, limiting earth disturbance, minimizing the size of well pads, and reclaiming sites to pre- existing conditions after wells are drilled and completed. Oil and gas development operations typically are not of the nature, scope or duration that would compromise the lifecycle, reproduction, and habitat of the northern long-eared bat.

Several of the statements in the Status Review's discussion of shale gas development are simply not accurate. 78 Fed. Reg. at 61061. First, the statements regarding the number of wells projected and the size of potential disturbance do not take into account the evolution and shift of technology of horizontal drilling and minimizing disturbance by drilling multiple wells on one well pad. Second, the surface disturbance created by the development of shale gas is temporary and many states including Pennsylvania require site restoration and reclamation as part of the permit and construction process. And third, there is no recognition of the very minor footprint (frequently half an acre or less) occupied by a conventional well after it is drilled and completed. PIOGA and the PA Chamber recommend that the Service more carefully consider these facts as it evaluates the proposed listing.

5. The relationship between White-Nose Syndrome and northern *long-eared bat population must be better researched and understood.*

The effect of WNS varies widely by bat species. The Service recognizes that the use of predicted trends in other species may or may not be indicative of population trends in other bat species including the northern long-eared bat. 78 Fed. Reg. 61061. The Service also acknowledges that the northern long-eared bat is easily overlooked during hibernacula surveys and the species is reported to be present in any one site smaller numbers than other species of bats. But the Service provides nothing to support the statement that "other factors are acting in combination with WNS to reduce the overall viability of the species." 78 Fed. Reg. 61076. As such, the determination to list the northern long-eared bat could only be based on strong data and evidence about the impact of WNS on the bats, which PIOGA and the PA Chamber believe is lacking.

Additional studies should be completed to understand the connection and impact of WNS on the northern long-eared bat.

6. PIOGA and the PA Chamber support deferring *the listing on the eastern small-footed bat.*

PIOGA and the PA Chamber agree with the Service's determination that an endangered listing of the eastern small-footed bat is not warranted at this time in

view of the information, survey data and what is currently known about this bat species.

Conclusion

We believe that there is not a legally or technically adequate basis to list the northern long-eared bat as endangered or threatened at this time. The listing proposal should be withdrawn or delayed until all current efforts to protect the species have been fully considered, and all of the assumptions, modeling, and uncertainties have been subject to peer review. PIOGA and the PA Chamber join the Marcellus Shale Coalition's request that the Service obtain a six-month extension to the deadline for making a final decision on the species listing. This would benefit all stakeholders and the Service because it would allow (i) stakeholders and the scientific community at large time to peer review data cited in the Status Review, (ii) the Service time to review the comments received with respect to the proposed listing, and (iii) the Service time to consider and compile additional data and information which may have been absent from the current analysis.

If the Service decides to list the northern long-eared bat, PIOGA and the PA Chamber strongly encourage the Service to provide maximum flexibility in any rule or protective measures that are developed. As noted above, designation of critical habitat is not appropriate to conserve the species because no specific area in this bat's range is likely to be essential to its conservation. The costs imposed on development activities throughout multiple industries and on the oil and gas industry specifically by any listing could be significant without a clear benefit to the species. However, if the Service moves forward to designate critical habitat and a recovery plan, PIOGA and the PA Chamber request to be included as stakeholders in that process.

On behalf of our members, we appreciate your consideration of our comments. Please contact us if you have any questions or if you want to discuss these comments.

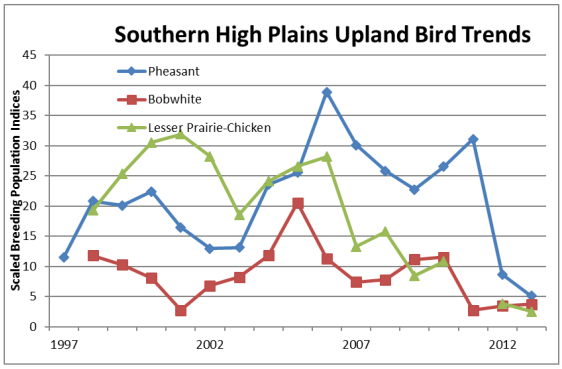
Sincerely,

Lou D'Amico,
President & Executive Director
PIOGA

Sam Denisco,
Vice President, Government Affairs
PA Chamber of Business and Industry

cc:
The Honorable Dan Ashe, Director, U.S. Fish & Wildlife Service
Jill Utrup—U.S. Fish & Wildlife Service, Twin Cities Field Office
William Capouillez, Director, Habitat Management, Pennsylvania Game Commission

ATTACHMENT 2



February 5, 2014

BY CERTIFIED MAIL

The Honorable Sally Jewell, Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

The Honorable Dan Ashe, Director
U.S. Fish & Wildlife Service
1849 C Street, N.W., Room 3331
Washington, D.C. 20240

Re: Emergency Petition for Programmatic "No Jeopardy" Finding for the Northern Long-Eared Bat

Dear Secretary Jewell and Director Ashe:

Pursuant to the Right to Petition Government Clause of the First Amendment to the United States Constitution,[1] the Ohio Oil and Gas Association, the Marcellus Shale Coalition, the Gas Processors Association, the Independent Oil & Gas Association of New York, the Oklahoma Independent Petroleum Association, the Pennsylvania Chamber of Business and Industry, the Pennsylvania Independent Oil & Gas Association, the U.S. Chamber of Commerce, and the West Virginia Oil and Natural Gas Association (collectively "Petitioners") hereby submit this petition, on an emergency basis, to the U.S. Department of the Interior and the U.S. Fish & Wildlife Service ("FWS" or "the Service"). Specifically, Petitioners ask the Service to issue a finding pursuant to Section 7(a)(4) of the Endangered Species Act ("ESA "), 16 U.S.C. § 1536(a)(4), that oil and gas exploration and development activities undertaken before FWS issues a final listing decision for the Northern long-eared bat ("NLEB"), expected later this year, are not likely to jeopardize the continued existence of the species.

As explained more fully below, after proposing to list the NLEB as endangered in October, the Service began instructing its Field Offices and federal action agencies to perform costly and time-consuming ESA Section 7(a)(4) conferencing reviews for all activities proposed to take place within the species' range to determine whether each activity likely will jeopardize the continued existence of the NLEB, and to initiate a conference even if the proposed activity likely will not jeopardize the species. These instructions and the reviews they generate are unwarranted and

[1] "Congress shall make no law . . . abridging . . . the right of the people . . . to petition Government for a redress of grievances." U.S. Const., amend. I. The right to petition for redress of grievances is among the most precious of the liberties safeguarded by the Bill of Rights. *United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967). It shares the "preferred place" accorded in our system of government to the First Amendment freedoms, and has "a sanctity and a sanction not permitting dubious intrusions." *Thomas v. Collins*, 323 U.S. 516, 530 (1945). "Any attempt to restrict those First Amendment liberties must be justified by clear public interest, threatened not doubtful or remotely, but by clear and present danger." *Id*.

unsupported by law. Because oil and gas exploration and development activities are localized and do not have population-level effects on the NLEB, there is no scenario in which those activities likely will jeopardize the continued existence of the species during the pendency of FWS's listing decision. As a result, there is no scenario in which such a proposed activity should trigger the ESA's Section 7(a)(4) conferencing requirement.

To ensure that the FWS Field Offices and the various federal action agencies comply with the narrow requirements of the ESA for proposed species and, in the process, avoid wasting millions of federal and private dollars and needlessly delaying billions of dollars in energy development projects nationwide, Petitioners respectfully request that the Service issue a programmatic "no jeopardy" finding for proposed oil and gas exploration and development activities scheduled to occur within the NLEB's range before FWS issues a final listing decision for the species.

I. Interests of Petitioners

The importance of the oil and natural gas industry to the national economy cannot be overstated. Oil and gas supply more than 60% of the ,nation's energy, and they are crucial components in a wide variety of products—from synthetic fabrics, to medicines, to fertilizers. As a result, the oil and natural gas industry has a deep impact throughout all sectors of the economy and across all 50 states. In 2011 alone, the industry's total impact on U.S. gross domestic product was $1.2 trillion, accounting for 8.0% of the national total. The industry's total employment impact to the national economy in 2011 amounted to 9.8 million full-time and part-time jobs and accounted for 5.6% of total U.S. employment. That employment generated $598 billion in labor income, or 6.3% of national labor income in 2011. *See generally*, American Petroleum Institute, *Economic Impacts of the Oil and Natural Gas Industry on the U.S. Economy in 2011* (July 2013), *available at* http://www.api.org/policy-and-issues/policy-items/jobs/economic-impacts-of-oil-natural-gas-industry-on-us-economy-2011. Petitioners represent thousands of members in this industry. many of whom regularly operate within the range of the NLEB and are significantly affected by the activities of FWS described in this petition.

The Ohio Oil and Gas Association ("OOGA") is one of the largest and most active state-based oil and natural gas associations in the country and has served as the representative of Ohio's oil and gas industry since 1947. Its 3,300+ members include large and small business entities involved in all aspects of the exploration, development, production, and marketing of crude oil and natural gas resources in Ohio. Because of the small size of many OOGA members, they often rely on OOGA as their primary source of information on industry trends, activities, tax changes, legislation, and regulatory matters. OOGA also serves to protect its members' interests by participating in federal and state regulatory actions involving the crude oil and natural gas industry.

The Marcellus Shale Coalition ("MSC") is a trade association with national membership. The MSC was formed in 2008 and currently is comprised of approximately 300 producing and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. The MSC's members represent many of the largest and most active companies in natural gas production, gathering and transmission in the country, as well as the suppliers and contractors who service the industry.

The Gas Processors Association ("GPA") is a trade organization that has served member companies since 1921. GPA is made up of 130 corporate members, all of whom are engaged in the processing of natural gas into merchantable pipeline gas, or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA's corporate members represent approximately 92% of all natural gas liquids produced in the United States and operate approximately 190,000 miles of domestic gas gathering lines.

The Independent Oil & Gas Association of New York ("IOGANY") is an industry trade association founded in 1980 and is currently comprised of more than 330 members, including but not limited to, oil and gas producers and operators, pipeline and marketing companies, engineers and geologists, and oil and natural gas utilities. Many IOGANY members operate in areas within the range of the NLEB. These operations are crucial to its members' business and their continued ability to develop and produce our nation's energy. They also provide substantial income within these localities, along with secure, well-paying jobs at a time when significant unemployment continues to trouble our nation.

The Oklahoma Independent Petroleum Association ("OIPA") represents approximately 2,650 small to large independent operators that are primarily involved with

the exploration and production of crude oil and natural gas in Oklahoma. In addition, OIPA represents a number of companies which provide services that support exploration and production activities. "Independent" producers are non-integrated companies which receive the majority of their revenues from production at the wellhead. They are exclusively in the exploration and production segment of the industry with no marketing or refining operations as compared to the large, integrated, major oil and gas companies. Independent oil and gas companies range in size from large companies with thousands of employees to hundreds of smaller "mom and pop" type companies. In Oklahoma, independent producers make up the majority of the energy industry producing 96% of the state's crude oil and 88% of the state's natural gas.

The Pennsylvania Chamber of Business and Industry ("PA Chamber") is the largest broad-based business advocacy association in Pennsylvania. Its thousands of members throughout the Commonwealth of Pennsylvania employ greater than 50 percent of Pennsylvania's private workforce. Its membership ranges from Fortune 100 companies to sole proprietorships. Headquartered in Harrisburg, the PA Chamber serves as the frontline advocate for business on Capitol Hill by influencing the legislative, regulatory and judicial branches of state government. Its mission is to improve Pennsylvania's business climate for PA Chamber members.

The Pennsylvania Independent Oil & Gas Association ("PIOGA") is a trade association comprising nearly 1,000 members: Pennsylvania independent oil and natural gas producers, marketers, service companies and related businesses, landowners and royalty owners. PIOGA's members undertake oil and gas development and production operations within the potential range of the NLEB in Pennsylvania. These operations, including clearing trees and building roads, are constrained and directed by environmental laws regarding permits and species protection, as well as by property and contract law.

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system.

The West Virginia Oil and Natural Gas Association ("WVONGA"), chartered in 1915, is the only association that serves the entire oil and gas industry within West Virginia. WVONGA members operate in virtually every county in West Virginia. Its members employ thousands of people across the state, having payrolls totaling hundreds of millions of dollars annually. WVONGA members have a cumulative investment of nearly $10 billion in West Virginia, own about 20,000 oil and gas wells, have more than 15,000 miles of pipeline crisscrossing the state and provide oil and natural gas to roughly 300,000 West Virginia homes and businesses. Because of the small size of many WVONGA members, they often rely on WVONGA as their primary source of information on industry trends, activities, tax changes, legislation, and regulatory matters. WVONGA also serves to protect its members' interests by participating in federal and state regulatory actions involving the crude oil and natural gas industry.

II. Background

On October 2, 2013, the Service issued a 12-Month Finding on Petition To List the Northern Long-Eared Bat and the Eastern Small-Footed Bat as Endangered or Threatened Species and Proposed Rule. 78 Fed. Reg. 61046 (Oct. 2, 2013) (Attachment 1 hereto). The Northern long-eared bat has a broad range, covering 39 states (including the District of Columbia) and much of Canada, and the species continues to be commonly captured throughout the bulk of that range. *Id*. at 61051–64. Nevertheless, FWS has proposed to list the species as endangered because of reported and anticipated impacts from white nose syndrome ("WNS")—a fungal disease discovered in New York in 2006 with currently no known cure.

In support of its proposed listing decision for the NLEB, the Service explains that "WNS currently is the predominant threat to the species, and if WNS had not emerged or was not affecting the northern long-eared bat populations to the level that it has, we presume the species would not be experiencing the dramatic declines that it has since WNS emerged." *Id*. at 61058. Although WNS has been confirmed only in a portion of the NLEB's range, FWS believes that in time the disease will spread to other areas of the species' range. Accordingly, the Service's proposed listing decision is premised solely upon the reported and anticipated effects of WNS on the NLEB. *See id.* at 61072. Indeed, the Service states that while "[o]ther sources of mortality to the species include wind-energy development, habitat modification, destruction and disturbance (e.g., vandalism to hibernacula, roost tree removal), ef-

fects of climate change, and contaminants . . ., no significant decline due to these factors has been observed . . .." *Id*. at 61075.

The Service did not designate any critical habitat for the NLEB in its proposed listing decision because it determined that doing so was not "prudent and determinable." *Id*. at 61077–79. FWS expects to issue a final listing decision for the species by October 2, 2014.[2] *See generally id*. Until that time, the NLEB is considered a "proposed species" under the ESA. 50 C.F.R. § 402.02.

III. ESA Section 7(a)(4) Conferencing Requirement and FWS Conferences on the NLEB

Unlike species that the Service has listed as threatened or endangered, proposed species, such as the NLEB, are not subject to the ESA's traditional species protections. *See* 16 U.S.C. §§ 1536(a)(2), 1538(a)(1). The ESA's protections for proposed species are limited in pertinent part to the Section 7(a)(4) conferencing requirement. *Id*. § 1536(a)(4).

Section 7(a)(4) of the ESA directs that "[e]ach Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under [the ESA] or result in the destruction or adverse modification of critical habitat proposed to be designated for such species." *Id*. Thus, in contrast to Section 7 consultations, which federal agencies must initiate with FWS anytime a planned action "may affect" a listed species, federal agencies must initiate Section 7(a)(4) conferences only if they determine that the action "likely" will "jeopardize the continued existence of" a proposed species.[3] *See id*.; FWS, Endangered Species Consultation Handbook at 6–1 (1998). That is a rigorous standard to meet.

The Service defines "jeopardize the continued existence of" to mean "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." 50 C.F.R. § 402.02. Making the standard even more demanding, jeopardy determinations must be based on the effects of the proposed action to the entire population of a species range-wide. Endangered Species Consultation Handbook at 4–36. As FWS has explained, "[a]dverse effects on individuals of a species . . . generally do not result in jeopardy determinations unless that loss, when added to the environmental baseline, is likely to result in significant adverse effects throughout the species' range." *Id*.

On January 6, 2014, the Service issued interim guidance to help FWS Regions 2, 3, 4, 5, and 6 conduct Section 7(a)(4) conferences on the NLEB in advance of a final listing decision. FWS, *Northern Long-Eared Bat Interim Conference and Planning Guidance* (Jan. 6, 2014) ("NLEB guidance") (Attachment 2 hereto). Notwithstanding the narrow requirement of Section 7(a)(4) for action agencies to confer with FWS only when they determine that a proposed activity likely will jeopardize a species, the Service's guidance espouses a far broader interpretation. The guidance asserts that "it is in the best interest of the species, and our federal partners to consider the value of voluntary conservation measures [in the conferencing process] for projects that are not likely to cause jeopardy, but are likely to adversely affect the NLEB." *Id*. at 6. In fact, the guidance acknowledges that its outlined procedures "include some section 7 language and steps that are not required," but states that "FWS offices and action agencies are encouraged to employ these procedures" nonetheless. *Id*. at 9. In other words, FWS is advising its Field Offices and the federal

---

[2] It should be noted, however, that numerous commenters on the proposed listing decision have urged FWS to obtain a six-month extension of the deadline for making a final decision pursuant to the terms of the multi-district litigation settlement agreements. *In Re: Endangered Species Act Section 4 Deadline Litigation,* MDL No. 2165, Case No. 10–377 (D.D.C).

[3] The Section 7(a)(4) conferencing requirement also is triggered when an activity likely will destroy or adversely modify proposed critical habitat. 33 U.S.C. § 1536(a)(4). Because FWS has not proposed to designate critical habitat for the NLEB, that requirement is not applicable here. In addition, although not contemplated in the ESA or its implementing regulations, the Service has unofficially interpreted Section 7(a)(4) to allow action agencies voluntarily to request a conference with FWS without first determining that a proposed action likely will jeopardize a proposed species or destroy/adversely modify critical habitat. Endangered Species Consultation Handbook at 6–1. We question the validity of that interpretation, but it currently is beyond the scope of this petition.

action agencies to take actions that are beyond the authority provided in the ESA and the conferencing requirement of Section 7(a)(4).[4]

Unfortunately, the Field Offices and action agencies already have begun implementing these overreaching procedures—in some cases, even before the guidance was finalized. For example, the FWS Ecological Services Office in Columbus, Ohio employed these procedures as early as November 2013 to instruct project proponents and federal action agencies not to clear trees in areas where NLEBs have been captured in surveys "until after any necessary consultation between the Federal agency and the Service, under section 7 of the Endangered Species Act of 1973, as amended, is complete." *See* Letters from Mary Knapp—FWS Field Supervisor for Columbus Ecological Services Office (Attachment 3 hereto).[5] It further "request[s] that unavoidable tree clearing be conducted from October 1 to March 31 whenever possible." *Id*. These instructions by FWS are not authorized by the ESA or justified under the statute's Section 7(a)(4) conferencing provision.

The ultra vires conferencing process that the NLEB guidance recommends already has had and will continue to have a significant impact on the government and on industry. Conferencing reviews take time. They require coordination between at least two federal agencies, evaluation of environmental studies and data, and legal and scientific analyses. Conducting those activities requires FWS and the action agencies to expend significant money and resources from their already-strained budgets.[6] Meanwhile, and contrary to the express terms of Section 7(a)(4), the subject activity under review cannot move forward because action agencies typically will not issue the permits and other federal authorizations required to begin work on projects until the conferencing review has been completed. *See* 16 U.S.C. § 1536(a)(4) (clarifying that the ESA *does not prohibit* permit applicants from moving forward with their activities before the conferencing process is completed). As a result, project proponents already have and will continue to suffer substantial and costly delays and incur significant opportunity costs on account of these unwarranted reviews.[7]

IV. Requested Relief and Justification

To ensure that the Service and federal action agencies act within the confines of the Section 7(a)(4) conferencing requirement and avoid wasting significant federal and private resources and needlessly delaying important energy projects in 39 states, Petitioners respectfully request that FWS promptly issue a programmatic "no jeopardy" finding for all oil and gas exploration and development activities ("O&G activities") to be undertaken within the NLEB's range before a final listing decision is made for the species.[8] Such a finding is appropriate because the best scientific and commercial data available—the record underlying FWS's proposed listing decision—demonstrates beyond dispute that (1) oil and gas exploration and development activities do not appreciably affect the NLEB individually or cumulatively (leading FWS to conclude that these activities do not affect the species' "continued existence"), even when combined with the effects of all other land development activities throughout the species' range; (2) the single primary threat to the NLEB is white-nose syndrome—indeed, FWS would not be proposing to list the NLEB but for the reported and anticipated effects of WNS—yet the disease has spread to only a portion of the NLEB's range and significant impacts to the species from the disease

[4] Although not the subject of this petition, Petitioners question whether the guidance is valid or authorized by the ESA. By filing this petition, Petitioners do not waive any right to challenge the guidance or FWS's or any other agency's reliance on it.

[5] These letters appear to go even further than the NLEB guidance by instructing the project proponent to undertake Section 7 consultation—a process that the ESA reserves only for species that already have been listed under the ESA. *See* 16 U.S.C. § 1536(a)(2).

[6] *See* U.S. Fish & Wildlife Service Budget Justifications and Performance Information—Fiscal Year 2014 at ES–11 (explaining that $64.75 million has been budgeted in FY 2014 for FWS to carry out its responsibilities under Section 7 and the habitat conservation planning provisions of the ESA).

[7] In 2012, oil and gas producers spent an estimated $153.7 billion to drill 46,736 wells in the United States. API Survey: U.S. Energy Revolution Gathers Momentum (Dec. 23, 2013), *available at* http://www.api.org/news-and-media/news/newsitems/2013/dec-2013/api-survey-us-energy-revolution-gathers-momentum. Billions more are spent each year on pipelines and related infrastructure.

[8] This petition requests the Section 7(a)(4) "no jeopardy" finding only until the Service issues a final listing decision for the NLEB because, if FWS decides to list the species, Section 7(a)(4) no longer would apply. Accordingly, any activities that have not been completed and will continue to require federal action or subsequently will require federal action would be subject to the ESA's Section 7(a)(2) consultation requirement for listed species (if they likely will affect a listed species) once a final affirmative listing decision is made.

have been reported only in a fraction of that area; and (3) irrespective of the impacts of WNS and any impacts from land development activities, the NLEB continues to be prevalent in the majority of its broad range. Each of these factors is discussed in turn.

First and most fundamentally, the Service already has determined that O&G activities do not have population-level effects on the NLEB, even when combined with all other non-WNS impacts. In the proposed listing decision, FWS considers potential direct and indirect effects to the NLEB from a variety of activities, including wind energy development, pesticide application, forest management and prescribed burning, activities that emit greenhouse gases, natural gas exploration and development, mining, and other land development activities that take place within the species' summer habitat. 78 Fed. Reg. at 61059–61 , 61068–72. Based on that analysis, the Service concludes that "[a]lthough such activities occur, there is no evidence that these activities alone have significant effects on [the NLEB], because their effects are often localized and not widespread throughout the species' range[]." *Id*. at 61072; *see also id*. at 61061 ("Although such activities occur, these activities alone do not have significant population-level effects on [the] species.").

Under the express terms of the ESA, that conclusion confirms that human activities do not affect the NLEB's "continued existence" and, therefore, that they cannot be "likely" to jeopardize the species' continued existence. *See* 16 U.S.C. § 1533(a)(1)(E) (setting forth the Factor E listing criterion—the analysis FWS performed to reach the above-quoted conclusion—which requires FWS to determine whether the species should be listed on account of "natural or manmade factors *affecting its continued existence*") (emphasis added). If that were not enough, the Service then concludes that those various types of human activities—even when viewed "in combination" with each other and even when considering "all present and threatened destruction, modification. or curtailment of [the NLEB's] habitat or range" from other activities (including natural gas development) and the use of the species for "commercial, recreational, scientific, or educational purposes"—"do not have significant effects on the species." *Id*. at 61057, 61061, 61072.[9]

In the face of these conclusions, which the ESA required FWS to make based on the best scientific and commercial data available, the Service cannot now reasonably find that any individual O&G activity that is undertaken before a final listing decision is made likely will jeopardize the NLEB.[10] That is particularly true in light of the Service's understanding that jeopardy findings should be based on range-wide, population-level species impacts from proposed actions, not localized and individual effects to species. *See* Endangered Species Consultation Handbook at 4–36; *supra* at 6.

Second, throughout its proposed listing decision, the Service makes clear that impacts—both reported and predicted—to the NLEB from white-nose syndrome are the "but for" cause of its proposal to list the species as endangered. FWS explains that "*WNS alone* has led to dramatic and rapid population level effects on the northern long-eared bat" and "the species likely *would not be imperiled were it not for this disease*." 78 Fed. Reg. at 61072 (emphasis added). At the same time, the Service recognizes that the distribution of WNS covers only portions of the NLEB's range in the U.S. and abroad. In fact, as of this past August, WNS has never been documented in 17 states within the NLEB's U.S. range. *Id*. at 61061. And based on FWS reports, to date the disease has not significantly affected the NLEB in many of those areas where its presence has been confirmed. *See id*. at 61064–65 (reporting that WNS is known to have significantly affected the NLEB only in the northeastern portion of its U.S. range). Moreover, while the Service hypothesizes that WNS will quickly spread to the remainder of the species' range and will significantly affect

[9] While FWS also states that "when combined with the significant population reductions due to white-nose syndrome (Factor C), the resulting cumulative effect *may further adversely impact the species*," that tentative conclusion does not suggest that these activities, alone or in combination with each other and WNS, could affect the NLEB to such an extent as to likely jeopardize its continued existence. *See id*. at 61072 (emphasis added). Nor could it given that WNS has not been confirmed in nearly half of the NLEB's range. *See infra* at 7.

[10] Although not considered by FWS in its proposed listing decisions, the conclusion that human activities such as O&G development will not likely jeopardize the species is even stronger here because (1) the NLEB will be in hibernation (and therefore would not be expected to be directly affected by such activities) for a large portion of the time remaining in the listing decision-making process, and (2) the species will not suffer significant effects from such activities when not hibernating since NLEB summer habitat is and will continue to be plentiful. *See* 78 Fed. Reg. at 61055 (explaining that NLEBs can hibernate from October until April); Comments of MarkWest Energy Partners, L.P. at 12 (Jan. 2, 2014) (Attachment 4 hereto) (citing the comments of several state and peer review commenters to demonstrate that summer habitat is not a limiting factor for the NLEB).

the NLEB range-wide in the future, the administrative record for the proposed listing decision does not support that conclusion. *See* Attachment 4, Comments of MarkWest Energy Partners, L.P. at 7–8.

In light of the foregoing, the Service and federal action agencies cannot reasonably conclude that any O&G activity likely will jeopardize the NLEB as the ESA requires to compel a Section 7(a)(4) conference with FWS. That WNS—the sole cause of the reported population-level declines of the NLEB—has not reached nearly 50% of the species' domestic range and currently does not significantly affect the bat in many areas that it has reached ensures that even the largest O&G activities will not jeopardize the NLEB.

Finally, notwithstanding the proposed listing decision, the NLEB continues to be prevalent throughout much of its broad 39-state range. As FWS recognizes, the NLEB has been particularly "abundant" in the eastern portion of its range, and it is "commonly encountered in summer mist-net surveys throughout the majority of the Midwest and is considered fairly common throughout much of the region" as well. 78 Fed. Reg. at 61052. According to the Service, the NLEB remains the second-most captured bat species in Vermont, is "fairly common" in Virginia and Maine, is routinely caught in at least 51 counties in Indiana, is considered "common" in West Virginia, is "commonly captured" in Missouri (so much so that the state removed the bat from its species of concern list in 2007), is "regularly caught" in Illinois, is "regularly collected" in Ohio, is "regularly captured" and is "one of the most common bat species captured during mist net surveys" within its range in Oklahoma, and is "commonly captured" in Kentucky. *Id*. at 61052–53, 61064. And as numerous state, peer review, and private commenters explained in their recent comments on the proposed listing decision, even these reports underrepresent the species' abundance and population trends. *See, e.g.*, Comments of OOGA (Jan. 2, 2014) and Comments of MarkWest Energy Partners, L.P. (Jan. 2, 2014) (demonstrating that the winter survey data that FWS relied on for the proposed listing decision significantly underrepresents the NLEB's abundance and does not reflect the best available science) (Attachment 4 hereto). In view of the NLEB's continuing abundance throughout much of its range (not to mention the localized nature of most O&G activities that FWS recognizes in the proposed listing decision, *see supra* at 8), no proposed O&G activity likely will jeopardize the NLEB and thus require a Section 7(a)(4) conference before a final listing decision is made.

For each of the above reasons, the Service should issue the requested "no jeopardy" finding for proposed O&G activities scheduled to occur within the NLEB's range before a final listing decision is made. The administrative record for the proposed listing decision, which the Service endorses as the best scientific and commercial data available, demonstrates that there is no scenario in which such activities "are likely to jeopardize the continued existence of" the NLEB during that time. There simply is no reasonable basis for concluding that any such activity could "be expected, directly or indirectly, to reduce appreciably the likelihood of *both the survival and recovery* of [the] species in the wild by reducing the reproduction, numbers, or distribution of that species" as the Service's regulations require for a jeopardy finding. *See* 50 C.F.R. § 402.02 (emphasis added). FWS already has concluded as much in its Factor E (and Factor A) analysis for the proposed listing decision. *See supra* at 8–9. It now should memorialize that finding for purposes of Section 7(a)(4) in a programmatic "no jeopardy" determination.

In light of the severe financial and logistical impacts that will continue to accrue until the Service acts on this petition, the limited timeframe until FWS makes a final listing decision on the NLEB, and the substantial legal and factual bases supporting the requested action, Petitioners respectfully request that FWS consider this petition on an emergency basis and perform an expedited review. To that end, we ask that the Service issue the proposed "no jeopardy" finding for O&G activities ***within 30 days*** from the date of this letter. Given the emergency nature of this request, if the proposed finding has not been issued by the expiration of that period, we must consider the petition to have been denied. In addition, in the interest of expediting this process, ***we request a meeting, with Director Ashe*** and any staff he deems appropriate before the expiration of that period to discuss these issues.

*****

Thank you for considering this emergency petition to issue a programmatic "no jeopardy" finding for proposed oil and gas exploration and development activities that will occur within the NLEB's range before the Service makes a final listing decision for the species. For the reasons explained above, issuing such a finding will comply with Section 7(a)(4) of the ESA, is supported by the administrative record for FWS's proposed listing decision, and will avoid wasting millions of federal and

private dollars to conduct superfluous reviews that will needlessly delay billions of dollars in planned projects over the next year. If you have any questions about this petition, please contact W. Parker Moore at (202) 789–6028, or counsel for OOGA, Kristin Watt at (614) 464–8398. In addition, please direct any correspondence regarding this petition to:

W. Parker Moore
Beveridge & Diamond, P.C.
1350 I Street, NW, Suite 700
Washington, DC 20005
(202) 789–6028
pmoore@bdlaw.com

Respectfully submitted,

Jeff Applekamp
Vice President, Government Affairs
Gas Processors Association

Thomas E. Stewart
Executive Vice President
Ohio Oil & Gas Association

Mike Terry
President
Oklahoma Independent Petroleum Association

Sam Denisco
Vice President, Government Affairs
Pennsylvania Chamber of Business and Industry

Nicholas "Corky" DeMarco
Executive Director
West Virginia Oil & Natural Gas Association

David Spigelmyer
President
Marcellus Shale Coalition

Bradley R. Gill
Executive Director
Independent Oil & Gas Association of New York

William L. Kovacs
Senior Vice President, Environment, Technology & Government Affairs
U.S. Chamber of Commerce

Lou D'Amico
President and Executive Director
Pennsylvania Independent Oil & Gas Association

The CHAIRMAN. Thank you. And thank you very much, Mr. D'Amico, for your testimony.

Now recognize Mr. Jim Brubaker from the Farm Bureau. You are recognized for 5 minutes.

STATEMENT OF JIM BRUBAKER, BOARD MEMBER, PENNSYLVANIA FARM BUREAU, UNION COUNTY FARMER, BUFFALO VALLEY FARMS, LEWISBURG, PENNSYLVANIA

Mr. BRUBAKER. Good morning, Chairman Hastings, and Representative Thompson and Representative Perry. I am Jim Brubaker, a grain and livestock farmer in Union County, Pennsylvania. I am a member of the Pennsylvania Farm Bureau, Board of Directors, and chair our Natural and Environmental Resources Committee.

Today, I am testifying on behalf of the Pennsylvania Farm Bureau and the American Farm Bureau Federation.

The Farm Bureau agrees that we must conserve and recover wildlife facing preventable extinction, but the ESA needs to be modernized to help endangered species without placing undue burdens on landowners.

The Northern Long-Eared Bat's range and numbers make the potential impact of this listing on agriculture significant, and we are concerned that the basis for listing is not related to human activity, but because of the White Nose Syndrome. In summer, the Northern Long-Eared Bat roosts in live trees and snags, and in and on buildings, barns, sheds and so forth. These features are commonly found on farms across Pennsylvania in the bats' range.

The take prohibitions of the ESA, along with the designation of critical habitat could severely restrict activities, including natural gas and wind energy development, pesticide, insecticide and herbicide applications, highway construction and timbering harvesting. These restrictions could seriously hurt Ag. and, more specifically, farms. We have many questions about how listing this bat could affect our livelihoods. For example, how would an endangered listing impact livestock farmers seeking to develop shale gas onto their property? What about a dairy farmer who can't get a milk truck onto his farm because construction and repair of a nearby bridge has been stalled? How would this impact a farmer's ability to clear trees for firewood, or planning or implement forest management plans?

Let's look at my farm. Do I have the Northern Long-Eared Bat? I really don't know. Like many farmers, I just know that I have bats but I don't know what species, and that leads to more questions. What if the bats that I have in my barn are the NLE Bat, would I be prohibited from repairing or even changing my barn? What if I had to take land out of production or change the way I farm because I was too close to a roosting site? For instance, the notice links pesticides to the NLE Bat. It is scary to think that inputs critical to farm production could be restricted, even though the notice indicates that exposure to pesticides is not an immediate or significant risk itself. Pesticides are already governed by Federal and state laws. Farmers have used well-established application practices, spanning decades, in which the NLE Bat populations were not declining.

I hope I have raised some important concerns today about how listing this bat will impact farmers. We care about the environment and conservation, and want to be good stewards of the land so we can pass it on to our next generation, but we also need to earn a viable income through our farms and be able to provide a safe and affordable food and fiber supply. Excessive regulations will not fix anything. Practical, workable solutions can, and we are willing—more than willing to do our part to help, but let's make sure we are solving the problem and not making a new one.

Listing this bat will only restrict farmers' ability to use their land, and isn't likely to stop the spread of White Nose Syndrome. We urge the Fish and Wildlife Service to not list the Northern Long-Eared Bat, and to ask Congress and the members of this committee to help prevent this listing from happening.

Thank you again for the opportunity to testify, and I would be happy to respond to your questions.

[The prepared statement of Mr. Brubaker follows:]

PREPARED STATEMENT OF JIM BRUBAKER ON BEHALF OF THE PENNSYLVANIA FARM BUREAU

Good morning, Chairman Hastings, Ranking Member DeFazio, and members of the committee. I am Jim Brubaker, a grain and livestock farmer in Union County, Pennsylvania. I operate Buffalo Valley Farms with my two sons. We have 900 acres of corn and soybeans, 18,000 market hogs and one million kosher broilers. I currently serve on the Board of Directors for Pennsylvania Farm Bureau (PFB), and on the Board's Executive Committee. I also serve as the chairman of the Natural and Environmental Resources Committee for PFB. In addition to my Farm Bureau activities, I am a member of the Buffalo Township Planning Commission and the Union County Commissioners' Ag Advisory Committee.

I offer these remarks on behalf of Pennsylvania Farm Bureau and our nearly 60,000 members, and the more than six million member families of the American Farm Bureau Federation. My testimony will focus on Farm Bureau's understanding of the proposal to list the northern long-eared bat as a protected species under the Endangered Species Act (ESA) and the potential impact on agriculture.

Before I begin, however, I want to be clear that Farm Bureau agrees that Federal agencies and citizens must take responsible action when wildlife species are in danger of extinction to facilitate recovery of species populations. Farmers enjoy the benefits of having wildlife on their properties. I know I do. And farmers already take measures on their own to provide for wildlife and their habitat on farmland. But, at the same time, Farm Bureau believes that the ESA must be modernized, so that we can protect endangered species without imposing excessive burdens and restrictions on landowners' use of land that provide marginal enhancement of species recovery. Unfortunately, the ESA is often ineffective at protecting endangered species, unnecessarily hurting people's livelihoods in the process. And, in the case of the northern long-eared bat, listing this species has the potential to negatively affect farmers within the bat's range.

POTENTIAL IMPACTS OF LISTING THE NLE BAT

The decision to list the northern long-eared bat should not be taken lightly. With a range of 38 states and the District of Columbia, and the fact that this species of bat is 15–20 times more common than other non-listed bats in some areas, the potential scope of this listing and the impact on agriculture could be unprecedented. Even more concerning is the basis for the proposed listing is not related to human activity, but because of the U.S. Fish and Wildlife Service's anticipated impact of the white-nose syndrome. Page 61058 of the October 2, 2013 Federal Register Notice [1] ("Notice") states:

> *". . . we have found no other threat that is as severe and immediate to the northern long-eared bat's persistence as the disease, white-nose syndrome (WNS) . . . if WNS had not emerged or was not affecting the northern long-eared bat populations to the level that it has, we presume the species would not be experiencing the dramatic declines it has since WNS emerged."*

In addition, the Notice's [2] summary of "other natural or manmade factors affecting [the northern long-eared bat's] continued existence" indicates that though the factors identified (which included wind energy and natural gas development, contaminants, etc) do occur, there is:

> *". . . no evidence that these activities alone have significant effects on either species [eastern and northern long-eared bat], because their effects are often localized and not widespread throughout the species' ranges."*

Furthermore, concerns have been voiced by commenters in response to the FWS's request for comments about the validity of survey data conducted for the proposed listing was based on inaccurate and insufficient NLE bat data collected during winter surveys. In fact, in the Notice,[3] the FWS discusses the winter habitat and specifically states that, "Northern long-eared bats are typically found roosting in small crevices or cracks in cave or mine walls or ceilings, often with only the nose and ears visible, thus are easily overlooked during surveys."

---

[1] Federal Register. Volume 78, Number 191. October 2, 2013. Docket No. FWS–R5–ES–2011–0024; 4500030113: Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Endangered or Threatened Species; Listing the Northern Long-Eared Bat as an Endangered Species.

[2] Page 61072.

[3] Page 61054.

The summer roosting locations are more likely to impact agriculture. Per the Notice, in the summer, the NLE bats, "typically roost . . . underneath bark or in cavities or crevices of both live trees and snags," and "they have also been observed roosting in colonies in human made structures, such as buildings, barns, a park pavilion, sheds, cabins, under eaves of buildings, behind window shutters and in bat houses."[4] Many of these roosting sites are likely to be found on farms across Pennsylvania and within the stated range of these bats.

Once listed, the ESA makes it unlawful for any person—including private and public entities—to "take" a NLE bat. The ESA defines "take" to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." Further, the Act prohibits potential "harm" to include significant habitat modification or degradation which "actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering." Violation of ESA take prohibitions carries civil penalties of up to $25,000 per violation, and criminal penalties of up to $50,000 and 1 year imprisonment per violation.

These take prohibitions, along with the designation of critical habitat, have the potential to adversely impact a broad range of industries/activities including natural gas and wind energy development; application of pesticides, insecticides and herbicides; highway construction; and timber harvesting. And, if there's one thing in common with this list, it's that they all impact agriculture. How would such a listing impact a livestock farmer with vast shale gas resources under her land, when the sale of subsurface rights would provide a much-needed infusion of capital? And what of a dairy farmer who can't easily get a milk truck onto the farm because construction of a nearby bridge has stalled?

For the purposes of this testimony, I'll discuss the issue of pesticides and forest land in a little more detail.

Pesticides

In asserting the possible cumulative effects to the NLE from other natural or manmade factors—specifically the application of pesticides—FWS's proposed listing seeks to tie the chemical application of agricultural use of organiochlorine pesticides,[5] organophosphate, carbamate and neonicotinoid insecticides, polychlorinated biphenols and polybrominated diphenyl ethers, and pyrethroid insecticides to species decline. However, at the end of the section of the Federal Register notice[6] discussing the effects of these and other contaminants, the FWS concludes:

> *". . . the best available data indicate that contaminant exposure can pose an adverse effect to individual northern long-eared and eastern small-footed bats, although it is not an immediate and significant risk in itself at a population level."*

Pesticide applications are covered by state laws and the Federal Insecticide, Fungicide and Rodenticide Act, and farmers have well-established practices concerning the application of pesticides. These practices spanned decades in which the NLE bat populations were not in decline. It was only after WNS was introduced to the NLE bat, that we began to see documented impacts to species health and population decline. In light of this, it is inappropriate for the FWS to link the application of pesticides by farmers to species decline without documented scientific analysis.

As a farmer, linking between pesticides and the NLE bat is very concerning. It's scary to think that my access to an important on-farm tool could be restricted. I—like many of my fellow farmers in PA—am a certified pesticide applicator. On our farm, we don't use more pesticides, herbicides and insecticides than we have to and choose our treatments/preventive measures carefully. For example, on my farm we choose our herbicides based on weed pressure and field history. As I mention later, we also use cover crops which helps reduce weed pressure and the amount of herbicides we have to apply.

Forest Land

With 59 percent or nearly 17 million acres of Pennsylvania covered by forest, many agricultural operations include forested acres. Given the statement on page 61075 of the Notice that, "Other sources of mortality to the species include . . . habitat modification, destruction and disturbance," and the summer habitats of the

[4] Page 61045–5.

[5] The Federal Register (page 61070) notice acknowledges that "most organochlorine pesticides have been banned in the United States . . .."

[6] Page 61071.

NLE bat discussed earlier, listing the NLE bat as an endangered species is likely to pose very serious challenges to farmers who have forested land on their farms.

While I personally do not have much forested land on my property, many farmers do. What happens if the NLE bat is found to be roosting in an area of a farmer's property? How will that impact the farmer's ability to clear trees for firewood or planting, implement forest management plans and undertake managed harvesting and other recommended activities? Restricting these activities has the potential to adversely affect on-farm production activities, forest habitat management, and farm revenue.

On the timbering side, I know you'll be receiving testimony from the PA Forest Products Association, however, I do want to mention that Pennsylvania has one of the Nation's largest concentrations of hardwood growing stock and is a leading producer of hardwood lumber. This industry sustains jobs and contributes to both the state and national economies. In addition, Pennsylvania is a national leader in the implementation and promotion of sustainable forestry practices.

Based on potential impacts on pesticide use and forest management alone, agriculture has much to be concerned about if the NLE bat is listed as an endangered species. But let's explore this issue even further.

FARMER CONCERNS

Looking at a Fish and Wildlife Service map,[7] there are confirmed or suspected cases of White Nose Syndrome in many of the counties surrounding Union County, where I live. This leads me to suspect that if the NLE bat was listed, I—or my neighbors—could face immediate restrictions on our farms and properties.

You may be wondering if I have the NLE bat on my property. My answer is I don't know. And I'd bet that a majority of my fellow farmers—in Pennsylvania or elsewhere—would answer the same way. I do have bats on my farm. I see them in buildings and in houses on my farm. In fact, there is one particular farmstead where I have a larger concentration of bats. But I don't know the species.

What if the bats in my own barn were found to be the northern long-eared bat? Would I face restrictions on how I could use my barn? Would I be able to repair or tear down an existing structure if it were found to house NLE bats? And, what if I had to take land out of production or change the way I farmed the land because it was too close to a roosting site?

Consider this: if I had to take 4 acres of a corn field out of production, that would amount to approximately 800 bushels of corn. At $4.30 a bushel, that's a $3,440 in income. Or, what if I wasn't able to spray the correct pesticide and, as a result, I lost 40 percent loss of my 4-acre crop? That's a loss of $1,376. On a farm, every bit of land counts, and losing even just a small parcel of land can have serious consequences on our bottom line and the success of our farm.

FARMERS CARE

I do know this: farmers care about the environment and conservation. We want to preserve our land and the environment. We want to pass our land onto the next generation without ruining it for them and the generations that follow. We want practical solutions that work for agriculture—and the environment.

On my farm, we do everything reasonably possible to be good stewards of the land. For example, we've been 100 percent no-till for the last 10–12 years; every year we sow cover crops on our soy stubble and use them to spread manure on in the fall; we have—and follow—a nutrient management plan; we test our soil before applying nitrogen to make sure we don't over apply nutrients and we've installed sod waterways.

On the conservation side, while most of our land is tillable with very little wooded land, we mow along streams to allow for habitat for rabbits and pheasants, and we try to keep a healthy, but manageable deer population. Due to the practices we use at Buffalo Valley Farms, our land has become much more productive over the 40 years that we've been farming it. I've seen our crop yields improve, and we're looking at our best crop year ever in 2014.

FINDING A SOLUTION

During my years as a farmer, I've learned many things, especially this: excessive regulations do not benefit either the person regulated or that which is intended to be protected. Paperwork doesn't solve problems. Practical, workable solutions can—

[7] http://www.fws.gov/midwest/endangered/images/mammals/nlba/nlebRangeAndWNSmapV4High.jpg.

and do—solve problems. As I mentioned earlier, we need practical solutions to protect wildlife and the environment, but we need to ensure that agriculture can continue to operate effectively and efficiently. If we fail, then we jeopardize the ability of agriculture to produce safe, affordable and abundant food and fiber for consumers in Pennsylvania, the United States and the world.

As the FWS and Congress try to make the right decisions regarding the NLE bat, they might want to look at the Pennsylvania Game Commission (PGC) as a case study. As you might know, several years ago, the PGC considered placing the northern long-eared bat and two other species impacted by white-nose syndrome on the state's endangered species list. Following a public comment period, the PGC decided not to list the three bat species. In a press release on the decision, Carl Roe, the PGC's Executive Director stated:

> *". . . it is clear that more discussion, research and coordination need to be done on WNS and the other outside factors that are impacting our bat populations, as well as how we can craft solutions that protect bats without threatening the industries that employ thousands of Pennsylvanians."*[8]

Based upon my understanding of the issue, I'd say that we're facing the same issue almost 2 years later. I'd say Pennsylvania made the right decision then, and I do hope that the Federal Government will make the right decision now. Because making the wrong decision will have ripple effects on the environment and agriculture right on to the consumer.

As a farmer, I believe that using both common sense and science is a logical way to approach not just farming, but regulations. It seems to me that this proposal to list the northern long-eared bat is flawed from both a scientific and common sense perspective. If the U.S. Fish and Wildlife Service recognizes that human activities have not had an appreciable effect on the species to date, why would we focus on human-induced impacts to try to slow population decline?

It just doesn't make sense.

Why hurt farmers, landowners, builders and service providers—to just name a few—when there is no guarantee that this will stop NLE bat declines? Instead, shouldn't we focus on the root cause of the problem—white nose syndrome?

Agriculture has long been willing to step up and do our part whether it's helping out in our communities or responsibly managing the environment or wildlife. We're more than willing to work with states and the Federal Government to do our part to ensure the longevity of the northern long-eared bat. But let's make sure we're solving the problem, not making new ones, because we're not targeting the root cause. And, in this case, it's white-nose syndrome.

Farm Bureau recommends that the U.S. Fish and Wildlife Service not list the northern long-eared bat as an Endangered Species. And we urge Congress and the members of the U.S. House Committee on Natural Resources to help prevent this listing from happening.

Additionally, I'd like to commend Chairman Hastings and members of the Natural Resources Committee for their continued efforts to identify and develop commonsense legislative reforms to the Endangered Species Act. The passage of H.R. 4315 in the House of Representatives demonstrates your commitment to update and improve the processes and procedures that the ESA put in place 40 years ago. We look forward to working with Congress to make the ESA more workable for private landowners and thus more beneficial for the species that it is supposed to help.

Thank you again for the opportunity to testify today, and I would be happy to respond to your questions.

The CHAIRMAN. Thank you, Mr. Brubaker. Appreciate your testimony.

Now recognize Mr. John Stilley, Owner and President of Amerikohl Mining. You are recognized for 5 minutes.

STATEMENT OF JOHN STILLEY, OWNER AND PRESIDENT, AMERIKOHL MINING, INC., BUTLER, PENNSYLVANIA

Mr. STILLEY. Good morning. Mr. Chairman, Members of the House Natural Resources Committee, my name is John Stilley and

[8] PGC News Release #121–12 (October 4, 2012).

I am President of Amerikohl Mining, along with Patriot Exploration Corporation and Amerikohl Aggregates. I also own all three companies, along with my two sons.

Amerikohl Mining mines coal by the surface mining method in 13 counties in Pennsylvania. Last year, we employed 125 hard-working men and women, produced 1 million tons of coal, all of which was marketed to local utilities' industrial accounts. Since 1978, we have completed mining of over 350 separate mine sites, and have successfully reclaimed the land to productive post-mining uses, including parks, residential communities, working farms and forest land.

Approximately one-third of these sites consisted of lands which were mined previously in the 1940s and 1950s when no reclamation was required or done. As part and parcel to our mining efforts, we have reclaimed on these sites miles upon miles of existing high walls, 15,000 acres of abandoned mine lands, and rehabilitated many, many miles of polluted streams, all at no cost to the taxpayer. Amerikohl has also won over 70 state and Federal awards for outstanding reclamation.

Amerikohl Aggregates operates two stone quarries in Pennsylvania, and annually produce and market over 1.25 million tons of stone and aggregate used primarily to build and rehabilitate Pennsylvania's infrastructure, and Patriot Exploration has drilled and currently operates 250 oil and gas wells.

I am here today on behalf of the Pennsylvania Coal Alliance, a trade association representing the interests of the state's bituminous coal industry. Our Pennsylvania industry is responsible for 60 million tons of production, and the creation of 40,000 jobs in the state.

With that, please allow me to address the potential impact on the mining and quarrying industry if the Northern Long-Eared Bat is listed as an endangered species, along with my experience with the endangered listing of the Indiana Bat.

The total amount of protected Indiana Bat habitats in Pennsylvania now totals over 3 million acres, or close to 10 percent of Pennsylvania. This encompasses almost 80 percent of Fayette County, and similar portions of Armstrong, Lawrence, Beaver and Butler Counties, specifically where we mine coal and quarry stone. Amerikohl has been dealing with the problem of the endangered Indiana Bat over the past 10 years, and expended millions of dollars in doing so, between mitigation fees, paid protection enhancement plans implemented, mist net surveys, seasonal limits on our lessees' ability to harvest their timber estates, additional permit costs, legal defense of our rights with other Federal agencies, scheduling conflicts, and on and on. Additionally, compliance with the requirements imposed have negatively impacted our ability to manage our reserves to their optimal work, keep our men and capital employed to the fullest extent possible, and obstructed our ability to comply with contractual supply obligations.

We, along with all in our industry, have stepped up and done all that has been asked of us and required of us. All the while, the Indiana Bat population over the same time frame has been decimated by White Nose Syndrome, rather than by lack of habitat or direct impacts from incidental take due to industry practices or any

other human influences. Similar to the Indiana Bat, the Pennsylvania Game Commission data documented decline in the Northern Long-Eared Bats primarily due to the White Nose Syndrome, and again, not industry practices or any human influences.

Unlike the Indiana Bat, the Northern Long-Eared Bat's summer and winter habitat ranges across the entire state, with a variety of forested habitats used for roosting and foraging. Should the Northern Long-Eared Bat be listed, the same limits and restrictions as mandated by the presence of the Indiana Bat would be imposed over most, if not all of Pennsylvania.

Although the U.S. Fish and Wildlife Service announced on June 30 a 6-month extension on any final decision regarding a listing, the Service's State College regional office is treating permit reviews as though the listing has already been made. In response to an application for a limestone quarry operation Amerikohl submitted for review, I was instructed via letter from the field office that this site is located within the range of the Northern Long-Eared Bat, and although the species is not listed, the letter cautioned us to address this issue in the permit application or face project delays if a listing is finalized.

So despite the U.S. Fish and Wildlife Service's acknowledgement about the scientific uncertainty associated with the available data for making a determination, despite its announcement to defer a decision until April 2, 2015, in order to fully analyze the data, and without any justifiable certainty that a proposed activity will indeed threaten the continued existence of the Northern Long-Eared Bat, the Pennsylvania field office is instructing all permit applicants to implement protective measures for a non-listed species to avoid permit delays.

This brings me to my final and principal comment. The regulatory process is in turmoil, devoid of science and common sense. Standards are constantly changing pursuant to regulatory and policy whims, not statutory or regulatory mandates, and all driven by a few who believe they know what is in the public's best interest. This well-intentioned legislation is passed by Congress, never intended or anticipated at takeover expansion to the extent we are seeing today by unelected bureaucrats for reasons very, very difficult for me to understand, creating many distortions in the marketplace and making our great Nation uncompetitive in a world economy.

The most important recommendation and request I can make to this committee today is to restore reason and balance to the process, and take back the power and authority invested in you by the electorate. Let size trump whim and hold these Federal bureaucrats accountable to the public law.

Thank you very much.

[The prepared statement of Mr. Stilley follows:]

PREPARED STATEMENT OF JOHN M. STILLEY, PRESIDENT, AMERIKOHL MINING, INC.

Good morning Mr. Chairman, members of the House Natural Resources Committee. My name is John Stilley and I am the President of Amerikohl Mining, Inc. which is headquartered in Butler, Pennsylvania. I am also President of Patriot Exploration Corp. and Amerikohl Aggregates, Inc.

Amerikohl mines coal by the surface mining method in 13 Pennsylvania counties. Last year we produced approximately one (1) million tons of coal and employed 120 workers. Since 1978, we have completed mining of over 300 separate mine sites and have successfully reclaimed the land to productive post-mining uses including parks, residential communities, working farms, and forestland. Approximately 1/3 of these sites consisted of areas which had been mined in the 1940s and 1950s when no reclamation was required to be done. Amerikohl has won over 65 awards for outstanding reclamation work, has reclaimed over 15,000 acres of abandoned mine lands and restored miles of streams at no cost to taxpayers.

We are also in the stone and natural gas businesses. This year we will produce 1.25 million tons of stone and aggregates used to build and rehabilitate Pennsylvania's infrastructure. Additionally we currently operate over 200 wells, producing gas and oil, from the Upper Devonian formation and participate in the drilling and production from 28 Marcellus dry gas wells which are all in Pennsylvania.

I am also here today on behalf of the Pennsylvania Coal Alliance (PCA), a state trade association representing the interests of the state's bituminous coal mining industry.

Pennsylvania is the Nation's fourth leading coal producing state, with about 67 million tons of both anthracite and bituminous coal mined in 2013.

The coal industry is a major contributor to Pennsylvania's economy. Its annual economic benefit to the Commonwealth exceeds $4 billion and it is responsible for the creation of almost 40,000 direct and indirect jobs.

Most of the coal produced in Pennsylvania is used to generate affordable and reliable electricity.

I appreciate being asked to testify today on the potential impacts for mining if the Northern Long-Eared Bat (NLE) is listed as an endangered species.

Because of time constraints, I have attached, for the record, specific comments submitted by the PCA to the U.S. Fish and Wildlife Service (FWS) on this matter. These comments are detailed, Pennsylvania-specific and highly relevant to this proceeding.

My testimony will highlight our major concerns with such action and, if time permits, I would like to address the committee on an important overarching issue that is a critical impediment to the future viability of coal mining.

Range—The NLE Bat has a much larger range and a greater presence in Pennsylvania than the Indiana Bat. (As a frame of reference, the total amount of protected Indiana Bat habitat in Pennsylvania today totals over 3 million acres). A listing would therefore, severely restrict any permitted earth moving activity proposed within a broad geographic area, particularly among the mineral extraction industry. The result would be permit delays and increased business costs without any assurance of commensurate environmental benefits.

Disease Not Habitat Issue—The NLE Bat has been hard-hit by White-Nose Syndrome (WNS), especially in the United States. Indeed, the FWS repeatedly recognizes that the WNS, not any human activity, alone is responsible for the major impacts to the NLE Bat that have been reported.

Any species protection requirements (e.g. tree clearing restrictions) that would accompany a Federal listing will not address the WNS impact on NLE Bats. It would be senseless to impose significant costs on a multitude of industries whose activities would not affect the bat's population with restrictions that would not in any measurable manner preserve the species.

Sufficiency and Accuracy of Data—Even the FWS recognizes that there has been ". . . substantial disagreement regarding the best available science . . ." as it relates to the NLE Bats current and predicted population trends and threats. Given the significant permit-related implications of a proposed listing, unless science is available to justify the action and unless reasonable expectations exist to demonstrate that such action would produce the intended benefit, the FWS should not proceed with a designation. On this particular issue, both parameters—science and expectations—are noticeably lacking.

COST IMPLICATIONS

Increased Costs Associated With Bat Mist Netting

In 2014, the USFWS issued a 2014 Indiana Bat Summer Survey Guidance Overview which provided the protocol for conducting bat surveys in Pennsylvania, which is within the Northeast Region (Region 5). While the initial intent was to reissue range-wide survey guidelines, the Northeast Region imposed a much higher level of survey effort (mist netting and acoustic) than other FWS regions. For "non-

linear" projects, which are most common for the mining industry, the following increases in effort and costs have been observed over the past several years.

Year	Required Survey Effort/Site	Increase in Effort	Approximate Cost/Site
2014	42 net nights/123 acres of suitable habitat	10.5x	$55,000
2013	24 net nights/123 acres of suitable habitat	6x	$30,000
2012	4 net nights/123 acres of suitable habitat	—	$ 5,000

As you can see, the level of bat survey effort has increased more than 10-fold over the past 3 years.

Example: If a mining company has a 500 acre forested site, it would cost roughly $275,000 to conduct a bat survey in Pennsylvania and the northeast region.

Telemetry Costs

If the proposed listing of the NLE Bat proceeds, any NLE bat captures will require radio telemetry work in order to locate roosting trees for individual bats. For each NLE Bat (and Indiana Bat) captured during a mist net survey, it costs approximately $7,000 to track and monitor each individual bat.

During the 2014 mist netting season (May 15 to August 15), a mid-size environmental consulting firm in Pennsylvania captured 55 NLE Bats in Pennsylvania, Ohio, and West Virginia. This equates to an additional $385,000 of costs that the industry will shoulder without any assurances of species protection.

Miscellaneous Cost Considerations

Additional costs associated with preparation of Habitat Conservation Plans (HCPs), tree clearing restrictions, and long term avoidance measures are also significant and need to be considered when discussing the economic impacts associated with the proposed listing of the NLE Bat.

Permitting Impacts—In addition to costs, unjustifiable and unpredictable Federal action can wreak havoc on our ability to obtain permits, a prerequisite to actual mining.

Due to the nature of the operation, permit delays are most troublesome for surface mine operators.

Since surface mine projects in Pennsylvania are significantly smaller in terms of reserves and production than underground mine operations and are completed in shorter time frames, permits for surface mining are required on a more frequent basis. As such, indeterminate permit delays acutely affect this type of mining method more than other type of mining.

For example, Amerikohl generally operates between 8 to 10 mining sites on an ongoing basis in a given year. On average, it takes us about 9 months to complete a job. Consequently, we are continually applying for permits to mine. Delays on permit issuance challenge the company's ability to maintain continuity of operations, meet our contractual supply obligations and keep our men and women working full time.

In addition, most of Pennsylvania's easily accessible surface coal reserves have already been mined and a high percentage of our remaining reserves are off-limit because of unilateral and unjustifiable regulatory actions, like this proposed listing, that more often than not are precipitated at the Federal level.

When all factors are considered, surface operators have very little viable options left on where to mine. Permitting restrictions further reduce these options and unless we get a more timely and predictable process, our remaining reserves will be sterilized, mining derived income and jobs will be lost and we all lose the benefits of cheap and reliable coal based electricity.

Implementation—Although the FWS announced on June 30 a 6-month extension on any final decision regarding a listing, the Service's State College Regional Office is treating permit reviews as though the listing has already been made.

In response to a permit application for a limestone quarry that I am in the process of attempting to secure, I was instructed via letter by the field office that the site is located within the range of the NLE bat. Although the species is not listed, the letter cautioned us to address this issue in the permit or face project delays if a listing is finalized.

So, despite the FWS' acknowledgement about the scientific uncertainty associated with the available data for making a determination, despite its announcement to defer a decision until April 2, 2015, to clarify and "fully analyze" the data, and *without* any justifiable certainty that a proposed activity will indeed threaten the continued existence of NLE bats, the Pennsylvania field office is instructing permit

applicants to implement protective measures for a non-listed species to avoid permit delays.

This brings me to my final, overarching comment—the regulatory process is in turmoil, devoid of science and commonsense; defined by standards that are constantly changing pursuant to regulatory whim, not statutory or regulatory mandates; and driven by a select few who believe they know what is in the public's best interest.

Overarching Concern—It would be easy to simply refer to this situation as the result of a deliberate and targeted assault on the coal industry. Clearly, the Obama administration's intent is to end mining and transform America's usage away from coal.

The administration's actions are certainly a challenge to the future viability of the industry and its workforce, as well as the price and reliability of electric generation. But the impacts of these actions are more profound than a war on coal.

Perhaps, most insidious is the manner in which these requirements are being applied—by policy, not by legislation or regulation. Under the Obama administration, Federal agencies have steadily usurped permitting and enforcement authority heretofore reserved to states by establishing through policies restrictions on both the mining and use of coal that are harsh, misguided and not supported by science. As a result, mining permits are delayed or denied, jobs are lost, and coal reserves are unnecessarily sterilized.

This Federal overreach tramples on public accountability and transparency while eroding our system of checks and balances that is the core of a true democracy.

My most important recommendation that I can make to this committee today is to restore reason and balance to the process, let science trump whim and hold these Federal bureaucrats accountable to public law.

Thank you.

Attachment: Pennsylvania Coal Alliance Comments

ATTACHMENT

PENNSYLVANIA COAL ALLIANCE,
HARRISBURG, PA,
JANUARY 2, 2014.

Via Docket submittal at www.regulations.gov

Public Comments Processing
Attn: FWS–R5–ES–2011–0024
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive
MS2042–PDM
Arlington, VA 22203

Re: Docket No. FWS–R5–ES–2011–0024—Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Endangered or Threatened Species; Listing the Northern Long-Eared Bat as an Endangered Species

To Whom It May Concern:

The Pennsylvania Coal Alliance (PCA) respectfully submits the following comments regarding the U.S. Fish and Wildlife Service's (USFWS) request for comments pertaining to the 12-month Finding on a Petition to List the Northern Long-Eared Bat (NLE) as a Threatened or Endangered Species and to NOT list the Eastern Small-Footed Bat, as noticed in the October 2, 2013 Federal Register (78 Fed. Reg. 61046), and the extension of the comment period in the December 2, 2013 Federal Register (78 Fed. Reg. 72058).

PCA is the principal trade organization representing underground and surface bituminous coal operators in Pennsylvania, as well as other associated companies whose businesses rely on coal mining and the thriving coal economy. PCA member companies produce almost 80 percent of the bituminous coal mined annually in Pennsylvania, which totaled nearly 60 million tons in 2012. PCA member companies operations are subject to both state and federal laws for the protection of threatened and endangered species. Accordingly, PCA has an immediate interest in the

USFWS' intent to list the Northern Long-Eared bat as a Threatened or Endangered Species and not to list the Eastern Small-footed Bat under the Endangered Species Act of 1973.

General

In the Federal Register notice, USFWS indicated they have determined that the NLE is in danger of extinction, predominantly due to the threat of White Nose Syndrome (WNS). PCA understands the damage WNS has inflicted on the NLE, as well as other bats. However, we disagree with the USFWS' proposed rule to list this species as Endangered, and we believe not enough data and information has been collected range wide to support a Threatened designation for the NLE.

Listing the NLE as Threatened or Endangered will have potentially significant permit-related regulatory implications for our members' operations with no positive effect on the bats.

Accordingly, we offer the following specific comments:

1. It is Premature and Scientifically Inappropriate to List the NLE Species Without Peer Reviewed Data.

The Endangered Species Act requires the USFWS to determine the status of a species on the basis of the best scientific and commercial data available after conducting a review of the status of the species. In the Federal Register notice, USFWS indicates they "will seek peer review" and are "seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule." The notice goes on to state that "our final determination may differ from this proposal."[1]

Because the proposed rule has not undergone peer review, it may not reflect the best scientific and commercial data available, as required by Section 4 of the Act. The peer review process ensures that any proposed listing meets the requirements of the Endangered Species Act of 1973 and allows a critique of USFWS' work, as well as ensuring that any additional scientific information is considered by the USFWS ahead of their actions.

The June 2012 USFWS document entitled, "*Information Quality Guidelines and Peer Review*,"[2] outlines the USFWS policy and procedures for reviewing, substantiating, and correcting the quality of information it disseminates to the public. Part VI contains information quality methods and the USFWS guidance on peer review of influential information. This section expands on peer review being conducted prior to the public comment period, specifically stating, ". . . peer review prior to the public comment period should be considered."[3]

We also agree that this step should occur *before* the USFWS proposes to list the species in the Federal Register as Threatened or Endangered and as such, the decision to list is premature.

The USFWS' Information Quality Guidelines and Peer Review also recognizes the White House Office of Management and Budget's Final Information Quality Bulletin for Peer Review.[4] That document discusses the timing of peer reviews suggesting early peer review leads to a better end product, and recognizes that "peer review should precede an opportunity for public comment to ensure that the public receives the most scientifically strong product (rather than one that may change substantially as a result of peer reviewer suggestions."[5]

The Endangered Species Act of 1973 requires USFWS to base its decisions on best available science. Given we do not have the data, we are unable to discern if the data USFWS utilized for these proposed actions went through peer review. Again, USFWS should not be basing its proposed listing decisions on data that has not been subjected to the peer review process by qualified specialists.

---

[1] Ibid.

[2] Found at: http://www.fws.gov/informationquality/topics/InformationQualityGuidelinesrevised6_6_12.pdf.

[3] Ibid, page 12.

[4] Found at: http://www.cio.noaa.gov/services_programs/pdfs/OMB_Peer_Review_Bulletin_m05-03.pdf.

[5] Ibid, page 21.

2. There is Insufficient and Incomplete Data to List the NLE and to Allow for Substantive Comments.

Throughout the entire Federal Register notice discussion, the USFWS acknowledges and notes there are many unknowns with respect to the NLE and WNS. For example, there is insufficient data regarding:

- NLE hibernation patterns
- NLE migration patterns
- NLE population mortality and susceptibility effects due to WNS
- The overall understanding of WNS and its effects on bats

This information is vitally important to the determination of the proper course of action regarding the NLE. And while we understand that it is the USFWS' mission to protect endangered and threatened species, for USFWS to act on a petition to list the NLE bat species based on inadequate data and without any demonstration that the listing would preserve or assist in the recovery of the NLE species is not a prudent use of the Service's time and budget—not to mention the resulting significant economic impact to the Pennsylvania coal industry to comply with the requirements that would result from the listing of the NLE bat.

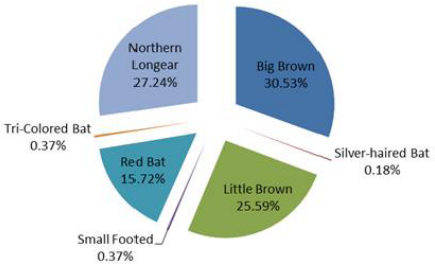
Further, we are very concerned at the references in the Notice to "unpublished data from Pennsylvania" and data that has not been peer reviewed. In an attempt to provide substantive and meaningful comments, PCA requested the unpublished data for Pennsylvania from the USFWS via email and received no data. We verbally requested the same information from the Pennsylvania Game Commission and also received no information. It is impossible for us to provide meaningful, scientific-based information to the USFWS without access to all available data.

However, as part of PCA's September 10, 2012 comments submitted to the Pennsylvania Game Commission in response to its Notice of Request for Comments relating to possible measures to protect the NLE and two other bats,[6] we provide you with the following analysis which illustrates that Pennsylvania data calls into question support for an endangered listing for the NLE.

As noted in our comments to the Pennsylvania Game Commission, a preliminary review of bat capture data from four projects which were to be reported in 2012 to the Pennsylvania Game Commission by a PCA member company indicates that two of the bat species—the Little Brown and the NLE, remain common throughout the western portion of the state where the surveys were conducted. The data was recorded from 547 bat captures at 80 net sites in Armstrong, Indiana, Clarion, Venango, Somerset, and Jefferson Counties. As can be seen in the chart below, approximately 27% of the bats captured were NLE and approximately 26% were Little Brown bats. Both species were captured at an average of 64% of the sites that were netted on these four projects.

Moreover, summer bat netting data from the PA Game Commission (Attachment, named "Exhibit 2") for the years 2009 and 2010–11[7] indicates that the number of NLE captured in 2010–11 was 8,554, which is a substantial increase over the 4,298 NLE netted during the prior period. Also, a summary of bat survey contractor netting activities for Pennsylvania from 1999 through 2010 (Attachment, named "Exhibit 3") actually evidences an upward trend in captures of the NLE.

2012 PA



[6] Found at: http://www.pabulletin.com/secure/data/vol42/42-32/1555.html.

[7] At the time of our September 10, 2012 comments, all the 2011 data had not yet been reviewed and tabulated. Even assuming there were not additional bats added to the 2010–2011 total (a most unlikely assumption), the data for the period 2009–2011 does not reflect a decline in the NLE population.

3. The NLE is Already Protected Due to Extensive Protection Measures for Other Bats.

The USFWS states in the Federal Register notice that conservation methods are already underway to protect the NLE, and

> *"Although there are various forms of habitat destruction and disturbance that present potential adverse effects to the northern long-eared bat, this is not considered the predominant threat to the species. Even if all habitat-related stressors were eliminated or minimized, the significant effects of WNS on the northern long-eared bat would still be present."* [8]

The Federal Register Notice itself further states that "the eastern small-footed bat and northern long-eared bat have likely benefited from the protections given to the Indiana bat and its winter habitat, as both species' ranges overlap significantly with the Indiana bat's range." [9]

In PCA's September 30, 2012 comments to the Pennsylvania Game Commission in response to its Notice of Request for Comments relating to possible measures to protect the NLE and two other bats, we indicate that extensive protections already afforded to the state- and federally-listed Indiana Bat are benefiting the above bat species.

Before a permit to conduct coal mining activities in Pennsylvania can be issued, a diversity index search must be conducted to determine whether the area of the proposed activity is located within a 10-mile radii of any locations where Indiana Bats hibernated, were captured, or where maternity roosting occurred.

If the project is located for example within a 10-mile radius of one of the 19 known Indiana Bat hibernacula as alleged by the Pennsylvania Game Commission, the applicant must submit a Protection and Enhancement Plan which, among other things, precludes the applicant from cutting any trees during specific months of the year and which further obligates the applicant to implement specific measures to protect and enhance the Indiana Bat.

Given that the NLE appear to share hibernacula with the Indiana Bat, and significant protective measures are already being implemented to protect the Indiana Bat, by default, the NLE. The data we discussed above from our September 30, 2012 comments to the PGC supports this assertion.

As an example, Fayette County in southwestern Pennsylvania allegedly has two Indiana Bat hibernacula. Drawing a 10-mile radius around each location (which does not appear to overlap), you encompass an area containing approximately 402,000 acres, or almost 80% of Fayette County's total area of approximately 510,000 acres. PCA asserts the existing Indiana Bat conservation management measures are, by default, already protecting the NLE species in Fayette County. A similar result is present in other Pennsylvania counties where mineral extraction occurs, including Somerset, Beaver and Lawrence Counties.

Indeed, even accounting for some overlap in the protective radii around the aforementioned 19 known Indiana Bat hibernacula, the total amount of protected bat habitat in Pennsylvania already totals over 3,000,000 acres at a minimum, or close to ten percent of Pennsylvania. Add in all 68 of the "special concern" hibernacula periodically monitored by the Pennsylvania Game Commission, the amount of protected area *increases to almost 49 percent of Pennsylvania*.

Because the range of the NLE in Pennsylvania overlaps with the Indiana Bat, according to the data PCA has available to us, all conservation management efforts that are currently utilized here in Pennsylvania to protect the Indiana Bat, serve to protect the NLE as well.

4. Bat Conservation Management Actions Need to Address WNS.

We are aware of the requirements to provide a means for listing species as endangered and giving them limited protection, and the associated conservation and recovery planning within the context of the Endangered Species Act. However, the connection between conservation management actions for the NLE bat, and bats in general, with the primary threat of WNS are out of sync. USFWS states:

> *"no other threat is as severe and immediate to the northern long-eared bat's persistence as the disease, white-nose syndrome (WNS)."* [10]

---

[8] 78 Fed. Reg. 61046 (October 2, 2013), 61061.
[9] Ibid, 61058.
[10] Ibid.

USFWS further states,

> *"Although there are various forms of habitat destruction and disturbance that present potential adverse effects to the northern long-eared bat, this is not considered the predominant threat to the species. Even if all habitat-related stressors were eliminated or minimized, the significant effects of WNS on the northern long-eared bat would still be present."* [11]

And,

> *"Although conservation efforts have been undertaken to help reduce the spread of the disease through human-aided transmission, these efforts have only been in place for a few years and it is too early to determine how effective they are in decreasing the rate of spread."* [12]

Furthermore, information on USFWS' website admits to a lack of knowledge surrounding WNS and its cause.[13]

Pennsylvania coal mining activities typically are not of the type that would compromise bat habitat and reproduction areas. Yet potential permit-related restrictions on our regulated members due to conservation management measures would impose resource burdens that would fail to address the primary driver behind this proposed listing by USFWS—the effect of WNS on NLE.

Given this, we suggest the USFWS' efforts should be directed to completing additional research to determine the exact original cause of WNS, possible treatment strategies for bats, assessing under what conditions the fungus is transmitted and how it spreads, determining what the optimal environmental conditions are that allow the growth and transmission of the fungus, determining what is driving the spread of the fungus, and determining the differences in those colonies affected and unaffected by WNS. Only when this critical information is known would USFWS then be able to determine appropriate listing actions, if necessary. It is inappropriate and scientifically unwarranted to take action to list the NLE without this knowledge.

5. Lack of Information Regarding Critical Habitat

In the Federal Register notice, USFWS identifies the situations at 50 CFR 424.12(a)(2) under which critical habitat is not determinable:

- Information sufficient to perform required analyses of the impacts of the designation is lacking, or
- the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

The notice goes on,

> *"We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. Since information regarding the biological needs of the species is not sufficiently well known to permit identification of areas as critical habitat, we conclude that the designation of critical habitat is not determinable for the northern long-eared bat at this time."*

These statements, combined with other statements found throughout the Federal Register notice serve to reinforce PCA's position that existing data does not support an endangered listing and there is insufficient data to support a Threatened listing of the NLE.

The goal of the Endangered Species Act of 1973 is to protect and preserve species. It is irrelevant whether critical habitat is "determinable" because no critical habitat designation will serve to protect any bats against WNS.

6. USFWS Decision NOT to List Eastern Small-footed Bat is Appropriate.

In the Federal Register notice, the USFWS indicates the factors contributing to their decision NOT to list the Eastern Small-footed bat as threatened or endangered including:

- Eastern Small-footed bats appear to be less susceptible to WNS than other cave bat species, (these factors include hibernacula selection, total time spent hibernating in hibernacula, location within the hibernacula regarding lower humidity and higher temperature fluctuations),

[11] Ibid, 61061.
[12] Ibid, 61066.
[13] http://www.fws.gov/northeast/pdf/white-nosefaqs.pdf.

- solitary roosting behavior,
- insignificant population declines,
- existing State listings, and
- less susceptible to mortalities caused by man-made equipment.

We support the USFWS' position NOT to list the Eastern Small-footed bat as threatened or endangered.

7. USFWS Agreements with External Parties are Precluding Solid Science.

On a bigger picture, the USFWS signed an agreement with the Center for Biological Diversity on July 12, 2011 requiring the Agency to make initial or final decisions on whether to add hundreds of imperiled plants and animals to the Endangered Species list by 2018.

The USFWS subsequently developed a Listing Program Work Plan to address the very large increase in the number of species petitioned for listing.[14] According to the USFWS' Listing Program Work Plan Questions and Answers,

> *". . . the Service was petitioned to list an average of 20 species per year from 1994 to 2006. By contrast, since 2007, the Service has been petitioned to list more than 1,250 species, nearly as many species as the agency listed during the previous 30 years of administering the ESA. The Service was petitioned to list 695 species in 2007, 56 species in 2008, 63 species in 2009, and 451 species in 2010 . . .. The deadlines for responding to this large increase in petitions, driven in large part by these megapetitions, have overwhelmed the capacity of the Listing Program and required diverting significant human and financial listing resources to the task of completing findings for the petitioned species, to such an the extent that no new listing determinations were initiated in FY 2010. The Service published final listing determinations for 51 species in FY10, and 13 species in FY11. Most were listed with a concurrent critical habitat designation."*[15]

We believe the workload imposed by these mega-petitions is precluding good science in USFWS' attempts to avoid legal repercussions. Furthermore, we suggest that USFWS financial resources that are being expended in these legal actions could better be utilized, for example, on WNS research.

CONCLUSION

Based on the above, we disagree with the USFWS' proposed rule to list the NLE species as Endangered and believe not enough information is known to list it as Threatened. We support the decision not to list the Eastern Small-footed Bat.

We appreciate consideration of our comments. Should you have any questions or comments, please do not hesitate to contact us.

Sincerely,

GEORGE ELLIS,
President, PCA.

Attachments: Exhibits 2 and 3

[14] http://www.fws.gov/Endangered/improving_ESA/listing_workplan_FY13-18.html.
[15] http://www.fws.gov/endangered/improving_esa/FWS%20Listing%20Program%20Work%20Plan%20FAQs%20FINAL.PDF.

EXHIBIT 2

COUNTY SUMMARY OF STATEWIDE BAT COUNTS FOR PERIOD 2009–2011
TAKEN FROM PGC REPORTS

(ONLY A PARTIAL COUNT FOR YEAR 2011)

Table 5. County summary of summer bat netting surveys and captures entered in the Wildlife Diversity database. Data includes those conducted by PA Game Commission staff (N=223) and private consultants (N=7,189). As of the writing of this report all contractor netting for 2011 has not been entered and is still ongoing.

	County	Net/Trap Sessions	Species*									Total Bats
			MYLU	*MYSE*	*MYLE*	*MYSO*	*EPFU*	*PESU*	*LABO*	*LACI*	*LANO*	
1	Adams	29	146	3	0	0	43	20	32	1	1	251
2	Allegheny	72	38	21	0	0	230	2	35	2	0	328
3	Armstrong	2	6	0	0	0	0	0	1	0	0	7
4	Bedford	88	186	96	1	2	234	2	75	2	2	600
5	Berks	23	48	26	0	3	43	4	6	0	0	130
6	Blair	233	4,034	188	7	14	391	9	176	13	5	4,837
7	Bradford	210	526	276	1	0	144	3	47	2	2	1,001
8	Bucks	12	5	9	0	0	44	0	2	0	0	60
9	Butler	21	119	16	0	1	20	0	6	0	0	162
10	Cambria	78	195	88	0	0	244	3	34	4	0	568
11	Cameron	47	27	96	0	0	32	0	18	2	1	176
12	Carbon	3	0	0	0	0	0	0	0	0	0	0
13	Centre	326	443	348	13	0	506	18	106	11	17	1,462
14	Chester	119	127	97	0	0	217	22	41	2	0	506
15	Clarion	29	44	26	0	0	19	1	1	0	1	92
16	Clearfield	160	148	192	0	0	457	3	64	7	1	872
17	Clinton	126	78	154	1	0	128	4	52	8	1	426
18	Columbia	57	159	177	10	0	160	6	16	5	0	533
19	Crawford	1	2	1	0	0	0	0	0	0	0	3
20	Cumberland	4	1	0	0	0	3	0	2	0	0	6
21	Dauphin	29	1,956	63	0	0	223	8	25	3	1	2,279
22	Elk	229	293	352	0	1	223	0	59	24	20	966
23	Fayette	365	228	576	2	0	411	21	122	7	6	1,373
24	Forest	148	527	218	0	0	268	1	86	9	15	1,124
25	Franklin	9	33	13	0	0	4	1	4	1	0	56
26	Fulton	4	15	0	0	0	0	1	4	0	0	20
27	Greene	488	508	360	0	33	440	46	245	15	5	1,652
28	Huntingdon	291	852	283	36	0	422	43	263	10	1	1,910
29	Indiana	29	27	12	2	0	9	0	11	1	3	65
30	Jefferson	66	158	113	0	0	190	0	20	2	0	483
31	Juniata	57	30	40	1	0	65	5	17	0	0	158
32	Lackawanna	125	140	53	4	0	69	3	16	0	0	285
33	Lancaster	18	5	4	0	0	32	2	16	0	0	59
34	Lawrence	27	60	4	0	0	8	2	3	0	0	77
35	Lebanon	24	30	60	0	0	44	5	17	0	0	156
36	Lehigh	2	0	0	0	0	3	0	1	0	0	4
37	Luzerne	178	359	126	5	0	240	19	29	2	1	781
38	Lycoming	508	1,484	682	2	0	769	32	175	24	16	3,184
39	Mckean	232	460	362	0	0	255	1	110	10	15	1,213
40	Mifflin	49	334	42	4	0	146	2	23	1	0	553
41	Monroe	101	287	65	0	0	193	5	16	2	0	568
42	Montgomery	7	146	1	0	0	2	0	0	0	0	149
43	Montour	10	46	4	0	0	15	3	1	2	0	71
44	Northampton	23	196	39	0	0	205	6	14	0	0	460
45	Northumberland	57	256	64	2	0	164	9	8	0	0	503
46	Perry	2	0	1	0	0	2	0	2	0	0	5
47	Pike	297	240	128	10	1	356	2	94	5	2	838
48	Potter	295	1,115	746	0	0	132	2	94	31	29	2,149
49	Schuylkill	228	141	295	5	0	347	16	65	5	0	874
50	Snyder	73	604	11	0	0	58	1	4	1	0	679
51	Somerset	326	553	474	9	2	568	20	99	14	1	1,740
52	Sullivan	81	9	12	0	0	24	0	13	1	1	60
53	Susquehanna	104	175	93	0	0	90	0	19	0	0	377
54	Tioga	429	720	757	2	0	430	1	162	58	45	2,171
55	Union	55	263	5	0	0	74	0	1	0	0	343
56	Venango	4	3	3	0	0	6	0	0	1	0	13
57	Warren	191	297	399	1	0	393	7	88	7	4	1,196
58	Washington	297	356	103	0	0	409	21	62	7	0	958
59	Wayne	121	62	39	3	0	120	1	37	1	0	263
60	Westmoreland	86	81	24	4	0	113	6	25	1	0	254
61	Wyoming	103	256	108	2	0	317	1	12	5	0	600
62	York	4	1	0	0	0	4	0	4	0	0	10
		7,412	19,537	8,554	127	57	10,758	391	2,780	309	196	42,699

* *MYLU=Myotis lucifugus; MYSE=Myotis septentrionalis; MYLE=Myotis leibii; MYSO=Myotis sodalis; EPFU=Eptesicus fuscus; PESU=Perimyotis subflavus LABO=Lasiurus borealis; LACI=Lasiurus cinerus; LANO=Lasionycteris noctivagans.*

Table 6. County summary of summer bat netting surveys and captures entered in the Wildlife Diversity database. Data include those conducted by PA Game Commission staff (N=192) and private consultants (N=3,185).

County	Net/Trap Sessions	Species[a]									Total Bats
		MYLU	*MYSE*	*MYLE*	*MYSO*	*EPFU*	*PISU*	*LABO*	*LACI*	*LANO*	
1 Adams	19	60	8	0	0	23	16	22	1	1	131
2 Allegheny	46	27	17	0	0	149	2	26	2	0	223
3 Armstrong	2	6	0	0	0	0	0	1	0	0	7
4 Bedford	84	182	93	1	2	231	2	72	2	2	587
5 Berks	23	48	26	0	3	43	4	6	0	0	130
6 Blair	175	3,661	128	6	13	247	8	160	12	5	4,240
7 Bradford	34	131	108	0	0	15	0	3	1	0	258
8 Bucks	12	5	9	0	0	44	0	2	0	0	60
9 Butler	19	117	15	0	1	18	0	6	0	0	157
10 Cambria	66	171	74	0	0	227	3	31	4	0	510
11 Cameron	25	24	84	0	0	11	0	9	1	0	129
12 Carbon	3	0	0	0	0	0	0	0	0	0	0
13 Centre	166	302	195	7	0	256	14	50	6	1	831
14 Chester	20	27	14	0	0	9	0	3	0	0	53
15 Clarion	29	44	26	0	0	19	1	1	0	1	92
16 Clearfield	26	45	59	0	0	74	0	9	2	0	189
17 Clinton	56	38	46	0	0	72	2	32	3	0	193
18 Columbia	26	77	122	4	0	113	3	11	5	0	335
19 Crawford	1	2	1	0	0	0	0	0	0	0	3
20 Cumberland	3	1	0	0	0	1	0	2	0	0	4
21 Dauphin	11	1,687	48	0	0	8	1	3	2	0	1,749
22 Elk	156	210	244	0	1	115	0	30	13	18	631
23 Fayette	329	186	524	2	0	395	21	119	7	6	1,260
24 Forest	130	135	193	0	0	241	1	75	9	15	669
25 Franklin	9	33	13	0	0	4	1	4	1	0	56
26 Fulton	4	15	0	0	0	0	1	4	0	0	20
27 Greene	151	220	146	0	19	150	15	81	4	5	640
28 Huntingdon	189	625	209	30	0	318	41	208	8	1	1,440
29 Indiana	24	6	7	2	0	9	0	10	1	2	37
30 Jefferson	23	31	54	0	0	38	0	7	1	0	131
31 Juniata	57	30	40	1	0	65	5	17	0	0	158
32 Lancaster	2	3	0	0	0	3	0	0	0	0	6
33 Lawrence	27	60	4	0	0	8	2	3	0	0	77
34 Lebanon	24	30	60	0	0	44	5	17	0	0	156
35 Luzerne	86	167	84	3	0	154	5	16	2	1	432
36 Lycoming	5	25	0	0	0	2	0	0	0	0	27
37 McKean	208	284	329	0	0	227	1	101	9	15	966
38 McKean	1	19	3	0	0	0	0	0	1	0	23
39 Mifflin	48	208	43	4	0	146	2	23	1	0	427
40 Monroe	76	253	41	0	0	132	4	14	1	0	445
41 Montgomery	4	0	1	0	0	2	0	0	0	0	3
42 Montour	4	35	4	0	0	10	3	1	2	0	55
43 Northampton	22	196	39	0	0	202	6	14	0	0	457
44 Northumberland	35	153	50	0	0	47	8	8	0	0	266
45 Pike	56	153	53	1	0	49	1	13	1	1	272
46 Potter	79	347	135	0	0	43	0	23	4	2	554
47 Schuylkill	10	5	5	0	0	0	5	0	0	0	15
48 Snyder	21	65	11	0	0	21	0	4	1	0	102
49 Somerset	188	364	275	5	2	346	11	67	8	0	1,078
50 Tioga	48	87	92	0	0	56	0	7	0	3	245
51 Union	10	17	5	0	0	4	0	1	0	0	27
52 Warren	179	243	378	1	0	355	7	80	7	4	1,075
53 Washington	214	307	72	0	0	198	32	34	6	0	649
54 Wayne	6	15	3	0	0	3	0	2	0	0	23
55 Westmoreland	3	0	0	0	0	0	0	0	0	0	0
56 Wyoming	102	155	108	2	0	317	1	12	4	0	599
57 York	1	0	0	0	0	0	0	0	0	0	0
	3,377	11,337	4,298	69	41	5,264	234	1,444	132	83	22,902

[a] *MYLU=Myotis lucifugus; MYSE=Myotis septentrionalis; MYLE=Myotis leibii; MYSO=Myotis sodalis; EPFU=Eptesicus fuscus; PISU=Perimyotis subflavus LABO=Lasiurus borealis; LACI=Lasiurus cinerus; LANO=Lasionycteris noctivagans.*

EXHIBIT 3

SUMMARY OF CONTRACTOR ACTIVITIES 1999–2011 TAKEN FROM PGC REPORTS

(ONLY A PARTIAL COUNT FOR YEAR 2011)

Table 6. Summary of contractor netting activities by year since 1999. As of the writing of this report all contractor netting for 2011 has not been entered and is still ongoing.

					Species Totals/Year and Species Effort/Capture by Year																			
Year	Netting Sessions	Effort[a]	Total Bats Bats	Bats/ Survey	MYLU	Effort[b] MYLU	MYSE	Effort[b] MYSE	MYLE	Effort[b] MYLE	MYSO	Effort[b] MYSO	EPFU	Effort[b] EPFU	PESU	Effort[b] PESU	LABO	Effort[b] LABO	LACI	Effort[b] LACI	LANO	Effort[b] LANO
1999	89	46,584	393	4	122	382	66	706	1	46,584	0		178	360	5	23,292	17	2,740	5	9,317	1	46,584
2000	8	15,406	11	1	0		2	7,703	0		0		7	2,201	0		1	15,406	1	15,406	0	
2001	341	237,007	1,253	4	481	493	362	655	1	237,007	0		262	905	18	13,167	89	2,663	15	15,800	25	9,480
2002	104	63,658	741	7	288	221	175	364	7	9,094	0		143	445	17	3,745	102	624	2	31,829	7	9,094
2003	161	111,632	840	5	239	467	247	452	3	37,207	0		254	439	3	37,207	81	1,378	6	18,604	7	15,946
2004	153	116,348	1,547	10	493	236	292	398	3	38,783	0		642	181	15	7,757	90	1,293	6	19,391	6	19,391
2005	511	261,648	2,797	5	1,164	225	691	379	14	18,689	0		701	373	34	7,696	180	1,454	11	23,786	5	150,824
2006	390	246,266	2,083	5	563	437	500	493	1	246,266	0		825	299	28	8,795	151	1,631	11	22,388	3	82,089
2007	301	212,916	2,045	7	790	370	477	446	0		7	30,417	595	358	9	23,657	152	1,401	12	17,743	3	70,972
2008	931	573,747	5,161	6	1,545	349	1,324	433	13	44,134	15	38,250	1,762	326	55	10,432	599	1,919	33	17,386	15	38,250
2009	1,651	991,191	6,826	4	2,635	376	1,435	691	30	33,040	6	165,199	2,147	462	70	14,160	424	2,338	48	20,650	31	31,974
2010	1,443	1,048,742	7,114	5	3,222	408	1,661	564	21	49,940	6	174,790	1,819	577	58	18,728	636	1,649	86	12,195	57	18,399
2011[c]	543	440,356	2,018	4	373	1,180	546	806	5	88,051	3	146,752	850	518	22	20,012	174	2,518	34	12,949	21	20,965

[a] MYLU=Myotis lucifugus; MYSE=Myotis septentrionalis; MYLE=Myotis leibii; MYSO=Myotis sodalis; EPFU=Eptesicus fuscus; PESU=Perimyotis subflavus LABO=Lasiurus borealis; LACI=Lasiurus cinerus; LANO=Lasionycteris noctivagans.

[b] One unit of effort is equal to 1 square meter of net or trap surface in a set position for 1 hour.

[c] As of the writing of this report, all contractor data for 2011 has not been entered and is still ongoing.

The CHAIRMAN. Thank you very much for your testimony.

Now recognize Ms. Mollie Matteson, Senior Scientist with the Center for Biological Diversity out of Richmond, Vermont. Recognized for 5 minutes.

STATEMENT OF MOLLIE MATTESON, SENIOR SCIENTIST, CENTER FOR BIOLOGICAL DIVERSITY, RICHMOND, VERMONT

Ms. MATTESON. Thank you, Chairman Hastings, Representative Thompson and Representative Perry. Thank you for the opportunity to testify today.

My name is Mollie Matteson and I am Senior Scientist at the Center for Biological Diversity.

The Northern Long-Eared Bat faces a grave crisis. Its plummeting populations over the last 8 years have put it on the fast track to extinction. It is the very kind of wildlife that needs the protection of the Endangered Species Act, just like the Bald Eagle, the Peregrine Falcon, Grizzly Bear, and other emblematic species of our Nation that have benefited greatly from the protection of the Act in the past.

Prior to the advent of the fungal disease, White Nose Syndrome, the Northern Long-Eared Bat was rare, patchily distributed throughout its range, and almost never found in large numbers anywhere. Scientists have recognized that this species is vulnerable to a number of threats including habitat loss, and in fact, this bat may have been in decline even before the arrival of White Nose Syndrome.

Since 2006, when White Nose Syndrome was first documented, the evidence has been clear; the Northern Long-Eared Bat population has plummeted. In the Northeast, once a stronghold for the species, scientists have estimated that the population has declined by 99 percent. In many bat caves, it has disappeared altogether. The disease is now in 25 states, taking in all of the most important territory for this species. According to peer-reviewed scientific models, White Nose Syndrome will eventually spread across most of North America.

Prominent bat experts have referred to the precipitous loss of the Northern Long-Eared Bat, and six other bat species also affected

by White Nose Syndrome, as the worst wildlife health crisis in memory. Endangered Species Act protection offers the best and perhaps only means for saving this species from extinction. The Act has a 99 percent success rate at keeping imperiled species from going extinct. The scale of this bat extinction crisis is not something that any one state has the capacity to address. Only the Endangered Species Act provides the long-term and broad-scale framework for conservation and recovery that is required to restore the Northern Long-Eared Bat to healthy numbers once again.

The Endangered Species Act is already working to recover hundreds of species in the eastern and central United States, including several bats, as well as birds, fish, turtles and many other creatures that not only add to the richness and beauty of this part of the world, but also are vital to environmental health and ultimately long-term social and economic well-being. As with currently protected species, the rules protecting the Northern Long-Eared Bat will have built-in flexibility that allows sustainable and responsible development.

Scientists estimate that bats provide billions of dollars in crop protection services across the United States. The Northern Long-Eared Bat controls moths and beetle pests that attack timber and crops. Without this bat, the challenges farmers and the timber industry face will grow, not lessen. Because the Northern Long-Eared Bat is so depleted, it is important that we safeguard survivors from as much harm as possible, including harm to their critical habitat. Responsible environmental stewardship calls for this approach. This is what the Endangered Species Act is designed to promote, and this is what Americans wish the Act to do; to protect for future generations the diverse and magnificent natural treasures of this Nation.

Thank you very much.

[The prepared statement of Ms. Matteson follows:]

PREPARED STATEMENT OF MOLLIE MATTESON, M.S., SENIOR SCIENTIST, CENTER FOR BIOLOGICAL DIVERSITY

INTRODUCTION

The northern long-eared bat faces a grave crisis. Its plummeting populations over the last 8 years have put it on the fast track to extinction. It is the very kind of wildlife that needs the protection of the Endangered Species Act, just like the wide-ranging bald eagle, peregrine falcon, grizzly bear, and other emblematic species of our Nation that have benefited greatly from the crucial protection of the Endangered Species Act in the past.

Prior to the advent of the fungal disease, white-nose syndrome, the northern long-eared bat was rare, patchily distributed throughout its range, and almost never found in large numbers anywhere. Scientists recognized the species as vulnerable to a number of threats, such as habitat loss, and it may have been in decline even before the arrival of the disease.[1]

However, since 2006, when white-nose syndrome was first documented in North America, the trends have been clear: the population of the northern long-eared bat has plummeted. In the Northeast, once a stronghold for the species, the population has declined by an estimated 99 percent. In many bat caves, it has disappeared altogether. The disease is now in 25 states, ravaging bat populations from New England, to the Mid-Atlantic and Midwest, to the South. These affected areas take in all of the most important territory for the species. White-nose syndrome continues

[1] Ingersoll, T.E., B.J. Sewall and S.K. Amelon. 2013. Improved analysis of long-term monitoring data demonstrates marked regional declines of bat populations in the eastern United States. PLoS ONE 8(6): e65907. doi:10.1371/journal.pone.0065907.

to advance, and according to scientific models, will eventually spread across most of North America.

Prominent bat experts have referred to the precipitous loss of the northern long-eared bat, and six other bat species also affected by white-nose syndrome, as the "worst wildlife health crisis in memory." The Endangered Species Act offers the best and perhaps only means for saving the northern long-eared bat. The Act has a 99 percent success rate at keeping species from the brink of extinction. Further, the scale of the problem is not something that any one state has the capacity to address. Only the Endangered Species Act provides the long-term and broad scale framework for conservation and recovery that is required to restore the northern long-eared bat to healthy numbers once again.

The Endangered Species Act is already working to recover hundreds of species in the eastern and central United States, including the Indiana bat and Virginia big-eared bat, as well as birds, fish, turtles, and many other creatures that not only add to the richness and beauty of this part of the world, but also are vital to environmental health and ultimately the long-term social and economic well-being of our society. As with those other federally listed species, the rules protecting the northern long-eared bat will have built-in flexibility that allows sustainable and responsible development.

Scientists estimate that bats provide billions of dollars in crop protection services across the United States. The insect-eating northern long-eared bat provides a valuable population check on moths and beetles that may attack timber and crops. Without this bat, the challenges farmers and the timber industry face will grow, not lessen. Because the northern long-eared bat is so depleted, it is important that we safeguard survivors from as much harm as possible, including harm to their critical habitat. Responsible environmental stewardship calls for this approach. That is what the Endangered Species Act is designed to promote, and for the majority of Americans, this is what they wish the Act to do—to protect for future generations the diverse and magnificent natural treasures of this Nation.

PATH TO ENDANGERMENT

Since 2006, the northern long-eared bat (*Myotis septentrionalis*) has declined dramatically as a result of the exotic, invasive fungal disease known as white-nose syndrome (WNS). In the Northeast, where the disease has been present the longest, the species has plummeted 99 percent.[2] However, WNS is not the only threat the species faces. Scientists have evidence that the northern long-eared bat was in decline prior to the onset of WNS, possibly due to factors such as habitat destruction and fragmentation, environmental toxins, and climate change.[3] Now, WNS may be interacting with these other dangers to cause a downward spiral that may soon become irreversible. For the perpetuation of the species it is vital that the scarce survivors are safeguarded from as many harms as possible. WNS has caused the sudden and dramatic shrinkage of the northern long-eared bat population, but it may well be these other factors, if left unaddressed and unmitigated, that could finish the species off. The northern long-eared bat is clearly in danger of extinction throughout all or a significant portion of its range, and as a matter of both law and responsible conservation policy, the FWS must designate the species as endangered.

The Center for Biological Diversity submitted a citizen petition to list the eastern small-footed bat and the northern long-eared bat on January 21, 2010.[4] On October 2, 2013, the U.S. Fish and Wildlife Service (FWS) proposed to list the northern long-eared bat (*Myotis septentrionalis*) as endangered.[5] The FWS then decided earlier this summer, primarily in response to listing opponents, to extend the period for final determination another 6 months, to April 2, 2015.

---

[2] U.S. Fish and Wildlife Service. 2013. Proposed Rule: 12-Month Finding on a Petition to List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Endangered or Threatened Species; Listing the Northern Long-Eared Bat as an Endangered Species. Docket No. FWS–R5–ES–2011–0024, 78 FR 61045. Oct. 2, 2013.

[3] Ingersoll, T.E., B.J. Sewall and S.K. Amelon. 2013. Improved analysis of long-term monitoring data demonstrates marked regional declines of bat populations in the eastern United States. PLoS ONE 8(6): e65907. doi:10.1371/journal.pone.0065907.

[4] Center for Biological Diversity. 2010. Petition to list the eastern small-footed bat *Myotis leibii* and northern long-eared bat *Myotis septentrionalis* as threatened or endangered under the Endangered Species Act. 61 pp. http://www.biologicaldiversity.org/species/mammals/eastern_small-footed_bat/pdfs/petition-Myotisleibii-Myotisseptentrionalis.pdf.

[5] FWS, ibid.

SPECIES' PRECIPITOUS DECLINE WARRANTS ENDANGERED LISTING

Populations of the northern long-eared bat have plummeted as a result of WNS. In the northeastern United States, where WNS has been present longest in North America, winter surveys demonstrate that the northern long-eared bat has declined by 99 percent. Summer surveys are generally in line with these findings. The Northeast is also the region in which the species was historically most abundant; a decline in that region has a disproportionately large impact on the species' overall status. No solution yet exists for WNS. So long as this is the case, the disease will likely spread and cause similar mortality among northern long-eared bats in other regions. Although the primary threat to the northern long-eared bat is WNS, it is an established biological principle that small populations of a species are more vulnerable to discrete threats than large populations are. For that reason, the severely reduced northern long-eared bat population is more at risk from other threats, including those from human activities, than prior to WNS.

We take issue with the claims of those calling for FWS to list the northern long-eared bat as threatened rather than endangered. Population declines of more than 90 percent in the core of its range, with more declines predicted due to WNS, constitute a present "danger of extinction throughout all or a significant portion of its range." The decreases do not represent a mere "[likelihood] to become an endangered species within the foreseeable future throughout all or a significant portion of its range." In other words, for the northern long-eared bat, endangerment is not just a possibility on the horizon—endangerment is already here.

NON-EXISTENT OR INADEQUATE PROTECTIVE MEASURES

No regulations or conservation plans currently exist that address the widespread and severe decline of the northern long-eared bat, and counter the various threats the species faces. The species is listed as state endangered or threatened in several states: "endangered" in Delaware, Massachusetts, and Vermont; "threatened" in Wisconsin; proposed for endangered in Maine. However, it has no protected status or only minimal recognition as a vulnerable species in many more states within its range. Unfortunately, none of the state listings provide strong regulatory protection against threats such as destruction of forested roosting habitat that, together with WNS, could lead to the extinction of the species. State-level protections also do not provide range-wide recovery planning, habitat conservation plans for activities that may take listed bats, or Federal funding for research and management.

Unfortunately, some state natural resource agencies in the upper Midwest have expressed opposition to the needed Federal protection of northern long-eared bats.[6] Directors of Minnesota, Wisconsin, Michigan and Indiana natural resource agencies requested in an April 2014 letter to FWS that the agency delay protection of the northern long-eared bat because of the potential impact on timber operations and private landowners. Yet, none of these states have their own programs to conserve and recover the species that are equivalent to the protections provided by Federal ESA listing.

WNS CONTINUES TO SPREAD AND NORTHERN LONG-EARED BAT CONTINUES TO DECLINE

The U.S. Geological Survey/National Wildlife Health Center reported this April[7] that WNS spread to three new states—Arkansas, Michigan, and Wisconsin—in the winter of 2013–14. The disease also continued to spread within the states where it had been previously documented, intensifying its impact in the Midwest, Southeast, and South. In Canada, the disease spread last winter within Nova Scotia, New Brunswick, Quebec and Ontario. The extent of the disease now reaches from the 49th parallel in Quebec south to Paulding County, Georgia, and from Prince Edward Island west almost to the Missouri/Kansas border.

The following information was reported at the 2014 Northeast Bat Working Group[8] annual meeting in January:

- In summer mist net surveys in New York, northern long-eared bats have notably declined over the last several years. Acoustic surveys show a dramatic decline of all *Myotis* species, which include the northern long-eared bat.
- In Pennsylvania, numbers of bats at summer roosts are down, as are numbers of bats at hibernacula. The northern long-eared bat was down by 99.2 percent

[6] http://www.jsonline.com/news/wisconsin/states-raise-concerns-about-bat-protection-plan-b99253534z1-256378541.html.

[7] http://www.nwhc.usgs.gov/publications/wildlife_health_bulletins/WHB_2014-04_WNS_Updates.pdf.

[8] http://www.nebwg.org/AnnualMeetings/2014/index.html.

in hibernacula surveys in 2013, as compared to pre-WNS counts. The number of contractor-conducted net surveys has grown dramatically from 390 in 2006 to 1,087 in 2012, yet the capture rate of northern long-eared bats relative to its pre-WNS numbers has continued to go down.

- In Virginia, the number of northern long-eared bats caught during summer mist net surveys has gone down by 96 percent compared to pre-WNS surveys.
- In West Virginia, the northern long-eared bat was the most common bat species found in summer mist net surveys prior to WNS (33 percent). However, now only 20 percent of the bats captured are northern long-eared bats. (The report did not indicate whether total number of all bats captured has also declined, but this seems likely).

A recent paper on pre- and post-WNS bat activity on the Fernow Experimental Forest in West Virginia reports: "Activity of little brown myotis, northern myotis, and Indiana myotis was lower post-WNS than pre-WNS, consistent with the species' precipitous declines previously reported in WNS-affected areas in the Northeast and upper portions of the Mid-Atlantic."[9] This study was based on summer acoustic surveys.

Some opponents of endangered species listing have asserted that recent summer bat surveys, unlike hibernacula surveys, indicate that the northern long-eared bat is still abundant. However, publicly available data such as studies and surveys cited above paint a clear picture of ongoing and dramatic decline of the species.

SCIENTIFIC UNCERTAINTY AND THE BEST AVAILABLE SCIENCE

The best, currently available science went into the FWS' recommendation to list the northern long-eared bat as endangered, and that decision was peer-reviewed and supported by leading bat scientists. There is no genuine scientific uncertainty about whether this bat is in danger of extinction in all or a significant part of its range. To the extent that incomplete information about the species, white-nose syndrome, and other threats still exists, this is a reality of the scientific process. A listing decision cannot wait until complete scientific research has been done and no amount of uncertainty remains. To delay such a decision while threats are ongoing, as they are for the northern long-eared bat, would be ecologically and fiscally irresponsible because the status of the species would likely worsen in the meantime, and require even more aggressive, potentially expensive, action down the line to save it from extinction.

THE NEED FOR ADDRESSING ALL HARMS

White-nose syndrome is the primary threat to the northern long-eared bat. However, it is not the only threat. A small population is vulnerable to losses of any kind, from any source. Forest clearing and fragmentation, human disturbance of caves, and environmental toxins, among others, are other threats to the northern long-eared bat that need to be addressed if conservation and recovery efforts are to be effective. Just as a cancer patient would be ill-advised to stop wearing her seat belt, just because the major threat to her health is cancer, so too must biologists be able to address potential and likely harms to the northern long-eared bat, from other sources besides white-nose syndrome.

CONCLUSION

The northern long-eared bat is in current danger of extinction throughout a significant portion of its range. Based on the current, best available scientific information, it qualifies for endangered status under the Endangered Species Act, and it is in need of that level of Federal protection to address the profound and various threats it faces. The Act is a tool that works, a policy that the American public supports, and in its success at preventing extinction, it is a gift that we bestow upon future generations.

The CHAIRMAN. Thank you very much for your testimony.

Now recognize Mr. Martin Melville, Owner of Melville Forestry Services. And, Mr. Melville, you are recognized for 5 minutes.

[9] Johnson et al. 2013. Nightly and yearly bat activity before and after WNS on the Fernow Experimental Forest in West Virginia.

STATEMENT OF MARTIN MELVILLE, OWNER, MELVILLE FORESTRY SERVICES, CENTRE HALL, PENNSYLVANIA

Mr. MELVILLE. Thank you very—I am going to move this thing closer here. So I was perhaps not as clear on my purpose for being here. I will say that given the pattern of ESA implementation by Fish and Wildlife Service, it is likely that a listing on such a broad scale as the Northern Long-Eared Bat would significantly impact, perhaps disastrously, as in the Northwest, my business, my logging and my peers.

I would say that in the reading that I have done in preparation for this, there is not any indication that ceasing forest management activities would benefit the bat. It appears that the bat is a generalist, and really actually kind of does pretty well when you give it a variety of habitats.

What I heard this morning though is more, so the ESA is 40 years old and it should be updated. And there are some important parts of it that just really don't seem to work. One of those was mentioned by our friend from Ford City who mentioned his inability to build a school. There is a clause in there somewhere about suitable habitat, and at one SFI workshop, I asked the facilitator if it was suitable habitat for a dinosaur, if that was meant that they were protected there and I couldn't do any work there, and he said, no, that doesn't apply because they are extinct. But the way that it was worded, it made it sound very clearly like if it was suitable habitat, it didn't matter if the animal hadn't been seen there for hundreds of years, it is still restricted activity.

I see mission creep, I think, although I am not an expert in ESA, certainly.

I was talking with a friend of mine this morning who is a log truck driver, and, you know, we live here, our office is out there, and we have lunch under a tree, and logging is as much a way of life as it is a mode of employment. And I mean I think it would not be too far-fetched to suggest that perhaps loggers should be listed at times.

There are some important considerations, and, for loggers themselves, we are now, whether we like it or not, members of a global economy and we must compete on that level. And so our opportunity to raise our prices to help meet our costs is virtually nonexistent. We are in competition with hybrid markets from Eastern Europe and Russia, and now from South America as well. Capital costs keep going up. Employees are harder and harder to find. And a recent logging survey showed that more than 70 percent of the loggers nationwide, but there would be no reason to doubt that the numbers are similar for Pennsylvania, were operating at a 3 percent or less margin of profit. And needless to say, that in itself is not a sustainable arrangement. So adding another burden to this heap for something that will arguably not help to benefit the bat strikes me as sort of arcane or bizarre.

Thank you, friends.

[The prepared statement of Mr. Melville follows:]

PREPARED STATEMENT OF MARTIN MELVILLE, CENTRE HALL, PENNSYLVANIA

Chairman Hastings and distinguished members of the House Natural Resources Committee, my name is Martin Melville. I am a resident of Centre Hall, Pennsylvania, received a Bachelor of Science in Forestry in 1980, and have worked in the forest industry for the past 35 years; 20 years logging and 10 years as proprietor of Melville Forest Services. I was presented the Pennsylvania "Outstanding Logger Award" in 1997 and met the criteria of the Sustainable Forestry Initiative® program Master Logger in 2004.

I also appear today on behalf of the members of the American Loggers Council, a national organization representing professional timber harvesters in 30 States across the United States with whom I have had an affiliation with for the past several years. I am pleased to have the opportunity to address the committee on the potential impacts that could occur should the U.S. Fish and Wildlife Service (USFWS) list the Northern Long-Eared Bat as a Federal Endangered Species, but first I would like to throw out a few statistics for you.

The latest numbers that I have been able to gather are from 2012, taken directly from the American Forest and Paper Association Web site. For Pennsylvania they are:

> Pennsylvania employment numbers in the forest products industry—50,103
>
> Payroll—$2,622,276
>
> With an estimated 274 manufacturing facilities ranging from mill work, treating plants, sawmills and paper mills, the total value of industry shipments in 2012 was $14,815,029,000.00 with state and local tax payments of $179,000,000.00.
>
> Forests compose 16,577,000 acres in Pennsylvania, covering 57 percent of the state. Of that 16.6 million acres, 11.6 million are privately held.

As you know, the Northern Long-Eared Bat is experiencing significant declines in parts of its range due to White Nose Syndrome (WNS). In its proposed listing, the USFWS has affirmed that WNS is the most significant threat to the NLEB and the species would most likely not be imperiled if not for this "*disease*" and that "*habitat concerns and other anthropogenic factors create no significant effects alone or in combination*." 78 Fed. Reg. at 61072 (emphasis added). USFWS also asserts in its document that when combined with significant population reductions due to WNS, "the resulting cumulative effect may further adversely impact the species"; **the only real threat to the species is clearly a wildlife disease, not habitat modification or loss**.

There is no evidence I am aware of indicating timber harvest restrictions will improve the NLEB's chances of surviving the WNS which is leading to the population decline, yet the Interim Conference and Planning Guidelines issued by the FWS in January of this year suggest a completely unrealistic, and in my view, unnecessary set of constraints on forest management during nearly every seasonal period of bat habitat use. These restrictions include vaguely worded restrictions on prescribed burning at various times of the year, restrictions on tree harvesting of all trees larger than 3 inches DBH and larger, and ambiguous direction to "Avoid reducing the suitability of forest patches with known NLEB use." In essence, although the species has been shown to be present in forest with a variety of age classes, management regimes, and in fact may depend upon management to perpetuate various habitat features over time, the Guidance seems to suggest that creating 5-mile radius "no management" zones around known habitat as the best way to conserve bats.

There is no evidence to suggest these measures have anything to do with the spread of White Nose Syndrome, nor that they would do anything to prevent very high levels of mortality should WNS spread throughout the bat's range, as the USFWS speculates it will.

I would argue current forest practices greatly enhance roosting and rearing habitat. In fact it may be true leaving dead snags and trees spaced apart from one another, such as those associated with logging, may separate the NLEB preventing incidental contact which spreads WNS.

This is supported by the fact where WNS is not yet present; populations of NLEB appear to be quite robust. For instance, the NLEB is one of the most frequently captured bats in the mist net surveys on the Black Hills National Forest in South Dakota, one of the most heavily managed National Forests in the country. In fact it is my understanding prior to the introduction of WNS, NLEB's were regarded as "most common" in the Northeastern portion of their range. States ranging from

Northern New England through the lower portion of the Lake States and Indiana contain a variety of habitat types, forest ownerships, and land use practices. This strongly suggests the bat is not dependent on a particular type of habitat much less a particular class of trees.

While UFWS may not take economics into consideration when making decisions, it should recognize the fact it takes dollars generated from tax paying businesses to have a clean stable environment both socially and ecologically. The forest products industry is one of the largest industries in the state of Pennsylvania generating over 14 billion dollars to our state economy.

As a logger, and part of the forest products industry here in Pennsylvania, I am committed to continuing forestry practices that enhance NLEB habitat. Any premature listing of an endangered species, or listing without taking into account economic considerations to the state, could have a negative impact to Pennsylvania's Forest Products Industry, including timberland owners and loggers as well as a significant impact to our state's economy.

Rural forest dependent communities are still reeling in the aftermath of the great recession. While housing starts have improved, they have yet to return to prerecession levels, and I and those in our industry that I represent are still struggling.

Over the past several years, I estimate that we have lost approximately 30 percent of our logging capacity due primarily to the downturn in the housing markets and the curtailing of mills producing solid wood products for that market. We are just now beginning to see some improvement in those markets, but to propose an Endangered Species listing that is based on a disease rather than loss of habitat, that would restrict my ability to manage and harvest timber could spell disaster for my family owned business.

I strongly recommend the emphasis on Northern Long-Eared Bat protection be focused on stopping the spread of White Nose Syndrome and not destroying well managed forests or the communities with an ESA listing that will have no impact on the viability of the species.

Thank you for the opportunity to testify and I would be happy to try and answer any questions that you might have.

The CHAIRMAN. Thank you very much for your testimony.

I now recognize Mr. Paul Lyskava, Executive Director of the Pennsylvania Forest Association. You are recognized for—Lyskava. Lyskava, is that how you——

Mr. LYSKAVA. That is correct, yes.

The CHAIRMAN. So I blew up the first time, but I recovered quickly.

Mr. LYSKAVA. That is OK, Mr. Chairman, members of my family do the same.

The CHAIRMAN. Well, I feel better about that then.

STATEMENT OF PAUL LYSKAVA, EXECUTIVE DIRECTOR, PENNSYLVANIA FOREST PRODUCTS ASSOCIATION, HARRISBURG, PENNSYLVANIA

Mr. LYSKAVA. Mr. Chairman, I would like to welcome the committee to Pennsylvania, which leads the Nation in the production of hardwood lumber. We are proud that Pennsylvania hardwoods are valued across the Nation and around the world as a renewable and sustainably managed resource of high quality and beauty. With over 17 million acres of forest, Pennsylvania leads the Nation in the volume of hardwood growing stock.

The decline of the Northern Long-Eared Bat and other cave-dwelling bat species due to the spread of White Nose Syndrome is an issue that should be of concern to all. Our organization supports public and private research efforts to learn more about White Nose Syndrome, and the efforts of Federal and state agencies to restrict

recreational access to certain caves to prevent the unintentional spread of White Nose Syndrome by man.

We are also taking steps within our organization to educate the state's forestry and logging community on bats and White Nose Syndrome through training offered by our sister organization, the Pennsylvania Sustainable Forestry Initiative. We commend the U.S. Fish and Wildlife Service for its decision to provide a 6-month extension before its final listing determination, but we believe that this extension still does not provide sufficient time to address the existing gaps and conflicting data on Northern Long-Eared Bat populations and survivability. Until these gaps and conflicts are addressed, we believe that it is premature for the U.S. Fish and Wildlife Service to list Northern Long-Eared Bat as endangered.

I would also like to stress, as the other speakers have, that the most significant threat to the Northern Long-Eared Bat comes from the White Nose Syndrome Disease, not from lack of habitat. The U.S. Fish and Wildlife Service, as others have stated, has gone as far as to state that habitat concerns and other anthropologic factors create no significant negative effects to Northern Long-Eared Bat, alone or in combination. Timber harvesting and other forestry activities are not causing a decline in the Northern Long-Eared Bat, nor are these activities associated with White Nose Syndrome.

If Northern Long-Eared Bat is listed as endangered, the U.S. Fish and Wildlife Service will likely adopt an extensive set of restrictions on forestry activities and other tree removal activities. This is because the Endangered Species Act currently requires the Agency to maintain a focus on habitat preservation, even if habitat issues are not causing the risk to the species, as is in the case with Northern Long-Eared Bat.

The current Endangered Species Act is poorly suited at helping a species which is suffering due to a wildlife disease. As others have stated, the habitat provisions will likely include establishing protection zones around hibernacula, establishing seasonal tree harvesting restrictions during the summer. In Pennsylvania, these seasonal restrictions could possibly run from as long as April 1 to November 15. All trees 3 inches diameter, breast height and larger, would be covered under these harvesting restrictions. There would also be additional restrictions on other non-harvesting forestry activities such as proscribed burning. Because the Northern Long-Eared Bat is a forest generalist, as my colleague just stated a few moments ago, and was prevalent—and is prevalent in Pennsylvania pre-White Nose Syndrome, the amount of acreage in the state impacted by the restrictions will be significant. As a forest generalist, Mr. Chairman, we mean that the Northern Long-Eared Bat, during the summer, can roost in a wide variety of species—big trees, small trees, living trees, dead trees; in a wide variety of forest types—types of forest landscapes. Because of this, the data recently developed by the Pennsylvania Game Commission and Pennsylvania Bureau of Forestry indicates that as much as 54 percent of Pennsylvania or 15.8 million acres provides a moderate to high potential summer habitat use for Northern Long-Eared Bat. This accounts for much of the forested acres within the state. This also includes about 88 percent of state forest land, and 84 percent of state game lands. Additionally, Pennsylvania has 114 known

hibernacula which house Northern Long-Eared Bat. As a result, as much as 20 percent of the state could be subject to the additional restrictions applied to—according to the anticipated hibernacula protection zones.

Mr. Chairman, if implemented, these various forestry restrictions across such a wide swath of Pennsylvania will basically decimate the state's forest products industry. Logging would essentially become a part-time activity across much of the state. Local supply chains that provide logs to sawmills, paper mills and other forest products manufacturers will be disrupted, and it is difficult to conceive a scenario where larger production facilities will be able to continue to sustain their operations under such a restricted supply of logs. Hundreds of operations will close, with the loss of tens of thousands of jobs.

What is at risk? Currently, Pennsylvania is home to more than 2,200 forest product establishments, employing approximately 60,000 Pennsylvanians. The listing of the Northern Long-Eared Bat will also impact an estimated 533,000 private forest landowners. These folks hold over 70 percent of the forested acres in the state.

From Pennsylvania forest products alone, the effect of the Northern Long-Eared Bat will have a significant negative impact on Pennsylvania's economy. In 2012, the state's wood industry had over $11 billion in sales, and an overall economic impact to the state of $19 billion a year. And we are just one of the states where forestry will be negatively impacted by the Northern Long-Eared Bat listing. According to the National Alliance of Forest Owners, 27 of the 38 states touched by the Northern Long-Eared Bat range have a sizable forest products industry presence. These states contain a total of more than 372 million acres of public and private timber land. The industry provides a total of 2.2 million direct, indirect and induced jobs, with a combined payroll of over $80 billion. Annual timber sales and manufacturing shipments equate to over $210 billion, with a combined contribution to the gross domestic products of those states of over $89 billion.

With that, sir, I will wrap up my testimony, and look forward to additional questions. Thank you.

[The prepared statement of Mr. Lyskava follows:]

PREPARED STATEMENT OF PAUL LYSKAVA, EXECUTIVE DIRECTOR, PENNSYLVANIA FOREST PRODUCTS ASSOCIATION

We thank the committee for the opportunity to comment on the decline of the Northern Long-eared Bat (NLEB) and the consideration of the species for listing as endangered under the Federal Endangered Species Act.

We also welcome the committee to Pennsylvania, which leads the Nation in the production of hardwood lumber. Pennsylvania hardwoods are valued across the Nation and around the world as a renewable and sustainably managed resource of high quality and beauty. With 17 million acres of forest, Pennsylvania leads the Nation in the volume of hardwood growing stock.

The decline of NLEB and other cave dwelling bat species due to the spread of white nose syndrome disease (WNS) is an issue that should be of concern for all. PFPA supports public and private research efforts to learn more about the impacts of WNS on NLEB and other bat species, and ultimately how to control, mitigate or eliminate WNS as a threat to bats. PFPA also supports the efforts of Federal and state agencies to restrict recreational access to critical bat hibernacula at this time to prevent the unintentional spread of WNS.

We are also taking steps to educate the state's forestry and logging community on bats and WNS through training offered by our sister organization, the Pennsylvania Sustainable Forestry Initiative®.

We commend the U.S. Fish and Wildlife Service (USFWS) for its decision to provide a 6-month extension before its final listing determination and the re-opening of the comment period this summer. But we believe that this extension still does not provide sufficient time to address the existing gaps and conflicting data on NLEB populations and survivability.

It seems that the evidence for the proposed listing of the species as endangered is based primarily upon significant mortality events documented at a limited number of hibernacula. While these events are dramatic, it has been documented that NLEB populations remain robust in portions of the species range, including midwestern and northern states where WNS is not yet documented. The USFWS and others have also recognized that NLEB is difficult to accurately count via cave surveys, given its preference to hibernate singularly and in small groups in recessed areas such as cracks, crevices and broken stalactites. Finally, there seems to be a consensus acknowledgment that the NLEB also hibernates in rock outcroppings in Pennsylvania and other areas, although these populations are not currently being considered.

Additionally, while the USFWS has cited NLEB mortality of as much as 99 percent at these hibernaculum die-offs, other research has suggested that NLEB population declines in Pennsylvania and nearby states may be as low as 31 percent.

Until these data gaps and conflicts are addressed, we believe that it is premature for the USFWS to list NLEB as endangered.

We would like to stress that the most significant threat to the NLEB comes from the WNS disease, not a lack of habitat. This fact is recognized by the USFWS and many environmental interests. The USFWS has gone as far as to state that habitat concerns and other anthropogenic factors create no significant negative effects to NLEB alone or in combination. Timber harvesting and other forestry activities are not causing a decline in NLEB, nor are these activities associated with WNS. As further evidence, the proliferation of WNS and reported decline of NLEB in Pennsylvania has occurred during a period of historically low timber harvesting in the state.

We thank the committee for gathering information on the economic impacts associated with a Federal endangered listing of the NLEB. As you know, the USFWS will not consider economic or human impacts in its determination whether to list a species as threatened or endangered.

If NLEB is listed as a federally endangered species, it will be illegal to kill, harm or harass a NLEB, even if unintentional. The definition of 'take' under the Endangered Species Act includes habitat impacts that could be an impediment to the essential behavior of the species, such as roosting or reproduction.

If NLEB is listed as endangered, the most likely USFWS management protocols, based upon the USFWS Interim Guidance document published in January 2014, will be an extensive set of restrictions on forestry activities and other tree removals. This includes establishing 5-mile protection zones around known hibernacula and establishing seasonal tree harvesting restrictions on bats summer habitat. In Pennsylvania, these seasonal restrictions could possibly run from April 1 to November 15. All trees 3″ DBH and larger would be covered by these harvesting restrictions. There would also likely be additional restrictions on other non-harvesting forestry activities, such as prescribed burning.

The NLEB is a forest generalist during the summer, utilizing a wide variety of forest age classes, tree species, tree sizes, living and dead trees, as well as various man-made structures. For this reason and the frequency of its occurrence pre-WNS, the amount of acreage in Pennsylvania impacted by these restrictions will be significant. Data recently developed for the Pennsylvania Game Commission and Pennsylvania Bureau of Forestry indicates that 54 percent of Pennsylvania (15.8 million acres) provides moderate to high potential summer use habitat for the NLEB, which accounts for much of the forested acres in the state. This includes 88 percent of State Forests and 84 percent of State Game Lands.

Pennsylvania has 114 hibernacula known to house NLEB. As a result, as much as 20 percent of the state could be subject to the additional restrictions applied to the anticipated hibernacula protection zones.

If implemented, these various forestry restrictions across such a wide swath of Pennsylvania will decimate the state's forest products industry.

During the fraction of the year that forestry will be unimpeded by these NLEB restrictions, Pennsylvania's forestry community is already subject to a variety of mandated, encouraged and voluntary restrictions on timber harvesting activities. This includes hunting seasons; forest roads closed or with plowing restrictions dur-

ing winter to support snowmobile activities; best practices that encourage minimizing the transport of logs during the spring freeze/thaw period when paved roads are most susceptible to damage; and periods in the spring when it is too wet to log.

As a result, logging would essentially become a part-time activity across much of Pennsylvania, unencumbered for only a fraction of the year. The owners and employees of these logging companies will not be able to continue their operations in this fashion. The local supply chain that provides logs to sawmills, paper mills and other forest product manufacturers will be disrupted. It is difficult to conceive of a scenario where larger production facilities will be able to sustain operations under such a restricted supply of logs.

Even secondary forest product manufacturers of products such as cabinets, flooring, millwork, and pallets will come to find Pennsylvania as an uncompetitive place to base operations, as the local supply of hardwood lumber dries up when the sawmills close.

Currently, Pennsylvania is home to more than 2,200 forest product establishments, employing approximately 60,000 Pennsylvanians. This is about 10 percent of the state's manufacturing workforce. The forest product industry has a presence in every county of the Commonwealth.

The listing of the NLEB as an endangered species and implementation of the suggested forestry restrictions will result in the loss of tens of thousands of these jobs and the closing of hundreds of businesses.

Most of the jobs lost will be in forestry, logging and manufacturing, paying middle class wages and above. Most establishments that will be forced to close will be owned by hardworking individual entrepreneurs and families, some of which have been in the forest product business for generations.

The listing of NLEB as endangered will impact forest landowners as well. Pennsylvania contains nearly 17 million acres of forest. Nearly 30 percent of this acreage (4.8 million acres) is publically owned. An estimated 533,000 private owners hold over 70 percent of the forested acres (11.7 million acres) in Pennsylvania. Families and individuals are the dominant group in this private category, accounting for 54 percent (9.6 million acres) of forest in Pennsylvania. The listing of NLEB and associated restrictions will impede public and private landowners from their desired and necessary forestry practices. Furthermore, a collapse of the state's forest products industry will lower the demand for logs, decreasing the value of timber on both public and private lands. Any disincentive to maintain lands as working forests provides an incentive for this land to be permanently converted to non-forest uses.

From forestry and forest products alone, the effect of the NLEB listing will have a significant negative impact on Pennsylvania's economy. In 2012, the state's wood industry had $11.5 billion in sales and an overall total economic impact of $19 billion contributed to the state's economy. This included total direct, indirect and induced employment of over 98,000 individuals, with $5.0 billion in wages and salaries earned. The anticipated loss of forest product business and jobs will significantly impact these figures. Local impacts will be even more dramatic in the communities where forestry and forest products are the leading employer.

Pennsylvania is just one of many states where forestry will be negatively impacted by an NLEB listing. According to the National Alliance of Forest Owners, 27 of the 38 states touched by the NLEB range have a sizable forest products industry presence. These states contain a total of 372,535,969 acres of public and private timberland. The industry provides a total of 2.2 million direct, indirect, and induced jobs with a combined payroll of $80 billion. Annual timber sales and manufacturing shipments equaled $210.7 billion, with a combined contribution to state GDPs of $89 billion.

The negative impacts of a NLEB listing are not only economic. The associated forestry restrictions will create a significant impediment to public and private forest owners seeking to improve the forest habitat for other species, including other listed species and other bat species being negatively impacted by WNS.

In Pennsylvania, for example, the state's Game Commission and Department of Conservation and Natural Resources are working on a habitat conservation plan that will improve forest habitat for the benefit of the endangered Indiana Bat. The forest management restrictions suggested for a NLEB listing may make this plan unfeasible.

The restrictions will also create an obstacle for landowners to engage in needed forest management practices to maintain forest health and address the impacts of forest diseases and invasive pests. A endangered listing of NLEB will lead to a general decline in the health of Pennsylvania's forests.

In conclusion, the habitat protection provisions associated with an endangered listing of the NLEB will have dramatic negative consequences for Pennsylvania's

forestry industry, its forest landowners, the state's economy and the forest habitat itself—all while providing no benefit to addressing the impact of WNS that threatens the NLEB.

The USFWS needs to forego any mandated restrictions on forest management practices. The USFWS needs to work with other Federal agencies, state wildlife and forestry agencies and other stakeholder to fill the gaps in the existing data and understanding of NLEB and WNS. Finally, the USFWS and others need to remain focused on the research and efforts on the control and elimination of the WNS that is the actual threat to NLEB and other bat species.

Thank you again for this opportunity to comment on this important matter.

Attachments:

PFPA Comments: Docket No. FWS–R5–ES–2011–0024 (August 29, 2014).

Consensus Forest Industry Comments: Docket No. FWS–R5–ES–2011–0024 (August 29, 2014).

PFPA Comments: Docket No. FWS–R5–ES–2011–0024 (January 2, 2014).

ATTACHMENT 1

PENNSYLVANIA FOREST PRODUCTS ASSOCIATION,
HARRISBURG, PA,
AUGUST 29, 2014.

Docket No. FWS–R5–ES–2011–0024

Public Comments Processing
Attn: FWS–R5–ES–2011–0024
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, MS 2042–PDM
Arlington, VA 22203

Re: Final Determination on the Proposed Endangered Status for the Northern Long-Eared Bat, 78 Fed. Reg. 61046 (October 2, 2013)—[Docket No. FWS-R5-ES-2011-0024]

Dear USFWS:

The Pennsylvania Forest Products Association (PFPA) offers the following comments related to the above referenced proposal to list the northern long-eared bat (Myotis septentrionalis) as an endangered species. We thank the USFWS for its six-month extension for the final listing determination and the re-opening of the comment period.

The following comments supplement our previous comments submitted on January 2, 2014, and the consensus comments submitted by coalition of forestry and forest product organizations (including PFPA) dated August 29, 2014.

About PFPA:

The Pennsylvania Forest Products Association (PFPA) is the leading trade group in the state representing the various sectors of the forest products industry. PFPA's membership accounts for approximately three-quarters of the state's hardwood lumber production, as well as many of the leading pulp and fiber utilizing manufacturing facilities in the state. PFPA's members also own or manage more than one million acres of private forest in Pennsylvania.

PFPA is also the administrative host and sponsor of the Pennsylvania Sustainable Forestry Initiative® (PA SFI®) , which has provided safety, environmental and ecological training to more than 7,000 loggers, foresters and others. It is the leading logger training program in the state. PA SFI® regularly includes courses related to wildlife, habitat and biodiversity issues as part of its continuing education opportunities.

We offer the following additional comments on this issue and respond to the USFWS request for additional information.

NLEB Population and Species Decline:

We share the concern about the decline of northern long-eared bat (NLEB) as a result of white nose syndrome (WNS). It seems that the evidence for the proposed listing of the species as endangered is based primarily upon significant mortality events documented at a limited number hibernaculum. While these events are horrific, the overall science on NLEB populations and survivability currently contains both gaps and conflicting data.

- It has been documented that NLEB populations remain robust in portions of the species range, including midwestern and northern states where WNS is not yet documented. Even in Pennsylvania, the Pennsylvania Game Commission has said that NLEB is still commonly found in parts of the state.
- The USFWS and others have recognized that NLEB is difficult to accurately count via cave surveys, given its preference to hibernate singularly and in small groups in recessed areas such as cracks, crevices and broken stalactites. As a result, there is a probability that actual NLEB populations in identified hibernacula are being under-reported. If so, the NLEB mortality rates at documented die-off events could be over-estimated, perhaps by a significant amount.
- While the USFWS has cited NLEB mortality of as much as 99 percent at these hibernaculum die-offs, other research has suggested that NLEB population declines in Pennsylvania and nearby states may be only 31 percent. (http://www.nrs.fs.fed.us/pubs/jrnl/2013/nrs_2013_ingersoll_001.pdf) While still significant, this rate of decline may not foretell the imminent demise of the species.
- There seems to be a consensus acknowledgment that the NLEB also hibernates in rock outcroppings. Numerous occurrences of NLEB in Pennsylvania where rock outcroppings are common suggest that rock outcroppings may be a significant undocumented resource for NLEB in Pennsylvania.

Additionally, we believe that certain characteristics of the ecology of the NLEB may suggest greater potential for species survivability than implied by reported mortality rates in the proposed listing. In comparison to other bats species impacted by WNS, NLEB tends to winter singularly and in small groups, segregated in the cracks and crevices of hibernacula (as opposed to other species that cluster in larger groups). Compared to the federally listed Indiana Bat, NLEB has been documented in significantly more hibernacula (114 vs 18 documented sites). As stated above, it is likely that there are significant undocumented populations wintering as individuals and small groups in remote rock outcroppings. Finally, the NLEB seems to congregate in smaller numbers during maternity and summer roosting. All of these factors combined would suggest the possibility that the spread of WNS could be slower within the NLEB population, compared to other bat species, benefiting the survivability. Research on this issue is needed.

In summary, we recognize the impact that WNS is having on NLEB. We believe, however, that there are still significant conflicts and gaps in the research to suggest that the species may not be at the brink of extinction. These research gaps need to be better addressed before an endangered listing is warranted.

NLEB Habitat:

As was emphasized in our previous comments and in the comments of countless others, the most significant threat to the NLEB comes from the WNS disease, not a lack of habitat. The USFWS recognizes this and has gone as far as to state that habitat concerns and other anthropogenic factors create no significant negative effects to NLEB alone or in combination.

Furthermore, existing research and the wide diversity of habitat within the NLEB range suggests that the species is not dependent upon any particular type of forest habitat. For its summer roosting needs, NLEB seems to be adaptive to a wide variety of forest age classes, tree species, tree sizes, living and dead trees, as well as various man-made structures. NLEB has not been adversely impacted by forest habitat changes resulting from forest management activities.

Because NLEB is such a forest generalist, data recently developed for the Pennsylvania Game Commission and Pennsylvania Bureau of Forestry indicates that 54 percent of Pennsylvania (15.8 million acres) provides moderate to high potential use habitat for the NLEB in the summer. We suspect that other states in the NLEB range also have expansive areas of potential use habitat for the NLEB in the summer.

For this reason, we continue to urge the USFWS to forego the designation of any forested areas as critical habitat, as no specific area within its range is critical to its future survival, save for hibernacula that are currently free from WNS.

We are distressed that the USFWS continues to seek to address the decline of NLEB by focusing on seasonal restrictions to forest management practices, as expressed in the Interim Guidance issued in January. These restrictions for timber harvesting, prescribed burning and other forest management practices throughout much of the year will do nothing to prevent the spread of WNS or protect NLEB from WNS. Such restrictions will, however, have a negative impact on efforts by public and private forest owners to improve the forest habitat for other species, in-

cluding other listed species and other bat species being negatively impacted by WNS. In Pennsylvania, for example, the Game Commission and Bureau of Forestry are working on a habitat conservation plan that will benefit the endangered Indiana Bat. The forest management restrictions suggested for a NLEB listing may make this plan unfeasible.

Ongoing Bat Conservation Efforts:

Recognizing the impacts that WNS is having on local bat populations, the Pennsylvania Sustainable Forestry Initiative® is offering a course entitled *Bats and Forest Management* as part of its logger training continuing education program. Taught by Pennsylvania Bureau of Forestry wildlife specialists, the course covers the importance Pennsylvania bat species, their habitat requirements, WNS, current regulations and additional steps that individuals can take to minimize potential impacts on bats during a timber harvest. We estimate that more than 700 harvesters and foresters will have an opportunity to take this course as it is offered during the upcoming years.

PFPA also continues to support public and private research efforts to learn more about the NLEB and for the control and elimination of the WNS that is the actual threat to NLEB and other bat species.

Potential Economic and Human Impact:

We recognize that the USFWS will not consider economic or human impacts in its determination whether to list NLEB under the Endangered Species Act. However, we feel obligated to provide such information as it relates to Pennsylvania, given the scope of forestry in Pennsylvania and the impact that any listing will potentially have on future conservation efforts affecting a broad range of wildlife species and forest health issues.

Pennsylvania contains nearly 17 million acres of forest. Nearly 30 percent of this acreage (4.8 million acres) is publically owned. An estimated 533,000 private owners hold over 70 percent of the forested acres (11.7 million acres) in Pennsylvania. Families and individuals are the dominant group in this private category, accounting for 54 percent (9.6 million acres) of forest in Pennsylvania.

Pennsylvania is the leading producer of hardwood lumber in the U.S. In 2012, the state's wood industry had $11.5 billion in sales. The total economic impact of wood industry amounted to $19 billion contributed to the state's economy, with total direct, indirect and induced employment of over 98,000 individuals. The state's forest products industry directly employs nearly 60,000 individuals, accounting for more than 10 percent of the state's manufacturing workforce.

Conclusion:

- Because of the continued gaps and conflicting data, we request that the USFWS not list NLEB as endangered.
- We request that the USFWS forego the designation of any forested areas as critical habitat.
- We request that the USFWS forego any mandated restrictions on forest management practices. These will not prevent the spread of WNS nor protect the NLEB from WNS, but will impede public and private forest landowners from effectively implementing other habitat and forest health improvements.
- We urge the USFWS to work with other federal agencies, state wildlife and forestry agencies and other stakeholder to fill the gaps in the existing data and understanding of NLEB and WNS.
- Finally, we urge the USFWS to focus its research and efforts on the control and elimination of the WNS that is the actual threat to NLEB and other bat species.

Thank you for the opportunity to comment again on this proposal. We welcome any additional conversations on this process and other efforts to address the impact of white nose syndrome on NLEB and other bat species.

Sincerely,

PAUL LYSKAVA,
Executive Director, PFPA.

ATTACHMENT 2

August 29, 2014.

Docket No. FWS–R5–ES–2011–0024

Public Comments Processing
Attn: FWS–R5–ES–2011–0024
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, MS 2042–PDM
Arlington, VA 22203

Re: Final Determination on the Proposed Endangered Status for the Northern Long-Eared Bat, 78 Fed. Reg. 61046 (October 2, 2013)

To whom it may concern:

We write to you today to provide comments on the U.S. Fish and Wildlife Service's (USFWS or Service) proposed listing of the northern long-eared bat (NLEB), *Final Determination on the Proposed Endangered Status for the Northern Long-Eared Bat*, 78 Fed. Reg. 61046 (October 2, 2013), and to express significant concerns with the Interim Conference and Planning Guidelines issued by the Service in January of this year, *Northern Long-Eared Bat Interim Conference and Planning Guidance*, USFWS Regions 2, 3, 4, 5, & 6 (January 6, 2014).

We recognize that the Service will not consider economic impacts in its determination whether to list the northern long-eared bat under the ESA. However, as you consider management and recovery policies, we believe it would be helpful to understand the breadth of the forest products industry throughout the range of the NLEB. While we summarize this in terms of economic impact, we urge you to also consider this as evidence of conservation opportunity. Of the 38 states touched by the NLEB range, the forest products industry has a significant presence in 29.[1] These states contain a total of 80,085,969 acres of public and private timberland. The industry provides a total of 2.2 million direct, indirect, and induced jobs with a combined payroll of $80 billion. Annual timber sales and manufacturing shipments equaled $210.7 billion, with a combined contribution to the states GDPs of $89 billion. Forest-related industries made the largest contributions to their state manufacturing (on a percentage basis) in Arkansas, which was the highest in the South with 19.90 percent; Pennsylvania, the highest in Appalachia with 9.98 percent; Maine in the Northeast with 23.73 percent; and Wisconsin with 14.04 percent in the Midwest.[2]

As you know, this species is experiencing significant declines in parts of its range due to White Nose Syndrome. In the proposed listing, the Service affirms that "*White-nose syndrome is the most significant threat to the northern long-eared bat, and the species would likely not be imperiled were it not for this disease*" and that "habitat concerns and other anthropogenic factors *create no significant effects alone or in combination*." 78 Fed. Reg. at 61072 (emphasis added). Although the Service asserts that when combined with the significant population reductions due to WNS, "the resulting cumulative effect may further adversely impact the species," *id*., the only true threat to this species is clearly a wildlife disease, not habitat modification or loss.

The fact is, where White Nose Syndrome is not yet present, populations of NLEB appear to be quite robust. For instance, the NLEB is one of the most frequently captured bats in mist net surveys on the Black Hills National Forest in South Dakota, one of the most heavily managed National Forests in the country. 78 Fed. Reg. at 61053. Moreover, prior to the introduction of White Nose Syndrome, NLEB's were regarded as "most common" in the Northeastern portion of their range. This vast swath of states, ranging from Northern New England through the lower portion of the Lake States and Indiana and all the way to parts of the Southeastern U.S., contains a mosaic of habitat types, forest ownerships, and land use practices. This strongly suggests that the bat is not dependent on a particular type of habitat, much less a particular age class of forest, and has not been adversely affected by forest management.

---

[1] These states are AL, AR, FL, GA, IL, IN, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NH, NY, NC, OH, OK, PA, SC, SD, TN, VA, VT, WV, WI and WY.

[2] The source for this paragraph, which is based on 2010 economic data, is *The Economic Impact of Privately Owned Forests in the United States* (June 27, 2013) prepared by Forests2Market for the National Alliance of Forest Owners and is available at www.nafoalliance.org.

In spite of the limited role that habitat conditions appear to play in the status of the NLEB, the Interim Guidance distributed in January suggests a completely unrealistic and unnecessary set of constraints on forest management during nearly every seasonal period. These restrictions include vaguely worded restrictions on prescribed burning at various times of year, restrictions on tree harvesting of all trees 3 inches DBH and larger, and ambiguous direction to "Avoid reducing the suitability of forest patches with known NLEB use." In essence, although the species has been shown to be present in forests with a variety of age classes and management regimes and, in fact, may depend upon management to perpetuate various habitat features over time, the Guidance seems to suggest that creating 5-mile radius "no management" zones around known hibernacula, and even greater summer habitat restrictions, is the best way to conserve bats. There is no evidence to suggest that these measures have anything to do with the spread of White Nose Syndrome, nor that they would do anything to prevent very high levels of mortality should WNS spread throughout the bat's range, as the Service speculates it will.

As you know, several State natural resources agencies wrote to the Service on April 17, 2014, expressing serious concerns about the NLEB Interim Guidance. They noted that "(a)lthough the USFWS solicited comments on the proposed listing, it did not afford our agencies an opportunity to assist in the drafting of the (interim guidance), and has not invited us to participate in the development of the consultation guidance." They also "request an opportunity to provide input on this guidance and any other species guidance and avoidance measures before they are finalized."

The Directors note that the Interim Guidance "is overly restrictive and too broad to be used as consultation guidance.. . . In particular, these measures protect summer habitat at a very high cost . . . If these measures were applied to all forested lands, they could impact hundreds of thousands of landowners managing their forests and have a crippling effect on our forest product industries. In addition, they would severely limit our ability to manage critical habitats for other species of special concern such as the Kirtland's Warbler (US Endangered), Karner blue (US Endangered), Golden-winged Warbler, and numerous savanna species that are dependent on intensive management."

We note that such restrictions on harvest, thinning, and prescribed burning could significantly complicate forest management efforts to maintain and enhance the habitat for other listed species, such as the Red Cockaded Woodpecker in the Southeastern U.S., and could limit your ability to implement needed forest management practices such as thinning overstocked conifer stands in the Rocky Mountains and regenerating aspen and mixed species stands in the Lake States and Northeast.

In actuality, thinning overstocked conifer stands aligns with NLEB habitat requirements, and we are alarmed how the Interim Guidance discounted much of the science in the proposed listing that discussed summer roosting habitat. The proposed listing discusses the benefits from an active vegetation management program, stating: "Studies have found that female bat roosts are more often located in areas with partial harvesting than in random sites, which may be due to trees located in more open habitat receiving greater solar radiation and therefore speeding development of young." 78 Fed. Reg. at 61060. The proposed listing also recognized that reproducing females generally have shown preference to roost "in areas of relatively less canopy cover and tree density," 78 Fed. Reg. at 61057, and that "Fewer trees surrounding maternity roosts may also benefit juvenile bats that are starting to learn to fly," 78 Fed. Reg. at 61055. These statements are supported by cited scientific research but are not reflected in any portion of the Interim Guidance.

We are extremely concerned that the Service will use the Interim Guidance not only as a basis for consultation and Biological Assessments and Biological Opinions for current and future forest management projects on Federal lands (including sales under contract) but also as the general management scheme for all non-federal forested lands within the bat's range until the critical habitat and recovery plan are completed.

It is absolutely vital that the Service work with other Federal agencies, State partners, and other stakeholders to revise and improve the Interim Guidance. Active forest management can help conserve the NLEB by creating a variety of stand conditions, ages, and types over time, providing secure habitat through management rather than by eliminating management. A reserve approach seems both unnecessary and unlikely to succeed. As members of the forest management and products community, we offer assistance to the Service to provide research for the control and elimination of the actual threat to the NLEB and other bat species, i.e.—White Nose Syndrome. Elimination of the disease is the best strategy to support and protect both the bat population and the wood products industry.

Thank you for the opportunity to comment on this proposed listing. We also support the comments submitted by the National Council for Air and Stream Improvement (NCASI), a copy of which is attached.

Sincerely,

Alabama Forestry Association
American Forest & Paper Assoc.
American Loggers Council
Appalachian Hardwood Manuf., Inc.
Arkansas Forestry Association
Associated Industries of Vermont
Black Hills Forest Resource Assoc.
Empire State Forest Products Assoc.
Federal Forest Resource Coalition
Florida Forestry Association
Forest Landowners Association
Forest Resources Association
Georgia Forestry Association
Great Lakes Timber Professionals
Hardwood Federation
Hardwood Manufacturers Assoc.
Hardwood Plywood & Veneer Assoc.
Illinois Lumber & Materials Dealer Assoc.
Indiana Hardwood Lumbermen's Association
Intermountain Forest Association
Kentucky Forest Industries Assoc.
Lake States Lumber Association
Louisiana Forestry Association
Maine Forest Products Council
Maple Flooring Manuf. Assoc.
Massachusetts Forest Alliance
Michigan Forest Products Council
Minnesota Forest Industries
Minnesota Timber Producers Assoc.
Mississippi Forestry Association
Missouri Forest Products Association
National Alliance of Forest Owners
National Assoc. of State Foresters
National Hardwood Lumber Assoc.
National Wood Flooring Association
New Hampshire Timberland Owners Assoc.
North Carolina Forestry Association
Northeastern Loggers' Association
Ohio Forestry Association
Oklahoma Forestry Association
Pennsylvania Forest Products Assoc.
Society of American Foresters
South Carolina Forestry Association
Southeastern Lumber Manuf. Assoc.
Tennessee Forestry Association
Virginia Forest Products Association
Virginia Forestry Association
Westside Hardwood Lumberman's Club
West Virginia Forestry Association
Western Hardwood Federation
Wisconsin County Forests Assoc.
Wisconsin Paper Council
Wood Component Manuf. Assoc.

ATTACHMENT 3

PENNSYLVANIA FOREST PRODUCTS ASSOCIATION,
HARRISBURG, PA,
JANUARY 2, 2014.

Public Comments Processing
Attn: FWS–R5–ES–2011–0024
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, MS 2042–PDM
Arlington, VA 22203

Re: Endangered and Threatened Wildlife and Plants; Listing the Northern Long-Eared Bat as an Endangered Species—[Docket No. FWS–R5–ES–2011–0024]

Dear USFWS:

The Pennsylvania Forest Products Association (PFPA) offers the following comments related to the above referenced proposal to list the northern long-eared bat (Myotis septentrionalis) as an endangered species and to not list the eastern small-footed bas as a threatened or endangered species.

The Pennsylvania Forest Products Association (PFPA) is the leading trade group in the state representing the various sectors of the forest products industry. Pennsylvania leads the nation in the production of hardwood lumber. PFPA's membership accounts for approximately three-quarters of the state's hardwood lumber production and many of the leading pulp and fiber utilizing manufacturing facilities in the state. PFPA's members also own or manage more than one million acres of private forest in Pennsylvania. Forest product manufacturing is an important component to the state's economy, employing an approximately 60,000 Pennsylvanians.

PFPA is also the administrative host and sponsor of the Pennsylvania Sustainable Forestry Initiative® (PA SFI®), which has provided safety, environmental and ecological training to more than 7,000 loggers, foresters and others. It is the leading logger training program in the state. PA SFI® regularly includes courses related to wildlife, habitat and biodiversity issues as part of its continuing education opportunities.

We offer the following comments on the related proposal:

Proposed Listing of northern long-eared bat:

We believe that the information provided in the Status Review of its proposal is insufficient to support the listing of the northern long-eared bat at this time. The Status Review acknowledges that the information regarding the impact of white nose syndrome on the species is limited, with significant data gaps, conflicting information, over-reliance on antidotal information and other data that has not been peer-reviewed, and assumptions that may well not accurately reflect what is happening to the species across its range.

For example, the Service references reports of declines from winter cave surveys in Pennsylvania and a limited number of other states. However, this is not confirmed by adequate surveying in during other seasons of the year. This is noteworthy, as the Service acknowledges that the northern long-eared bat is easily overlooked during hibernacula surveys. It is also noteworthy that recent summer mist net surveys and acoustic surveys in several states indicate the northern long-eared bat to be among the most common bat detected.

Given the data gaps and use of anecdotal and non-peer reviewed information, we believe that the proposal is not supported by the best scientific and commercial data available, as is required by the Endangered Species Act.

State Regulatory Actions:

In its Status Review, the Service has wrongly mischaracterized (p. 61068) a pending bill in the Pennsylvania General Assembly (HB 1576) as a proposal to prohibit state species listings. This is representation is incorrect, as the bill explicitly does continue to allow for state listings and provides a defined process that ensures that proposed listings are reviewed to ensure that they are based in sound science and open to public comments, as is the required by the Federal Endangered Species Act. It should also be noted that this bill has been introduced, but not yet enacted into law, not unlike the thousands of other bills introduced in the Pennsylvania General Assembly each legislative session—including HB 1099, which would mandate the state endangered listing of northern long-eared and other bat species. Given the uncertainly of final enactment, this legislative proposal did not warrant mention in the Status Review, let alone it mischaracterization.

Furthermore, we do not believe that the Service has fully considered to actual state efforts which are on-going and under development to both address white nose syndrome and conserve the northern long-eared bat, nor have states been given adequate time to do the necessary research to fully develop and initiate their own action plans. The Endangered Species Act allows for federal determinations to be made only after taking into consideration all of the efforts of the states and political sub-divisions to protect the species.

Critical Habitat:

The Service's proposes to list northern long eared bat as endangered of extinction predominately due to the threat of white nose syndrome. The Service has stated that the even if all habitat-related stressors were eliminated or minimized, the significant effects of white nose syndrome on the northern long-eared bat would still be present.

There is little definitive research that suggests that specific forest types of forest structures are a limiting factor for survival of the species or that restricting forest management activities will aid the species in recovery. There is also little evidence linking forestry activities to the spread white nose syndrome.

We urge the Service to forego the designation of any forested areas as critical habitat, as no specific area of its range is critical to its future survival. Although the Service states that there is much to learn about the interactions between the species and its forest needs, there does seem to be a level of consensus that the northern long-eared bat is more of a forest generalist able to utilize a wide variety of forest conditions.

The only areas where critical habitat may be warranted are the hibernacula, as this is where white nose syndrome seems to have its greatest direct impact on the species.

We also urge the Service to minimize the restrictions on forestry as part of the recovery plan. These restrictions will have little if any impact on preservation of the species. They will, however, negatively impact thousands of hardworking families that depend on forest product jobs for their livelihood. We also believe that unnecessary and unproductive regulation of forestry activities will ultimately discourage forestry practices that may help improve forest habitat to the benefit other species.

Decision to deferral on listing of eastern small-footed bat:

We agree that with the Service's determination that a threatened or engendered listing of the eastern small-footed bat is not warranted at this time, given the survey data and information on the species known at this time.

Response to the information request:

We offer to the Service the following information:

- According the U.S. Forest Service, there was a one percent net gain of forestland cover in Pennsylvania between 2004 and 2009, with the minimal conversions of forest acres to non-forested and agricultural uses off-set by other lands reverting to forest. http://www.fs.fed.us/nrs/pubs/rb/rb_nrs82.pdf. Prior to that, there was no significant change in the total acreage of forestland cover between 1989 and 2004. http://www.nrs.fs.fed.us/pubs/2990.
- Since 2007, Pennsylvania's forest products industry has suffered through a significant downturn of which it is still struggling to recover. Hardwood lumber production in the state dropped by more than 40% since 2006. These are the lowest levels of sawmill production since the Great Depression. http://www.fs.fed.us/nrs/pubs/rb/rb_nrs82.pdf.

This data is offered as further evidence that the reported demise of the northern long-eared bat in Pennsylvania is not due to any scarcity of forest habitat for the species. The reported decline of the species has occurred during a period where the forest cover in the state has been stable and there has been a historic low level of timber harvesting and other forestry activities in the state.

Conclusion:

- We request that the Service withdraw or delay the proposed listing of northern long-eared bat until gaps in the science and species data have been addresses, information peer reviewed and all current efforts to protect the species have been fully considered.
- We also request that the Service forego the designation of any forested areas as critical habitat.

- We agree that with the Service's determination that a threatened or engendered listing of the eastern small-footed bat is not warranted at this time.

Thank you for the opportunity to comment on this proposal. We welcome any additional conversations with the U.S. Fish and Wildlife Service on this process and other efforts to address the impact of white nose syndrome on this and other bat species.

Sincerely,

PAUL LYSKAVA,
Executive Director, PFPA.

The CHAIRMAN. Thank you very much. And I do want to thank all of you. I allowed several to go over because some of you were less, and so I am keeping score up here and I—it works out precisely perfectly.

Before we go to the question from the Members up here, I have 13 letters here from Members of Congress, from Governors and State Departments of Natural Resources, from the States of Pennsylvania, Ohio, West Virginia, North Carolina, Georgia, Alabama, Mississippi, Louisiana, Wisconsin, Indiana, Michigan and Minnesota, all raising concerns with the Fish and Wildlife Service proposal to list the Northern Long-Eared Bat, and I ask unanimous consent to be a part of the hearing. Without objection, so ordered.

Normally, the Chairman has all the power in these committees and he gets to start the questioning, however, in deference to my hosts here in Pennsylvania, I am going to allow my colleagues from Pennsylvania, and then I will follow up, and we may have more rounds of questioning rather than just a round of questioning, it just depends on the interest here so far.

So with that, let me recognize Mr. Thompson for 5 minutes for questioning.

Mr. THOMPSON. Well, Mr. Chairman, with unanimous consent, we acknowledge you are all-powerful, and I appreciate you deferring.

Once again, good morning, everybody. Thank you for being here, thanks for your testimony.

Ms. Matteson, I want to start with—there seemed to be some really conflicting points of testimony, and sometimes, not just your testimony, but testimony—even with language within the citizens' petition on this issue, and your testimony, whether it is total, it seems like you are projecting there is total consensus on the science, and even within the citizens' petition where it really indicates that there is very, very limited consensus. And one particular area I wanted to check in on was under your testimony on protective measures which, you know, if they are effective, they are science-based, I think that is wonderful.

So my question is, in your testimony—written testimony, you talked about no regulations or conservation plans currently exist that address this issue, and specifically, the Chairman referenced the State of Minnesota; Minnesota, Wisconsin, Michigan, Indiana, Natural Resources Agencies requested in April 2014 a letter that the Fish and Wildlife delay protection, and the objection to the organization was that none of these states have programs to conserve

and recover. My question is, was your organization supportive of—out of Pennsylvania, we have a, was put forward the Habitat Conservation Plan, which just—was just not Pennsylvania, it had to go through a complex and extensive process with the Fish and Wildlife Service, and it is supported by the U.S. Forest Service, National Park Service, and then Pennsylvania Forest Products and various aspects of the industry, so it really had some very strong Federal Government endorsement. Is that what was missing from Minnesota, so is your organization on record then of supporting the Habitat Conservation Plan that was put forward by the Commonwealth of Pennsylvania with those other strong partners, including the U.S. Forest Service and, I apologize, and the National Park Service?

Ms. MATTESON. Excuse me, Representative Thompson, which Habitat Conservation Plan are you referring to? Was this for the Northern Long-Eared Bat?

Mr. THOMPSON. Yes—well, actually, it was originally put forward for the Indiana Bats, to accommodate current and future forest management activities on state lands.

Ms. MATTESON. I think—if I understand your question correctly, you are asking me if the Center for Biological Diversity is in support of habitat conservation plans?

Mr. THOMPSON. Correct.

Ms. MATTESON. We certainly are, yes.

Mr. THOMPSON. Well, then it is entered in your testimony though you—shortly after this was submitted—by the way, included, actually, the National Guard as well because of our training center in this area. Shortly afterwards, your organization, along with several other national environmental groups, sent a letter to the Federal Fish and Wildlife Service urging denial of the ACP.

Ms. MATTESON. OK, now I——

Mr. THOMPSON. And so——

Ms. MATTESON. I—yes, now I understand which ACP you are talking about.

We support habitat conservation plans. We were arguing with the content of that plan, not the idea of a plan.

Mr. THOMPSON. OK. One of the—you know, in your testimony, you talk about publicly available data, you talk about how some opponents from the Endangered Species Act have asserted that recent summer bat surveys, like hibernacula surveys indicate the Northern Long-Eared Bat is still abundant, however, publicly available data such as studies and surveys cited above paint a clear picture of ongoing and dramatic decline of the species. So I assume, obviously, your organization is very supportive of transparency in terms of publicly available data?

Ms. MATTESON. I am supportive of transparency, yes.

Mr. THOMPSON. Yes. Is your organization supportive of the measure that we recently passed out of the House of Representatives, which basically was all about transparency, it would just require the Fish and Wildlife Service to make public the science and the data that it uses for making determinations of listing? I think we passed it out of the House——

VOICE. Bipartisan.

Mr. THOMPSON. It—with bipartisan support within the past month, I believe.

Ms. MATTESON. Well, I am not personally familiar with that legislation, but we are certainly supportive of data being——

Mr. THOMPSON. Transparency.

Ms. MATTESON [continuing]. Data transparency, yes.

Mr. THOMPSON. OK, so—as am I. Thank you.

Representative Pyle, it is great to see you again.

Mr. PYLE. Good to see you again.

Mr. THOMPSON. Can you discuss what listing by either both the state or the U.S. Fish and Wildlife would mean for Pennsylvania from a regulatory standpoint? In other words, should the Northern Long-Eared Bat be listed by the state or Federal Government, and what kind of burden and regulatory responsibility would this put on the State of Pennsylvania?

Mr. PYLE. It would be profound, Congressman. As you can see, its range pretty much goes from coast-to-coast, top to bottom.

I can tell you from personal experience what is going to happen if this goes down. What they are going to do is they are going to go up and they are going to tell you this is where the bat is. In our case, the Pennsylvania Game Commission of Pennsylvania, Fish and Boat Commission, oversee the Endangered Species Act. What the gentlemen probably don't realize is in addition to your endangered species list, we have one of our own also.

I can give you an opinion, Congressman, and say anybody who wants to walk on my family land and tell us what we can do with it after 200 years of treating it well and raising scores of dairy cow that fed the whole place, I can tell you that should one of these people show up and tell us what they are going to do with our land, it is going to be met with opposition.

Now, on an official level, we in Pennsylvania in the Commonwealth have similar difficulties that you on the Federal level are having, only you just brought up something that I think is a great idea here. I recently tried to run an Endangered Species Coordination Act. I was met with such a wall of grief. Now, what their main oppositions are going to be were exactly what you just identified; transparency. One of the parts of our bill that was not run was that if there is a developer willing to come into an area, either to log timber, mine coal, or build a cul-de-sac or a shopping mall, one of the parts of our bill we felt was fair was the caveat emptor clause, where, before somebody has to put down large sums of money to buy the property to develop whatever they want, they would go to our Fish and Game or—you know, Commissions and ask, do you have any hits on endangered species on this property. Absolute objection, dig your heels in and fight. Which tells me what they want to do is they want you to put the money up first so they can come in later and say, surprise.

Now, how can I back that up? I can give you examples from Clarion County where a family had a couple hundred acres and they wanted their boy to build on it, and the kid went off to school in California, made all kinds of money, came back, Dad wanted to carve off half the land, and one day the guy walks out and there is a guy walking up and down through Redbank Creek on his property. And the guy said, who are you, and the guy said, I am from

Fish and Wildlife and you have a Massasauga snake habitat. And the guy said, we have never had snakes here, where is it. And he took him down to the stream and he showed him a bunch of piled-up rocks, and he said, that is perfect. And the guy said, what does that mean to me, and he said, well, $30,000 for offset acreage and we will let you build on land your family has owned for 100 years. Are you serious? You know what I mean.

Especially in the northern tier, Pennsylvania's hardwood industry is huge. If you cut down our ability to feed our kids, you are essentially exercising a de facto eminent domain on us.

The CHAIRMAN. Representative Pyle, we have others, I——

Mr. THOMPSON. Thank you, Chairman.

The CHAIRMAN. Mr. Perry is recognized.

Mr. PERRY. Thank you, Mr. Chairman. I will turn to Mr. Pyle.

It is my understanding and recollection that you used to be an educator, is that correct? You taught in the school system in Pennsylvania?

Mr. PYLE. Fourteen years in the public high schools.

Mr. PERRY. Did you teach anything other than the facts?

Mr. PYLE. No.

Mr. PERRY. So if I tell you the Federal Government has currently listed 1,553 domestic species as threatened or endangered, and over 40 years recent analysis has determined that about 33 species have ever been deemed recovered and removed from the list, in regard to Ms. Matteson's testimony that says that the ESA is 99 percent effective because it saves endangered species. Now, I know that is quick math for you, Representative Pyle, is this 99 percent effective statement true based on what I just told you, the 1,553 versus the 33 species over 40 years?

Mr. PYLE. I would say statistical analysis would not bear-up the assertion, sir.

We have, however, in my county, had great success with new breeding pairs of Bald Eagles, and we are pretty happy about that.

Mr. PERRY. So as you know, the Endangered Species Act is—as it is currently written, requires the best scientific and commercial data available, and I quote, "best scientific and commercial data available." The FWS proposed ruling calling for the endangered listing of the Long-Eared Bat refers to unpublished reports 87 times, and refers to some studies that were written in 1940 and 1969. With all due respect, Ms. Matteson, in her written testimony, claims that this is the best available science and listing—and that the listing should occur based on that. Eighty-seven times unpublished reports, and studies written in 1940 and 1969, just based on that, do you agree with her finding?

Mr. PYLE. No, I do not, Congressman. It is—you can repeat a lie over and over and over, and thousands of people rank upon row can repeat it, but that is not going to make it true.

Mr. PERRY. Thank you.

Ms. Matteson, your disclosure mentions that the Center for Biological Diversity files on average about 42 lawsuits a year. When your organization receives taxpayer financed attorney fees from those lawsuits from the Federal Government from some of these lawsuits, how much does your organization invest into habitat for existing endangered species? How much do you turn back

into habitat—saving the habitat or safeguarding the environment of those funds?

Ms. MATTESON. Well, first of all, the amount of money that we receive from litigation is a very small percentage of our budget. It is, on average, less than 5 percent——

Mr. PERRY. But it is——

Ms. MATTESON [continuing]. A year.

Mr. PERRY [continuing]. Up to $600 an hour, which goes way above the limit for Federal attorney fees as I understand it. Is that correct?

Ms. MATTESON. I am not an attorney, I am a biologist, so——

Mr. PERRY. OK.

Ms. MATTESON [continuing]. I am not familiar with that.

Mr. PERRY. Fair enough. All right, so it is a small percentage, but how much is reinvested into habitat reclamation or protection?

Ms. MATTESON. So we are a group that focuses primarily on advocacy for endangered species.

Mr. PERRY. Do you know? Is there an answer? I mean I——

Ms. MATTESON. We——

Mr. PERRY [continuing]. If you don't, it is OK——

Ms. MATTESON. We——

Mr. PERRY [continuing]. I just——

Ms. MATTESON. We do some conservation land work in the Southwest, but primarily we are an advocacy organization.

Mr. PERRY. All right. If you could at some point, we would love to get that figure, how much your organization uses for—to invest in habitat for endangered species.

Moving on, can you name the timber sales on Federal land that your organization has supported? Which ones?

Ms. MATTESON. I cannot answer that question.

Mr. PERRY. Do you know if there are any?

Ms. MATTESON. I am not familiar with the answer to that question.

Mr. PERRY. OK. It is my understanding that there aren't any, and it just leads us to believe, with all due respect, that the organization is opposed to any timbering whatsoever. And while we depend on the things that we are sitting behind, I hate to mention it but toilet paper is really important to a lot of people, it is an important industry and we would hope that there would be a balance from your organization as well as from the Federal Government.

To Mr. Brubaker, you indicated that barns and silos could be impacted by the Federal bat designation. What would happen if you were a homeowner who had a bat lodged in a wall or a fireplace, or if a bat got into your house, could you be liable and subject to fines under Federal law if you harmed this bat, based on your understanding of this——

Mr. BRUBAKER. Based on my understanding, I would say that we could be, and I have had the experience too of needing to rid a bat from my bedroom. And in that particular case, there is no discretionary decision; the bat will go.

Mr. PERRY. So you would be in violation of the Federal statute, the Federal rule if you tried to clear the bat from your kitchen, your bedroom, your living room——

Mr. BRUBAKER. That is——

Mr. PERRY [continuing]. You would be——

Mr. BRUBAKER. That is my understanding.

Mr. PERRY [continuing]. In violation?

Mr. BRUBAKER. That is my understanding.

Mr. PERRY. That is great.

All right, Mr. Chairman, I yield.

The CHAIRMAN. Thank both of you for your statements.

I just want to make kind of a big picture observation, and I do have a question for Mr. Lyskava, but the Endangered Species Act has been around since 1973, and there have been, as Mr. Perry pointed out, 1,553 listings and 33 species recovered. Now, I am sure people here in Pennsylvania, with two Major League baseball teams, are all baseball fans. Let me just ask a rhetorical question here. You don't have to answer, but if you are 33 for 1,553, would you even qualify for T-ball at that batting average? I mean, but that is what we are dealing with.

Now, here is the—what I think is a huge, huge issue with this mega listing; 1,553 listings in 40 years. This mega settlement could be more than 750, or roughly 50 percent more, in the next 2 years, and the mere fact that the testimony and all of you have heard, I have certainly heard over and over and over, is the simple fact that the data is questionable. If the data on the Long-Eared Bat is 40 years old at best, and even the petitioner says that you can't draw conclusions, does that give you any confidence that the 750 potential listings of the mega settlement will be any better, or probably worse? And that is what the issue facing the committee is. And by the way, going back to Mr. Thompson's question to Mrs. Matteson, for the record, the Center for Biological Diversity opposed the legislation to have transparency in listings or de-listings. They opposed that legislation that passed on a bipartisan basis.

Mr. Lyskava, I want to follow up, since you are in the timber industry and I alluded to in my opening statement the Spotted Owl in the Northwest, and the fact that timber harvests have declined by some 80 percent. On Federal land, by the way, it is 90 percent in where it is listed. And the issue of the Spotted Owl was the lack of old growth timber, and that is supposedly why that was listed.

We have now discovered, however, that it is not the lack of old growth, but rather a predator called the Barn Owl. It is a little bit larger than the Spotted Owl. Big guys beat up on little guys, that is in human nature, I guess, forever. By the way, I should say, Fish and Wildlife's response to that is to shoot the Barn Owl, by the way. That is the response. This just happened.

Now, Mr. Lyskava, I want to ask you a question. Do you see any similarities with what has happened in the Northwest with the Spotted Owl that could happen if the Long-Eared Bat is listed here in Pennsylvania?

Mr. LYSKAVA. Mr. Chairman, the proposed listing for the Northern Long-Eared Bat is our Spotted Owl moment. It is our Spotted Owl moment for Pennsylvania, for the other Appalachian states, for the states in the northern part of the range, and the other areas within the range of the Northern Long-Eared Bat. And I would agree with you, sir, that the economic impact is going to be severe, and those aren't faceless jobs, those are tens of thousands of families that are going to be impacted, whose family struc-

ture is going to be severely stressed when they lose those jobs. Those rural communities that depend upon forest products are going to be severely impacted. And as you had stated previously also, the benefits of forestry activities which would take place; forest health activities, we don't—in the eastern United States, we do not have the problems with fire that you do in the West, but we do have a lot of forest health issues out there as it relates to Gypsy Moth, Hemlock wooly adelgid, Emerald Ash Borer, and dealing with those issues, both on private forest land and public forest land, we will be precluded from doing that. And, ironically, both private and public forest landowners will be precluded from initiating the forestry activities which help a wide variety of other species, whether they be a listed species such as the Indiana Bat, in which the—as was previously mentioned, the Pennsylvania Department of Conservation and Natural Resources, and the Pennsylvania Game Commission, are looking at submitting a habitat conservation plan to help improve the habitat for Indiana Bat, or the wide variety of other species that are out there that the citizens of the Commonwealth and citizens of the United States would like to have around, and it is all going to be severely impacted without this listing, again, without—because we are talking about disease, sir, all this listing and all those negative impacts will provide no positive affect upon the survival of the Northern Long-Eared Bat.

The CHAIRMAN. OK, my time has expired.

We will start a second round, and I will recognize Mr. Thompson.

Mr. THOMPSON. Thank you, Chairman.

Mr. Biggica, in your testimony you talked about projected impact, I think the number was 650 rural electric co-ops or around within that region, that green area, that was new information to me, but it makes sense. You talked about the conflict in compliance, basically, caught—basically, double jeopardy that rural utilities faced with regard to tree removal versus potential ESA restrictions, because there are regulations on both, and I wanted to see if you could expand on that a little bit. In your experience, does the ESA provide the flexibility to account for common sense, but also to be able to mitigate its way through conflicting regulations that are imposed upon the industry?

Mr. BIGGICA. Congressman Thompson, this is our catch-22. Where do we go? We have two agencies asking two different things from us. It attacks us a little differently in Pennsylvania with the rest of our cousins throughout the rural areas, both on the transmission side and on the distribution side. And NERC has a zero tolerance when it comes to tree trimming and vegetation management. Even beyond our right-of-ways, NERC has asked G&Ts, generation transmission cooperatives, that not only are responsible for our right-of-way, which is usually for a transmission line about 200 feet, even beyond the right-of-way, if there is any threat to dead trees or imposing trees on those lines. We have faced tremendous problems with right-of-way clearing. In the State of Pennsylvania, as you know, about a year-and-a-half ago, we had the tremendous ice storm that affected your cooperative, Congressman, down in Adams. We had some people who were out for almost a week. Luckily for the cooperatives, our reliability was better than the

other utilities around. They were out for 3–4 weeks. Clearing, vegetation management, right-of-way trimming is a direct correlation with reliability, and that is of utmost importance.

Our people are very reasonable people, but when you are out for a week because a tree is lying across the power line, they become very unreasonable. And we have found that the correlation between trimming, vegetation management is so important to the stature of the cooperative and the commitment to its consumers.

Mr. THOMPSON. Thank you.

Mr. Stilley, your testimony mentioned permitting delays. Should the Northern Long-Eared Bat be listed, what kinds of impacts might delays have on permitting and ultimately on your business?

Mr. STILLEY. It creates a huge problem for us. You know, in the coal industry in particular, we have been mining coal in Pennsylvania for the last 150 years. As I mentioned in my testimony, anywhere between one-third and one-half of the sites that we move on to mine coal today have been previously either surface mined or deep mined in years past. So, in effect, the permits that we need to secure to maintain our level of operation are our lifeblood. Our jobs last anywhere from 3 months to 2 years, and we are moving from site to site as often as 9 months to a year apart.

The impact of the Endangered Species Act, and requirements under the permitting requirements, extend the review time by the DEP, who are working under privacy with OSM, by as much as anywhere from a year to a year-and-a-half. So in effect, if we don't have a permit issued, our guys stay home, our equipment stays parked. We have contractual arrangements to ship coal to various utility companies in Pennsylvania, and industrial customers up in New York State. If we can't get the permits to maintain our consistent production of coal, we are then in violation of those contractual obligations. And the way the coal industry is today, with the number of plant closings that have taken place under the Obama administration, you can ill afford to miss any potential to be able to ship coal because chances are, a year from now, those opportunities are going to disappear. We have to be able to get permits on a timely basis, and this is just another impact that precludes us from not being able to get that done.

Mr. THOMPSON. Thank you.

Mr. D'Amico, talking about permits, you had mentioned in your testimony that PIOGA and eight other companies requested an emergency petition to Fish and Wildlife in February 2014, 7 months ago. Still no response back from that office?

Mr. D'AMICO. No, sir.

Mr. THOMPSON. Yes. What else can you say, except I yield back.

The CHAIRMAN. Mr. Perry.

Mr. PERRY. Thanks, Chairman.

Mr. Biggica, you are a co-op, right, or you represent co-ops, so just explain to everybody that—the customers are owners, right? Customers—your customers are—they own——

Mr. BIGGICA. Are the owners.

Mr. PERRY [continuing]. The electricity company——

Mr. BIGGICA. Yes.

Mr. PERRY [continuing]. Power company. So how would a listing of the Northern Long-Eared Bat complicate your ability to provide

electricity and transmission to parts of the state, and can you elaborate based on a direct and indirect cost about that?

Mr. BIGGICA. Well, the costs are hard to substantiate right now, but we can tell you that most importantly there is a direct correlation. It is probably the most labor intensive and financial intensive project that we do as cooperatives. There is nothing more important than clearing right-of-way. There is nothing more devastating than downed power lines. As I said with NERC, they have a zero tolerance when it comes to transmission lines. On the other side, on the distribution side which we are most in Pennsylvania familiar with, we only have about 11 miles of transmission lines. We are working with the PUC with jurisdictional utilities, as you know, we are owned and operated by cooperatives, so we are non-jurisdictional, but because of the devastation that we have experienced in Pennsylvania with the hurricanes and the ice storm, the PUC, rightfully so, is also taking a zero tolerance toward it, but when it comes to cost, it is the most expensive aspect of a cooperative operation and that is to clear the lines. We usually do—we do it all the time on emergency bases, but we have cycles; either 3, 4 or 5 years. Five years is kind of pushing the cycle.

Mr. PERRY. So let me ask you this, who pays for that?

Mr. BIGGICA. Well, our cooperative owners, the members.

Mr. PERRY. Who are your owners?

Mr. BIGGICA. Our owners are the people who receive the electricity from us.

Mr. PERRY. It is your customers, right?

Mr. BIGGICA. That is exactly right.

Mr. PERRY. And they are going to be paying the bill for this based on inexact science, I think you would——

Mr. BIGGICA. Exactly right.

Mr. PERRY [continuing]. Conclude.

Ms. Matteson, the Endangered Species Act as it is currently written requires, again, and I want to use this quote, "the best scientific and commercial data available." In your experience, if data isn't available, often unpublished studies or opinions are used. I mean I read that in your own testimony. In your view, is that the best? Is that the best?

Ms. MATTESON. It is the best available at the time. In——

Mr. PERRY. It doesn't say at the time, it says the best scientific and commercial data available. It doesn't say at the time, it says available.

Ms. MATTESON. If we continue to wait on endangered species, they will go extinct.

Mr. PERRY. If we continue to wait on——

Ms. MATTESON. But we need to——

Mr. PERRY. Even if the data is——

Ms. MATTESON. We need to protect——

Mr. PERRY [continuing]. One hundred percent flawed—you would say even if the data is 100 percent flawed, White Nose Syndrome is causing it, it has nothing to do with habitat, human activity, we must move forward anyhow. Would that be your assertion then based on that?

Ms. MATTESON. The law says to use the best scientific and commercial data available, and that is what is in this decision——

Mr. PERRY. So you are saying this data that is from 1969 and 1940, that is the best available?

Ms. MATTESON. I don't know the context of how that particular reference was used. It may have been historical——

Mr. PERRY. OK.

Ms. MATTESON [continuing]. But most of the information, most of the reference that went into the proposed rule is much more current than that. And sometimes publication takes a long time, so you have to go with what is currently available.

Mr. PERRY. I would say we all want to save these endangered species, and as a person—marvel at bats, they eat a lot of insects and we want them around, and live in our barns and in our fields and forests and so on, we want them around, but we want to make sure we are making the proper—taking the proper discretion regarding impacting people and animals' lives from a Federal law standpoint. If we have insufficient, incorrect, outdated data, it seems to me that that is not the best scientific or commercial data available.

While I complete here, Mr. Stilley, you are in the mining business, heavily, heavily regulated. Rightly so, right, based on safety, et cetera. If I said to you, you must use the best scientific and commercial data available regarding your safety program, and you gave me something decades old and said, well, this is what I've got, do you think that that would fly in the face of the regulators that you deal with? Do you think that they would accept that and let you continue to operate based on what we knew 20, 30, 5 years ago, as opposed to today? Just curious, because we live by the same set of rules, right? We should. Your comments.

Mr. STILLEY. MSHA is our current regulator for the mining industry, Mine Safety and Health Administration. They are revamping their regulations and policies on a daily basis. To think that we would be living under regulations as posed and required of us 30 years ago and try to do that with MSHA, we—first of all, it is not the right thing to do, and second, we would be shut down today. We must, for the sake of our employees and the guys working in the mines, make sure that it is as safe and sound a place as staying at home. And that requires up-to-date, current information at this instant in time, pure and simple.

The CHAIRMAN. Thank you very much, Mr. Perry.

Mr.—I want to kind of follow up on this. Mr. D'Amico, in your testimony, you said that the proposed listing is not based, this is the line of questioning Mr. Perry had here, is not based on the best scientific and commercial data that is available, and I tend to agree with you. Yet, on the listing by the Center for Biological Diversity, on page 11, they state, and this is a direct quote from that petition, "little is known about population trends for the Northern Long-Eared Bat." Now, that is in their petition listing. They further go on to say that because that small amount of population data, they say this, and I quote, "make—to make any conclusion, provisional at best."

So this is what Fish and Wildlife got from the petitioner, and yet Fish and Wildlife went ahead with this listing. Your comments on that process.

Mr. D'AMICO. I think there is an overall concern here, and you made reference to it in your initial comments, and as the process of the mega settlement. When the Center proposed several hundred species at one time, you have a Federal agency, the Fish and Wildlife Service, that now all of a sudden has a—basically an insurmountable effort to do, because they have to review this, make a determination in one year's time or they are going to be in court back with the Center or some other environmental group trying to do it. So from their standpoint, if I put myself in the Fish and Wildlife's shoes, they are afraid to make the wrong decision, and from their standpoint, as protectors of wildlife, they are going to err on the side of, well, you know, let's regulate everything to death. The problem with that concept is the overall damage that it does to the entire country, whether it is my industry, and actually it is kind of, you know, somewhat of a relief hearing all the impacts that are happening to everybody else, because there are times we have to focus on our industry and, oh, my God, these people are just trying to put us out of business, for the Northern Long-Eared Bats with our industry here in the East or the Prairie Chicken in the West, you know, we are hearing the same kinds of things.

But the bottom line is, at some point we need to have things and protections that don't shut down the entire economy, don't shut down farming so we can't feed our people, doesn't shut down the natural gas industry so that we can't keep people warm, it doesn't shut down the coal industry so that electricity can be generated, and, frankly, Russ, you know, from your standpoint, if we can't produce the energy to make the electricity, you don't have anything to worry about because it is not going to affect you. We won't have any electricity. But this is the problem; I think there is absolutely no common sense, sir, in these regulatory agencies, and how these rules are being conducted. And, unfortunately, something that you all are very well aware of, there is such a partisanship in the U.S. Congress that it makes it difficult for even you folks to impact this because you have another—that is going to come up with an entirely different opinion. Pardon me speaking with my hands, I am Italian. But, that is the basic issue here, and to base something without scientific basis is just—it is why I referred to it as a fiasco.

The CHAIRMAN. Well, I, of course, agree with that, and I mentioned earlier I come from the Northwest, and prior to this mega listing, while there are instances around the country, most of the big economic impact because of listings was in the western part of the United States. There are documented cases all over of the school district in Southern California that went through as bad as you went through, Representative Pyle. But in addition to the Spotted Owl, we have the salmon issue in the Northwest. We spent billions, and that is with a B, billions of dollars. Ratepayer dollars transferred because the utilities are paying for this, plus taxpayers. And I might add, just for the record, the salmon return coming back in the Columbia River are larger now the last 4 or 5 years than they have since we have been keeping records in 1938. There has been nary a—anybody speaking about de-listing the fish yet, so billions are still going to be spent. And the reason that I have had such an interest in this and was so happy to come to

Pennsylvania, and earlier down in Arkansas, is because now, because of this mega listing, the rest of the country is going to be—could be potentially as impacted as we are. Now, when I started talking to my colleagues earlier and they said, are you going to do anything on the Endangered Species Act, I say why and then they tell me, and like listings like this. And my response to them is I don't take pleasure in this, but welcome to the club. Why welcome to the club? Because the only way you are going to change is when you have the political will to do so. Now, my colleagues here and in Arkansas, and all of the Governors of the states I listed are going to tell their people get some common sense into the Endangered Species Act.

So my time is way over. Do any of my colleagues want to make any more questions or—if not, I will yield to you for your closing statement.

Mr. THOMPSON. OK, Chairman, thank you very much. I would be remiss if I didn't say a special hello to one of the witnesses who are my constituents here today, the gentleman from Centre Hall, thanks for being here, Mr. Melville. We greatly appreciate it.

I want to thank someone else that helped really secure this facility, Senator Gene Yaw, who has been a good friend, a good public servant of Pennsylvania, he went out of his way to make arrangements to allow us to be able to have that here today. We are very much appreciative to the Pennsylvania Senate and the Legislature.

Chairman, thank you for having this hearing, Mr. Perry, for being a part of it. Thanks to the witnesses for being here and for all those who took time this morning to attend.

You know, the Endangered Species Act is important, and, quite frankly, I care about the National Long-Eared—Northern Long-Eared Bat. Well, it is almost national, I guess. That green area, pretty much could claim it. I am glad it wasn't—I would soon much have the eagle as our flying symbol versus the bat, but it does cover a lot of area.

You know, this species and any others deserve an Endangered Species Act that is effective, that is transparent, that is science- and data-based, that avoids unwarranted, unneeded, negative consequences. That is not what we have today with the Endangered Species Act. You know, these species deserve better. You know, there is a requirement to use best available science. I have to tell you that because of the lack of transparency by the Fish and Wildlife Service, I have no idea whether our Fish and Wildlife Service is in compliance with the law. I don't know, and we should be able to know and make those—as the lawmaking body in this country, we should be able to offer that judgment, whether these Federal agencies are working according to the Federal law, and the complete lack of transparency alarms me because I don't know. I couldn't assure you or my constituents, or the citizens of the Nation, that we are—that they are following the laws. The Endangered Species Act, you know, must be science- and data-directed, not the result of a closed-door settlement, and that is where we are at today. And I really appreciate the leadership of the Chairman and the Natural Resource Committee, and I look forward to continuing this work as we have a lot of work to do left in the 113th Congress, so thank you and I yield back.

The CHAIRMAN. Thank you.

Mr. Perry?

Mr. PERRY. Mr. Chairman, Doc, thanks for coming to Harrisburg. Thanks very much for allowing me to participate. To you folks, thanks for your attendance here today. We are looking for solutions, and I would agree with Ms. Matteson, especially for the bat who is the—the time is very urgent, I am concerned about a Federal Government and an Agency that spends much of its resources defending lawsuits, and where those resources could be used in combating this White Nose Syndrome, and actually getting to the facts so that we can find a solution to save the bat, at the same time, continue to live our lives and employ people and live well in doing so in harmony and in concert with the species around us. The Endangered Species Act is vitally important in that regard, and we must do everything we can to safeguard it, but also to make sure it is effective, and I fear at this point over its time it is being used to fulfill the agendas of some folks that can't fulfill an agenda through the other means, and that is the problem, because we all want to preserve these species, at the same time preserve our way of life. And so I think that is what this hearing is about, to get to the facts, and I hope that it helps us as legislators become more educated on not only the bat itself, but the process by which we save all our species in the United States, and so we can be more effective at doing so, and I appreciate your indulgence and your willingness to stand for the tough questions.

Thank you, Doc.

The CHAIRMAN. Thank you very much, and I want to thank my colleagues for talking to me about having this hearing here some time ago, and I am glad we finally made it come to an end.

I just want to make a couple of statements. And I want to thank the panel for your testimony. Many times when we have panels, there are follow-up questions. If you get a question from us, we would ask you to respond in a very timely manner. And in that regard, Mr. D'Amico, you said in a larger sense that, politically, there is a challenge in Washington, DC. Listen, I think anybody, no matter where they live in this great country that we have the privilege to live in, would acknowledge that the country is somewhat divided politically. OK, that is the price of self-government. As difficult as it is, that is the price of self-government. And that reflection is going to be reflected in the peoples' house that we have the privilege to serve in, in the peoples' house. But we have to work our way through it. And, yes, there are politics in a lot that we do, there is absolutely no question about that, and sometimes it doesn't help when the rhetoric on both sides gets rather heated. Now, I was asking you about the science. There has been a lot of discussion on the science here, and, Ms. Matteson, you said that the best available science goes back over 40 years, and yet in your press statement, you said because the science is clear. Now, does that help the discussion, for goodness sake, when you say here in Committee that is the best available science, acknowledging it is over 40 years old, and yet say in a press statement about this meeting that the science is clear? That doesn't help trying to find solutions to what we are trying to find.

And let me go one step further. Mr. Perry asked you if the CBD had been involved in any restoration or whatever, you didn't know because you said you are a scientist, but you do work for them, so I am not—well, I won't ask you if you know or not, I am asking you to find out and tell us, send to the committee what CBD has done as far as restoration. You said specifically in the Southwest. I want to know exactly what you are doing there. The committee wants to know that. And so you get that information to us, and I will ask a further question. We heard virtually all of the panelists here talk about the White Nose Syndrome. Virtually all of them. I want to know if CBD is doing any research on trying to eradicate that. So I am asking you to give us that information, not that we would like to have it, I want to know because you work for CBD, get it to us.

And so if there are any further questions to any of you, that would be the same tone we would ask you; get the information to us.

Once again, I want to thank the panelists for being here. And for those of you in the audience, if you would like to comment, you can go to our Web site, or there are sheets back here that you can add. I think we will have—generally, we have 10 days after these hearings to get comments in place.

So if there is no further business to come before the committee, the committee stands adjourned.

[Whereupon, at 11:52 a.m., the committee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

JUNIATA VALLEY AUDUBON,
TYRONE, PA 16686

Hon. GLENN THOMPSON,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN THOMPSON:

Juniata Valley Audubon, a regional conservation organization with more than 500 members in south-central Pennsylvania, strongly supports the proposal to list the northern long-eared bat as endangered under the Endangered Species Act.

White-nose syndrome has killed an estimated 5.5 million cave-hibernating bats in the Northeast, Southeast, Midwest and Canada. **Populations of the northern long-eared bat in the Northeast have declined by 99 percent since symptoms of white-nose syndrome were first observed in 2006**.

Before the emergence of white-nose syndrome, the northern long-eared bat was found in 39 states, including the District of Columbia, with higher abundance in the East and becoming increasingly rare moving west. Other threats to the species include wind energy development, habitat destruction or disturbance to hibernating and summer habitat, climate change, and contaminants.

Under the Endangered Species Act, an endangered plant or animal is one that is in danger of becoming extinct. This is certainly the case with the northern long-eared bat. If a final decision is made to list the northern long-eared bat, the species will be protected from take—harming, harassing, killing—and federal agencies will work to conserve the bat and its habitat as they fund, authorize or carry out activities. In addition, a recovery plan should be developed for the species.

Sincerely,

STAN KOTALA, M.D.,
Conservation Chair.

PENNSYLVANIA'S 154TH LEGISLATIVE DISTRICT,
SEPTEMBER 5, 2014.

Hon. DOC HASTINGS, *Chairman*,
House Committee on Natural Resources,
Washington, DC 20515.

Hon. PETER DEFAZIO, *Ranking Member*,
House Committee on Natural Resources,
Washington, DC 20515.

DEAR CHAIRMAN HASTINGS AND RANKING MEMBER DEFAZIO:

The House Natural Resources Committee will be holding a field hearing at the Pennsylvania State Capitol Complex on Sept. 8 regarding the proposed listing of northern long-eared bats under the federal Endangered Species Act. While it appears that there will be at least one scientist present at this hearing testifying in support of the protection of the species, I am concerned that the other witnesses will not provide an accurate portrayal of how Pennsylvanians feel about the protection of our natural heritage, both inside Pennsylvania and across the United States. As a member of the Pennsylvania General Assembly, I am writing to you today requesting that this letter become part of the official record of this hearing.

Pennsylvania has a proud and long tradition of protecting endangered species. In 1982 Pennsylvania passed the Wild Resources Conservation Act—our own state-level endangered species legislation—setting up a system of legal protections for rare and endangered species within Pennsylvania. This law protects species that are rare and declining in Pennsylvania even if those species are common elsewhere. Currently more than 75 animals and 600 plants are protected under Pennsylvania law, as well as 15 species within Pennsylvania that are protected by the Endangered Species Act.

The strength of both our Pennsylvania law and the federal Endangered Species Act has come from their requirements that decisions on whether to protect a species is based solely upon the best available science. Whether or not a species is in fact endangered is a purely scientific question—and it has been the judgment of both the people of Pennsylvania and the nation that when a species is endangered, we have a moral obligation to prevent its extinction. But once a species is protected, there are alternatives and options regarding how to conserve those species in ways that minimize the economic impacts that the conservation activities have on our local and regional economies. In fact, both Pennsylvania law and the Endangered Species Act contain numerous provisions that provide flexibility and options to private parties to minimize any burdens that they may experience in helping to conserve our natural heritage.

In the past two years, Pennsylvania's Wild Resources Conservation Act has come under heavy attack. House Bill 1576, introduced by Rep. Jeff Pyle, sought to gut the Act by ending protections for species already protected under Pennsylvania law, turning over listing authority to the Independent Regulatory Review Commission, and requiring that all information on endangered species be placed in a centralized database that disclosed geographic information on species' locations. This bill is unnecessary and, if passed, would pose a tremendous threat to Pennsylvania's natural heritage. The U.S. Fish and Wildlife Service was so concerned about the passage of this bill that it wrote a letter on Aug. 9, 2013 indicating that passage of this legislation would jeopardize Pennsylvania's Pittman-Robertson Wildlife Restoration funding.

Industry special interests may believe that H.B. 1576 would benefit them by reducing their environmental stewardship responsibilities. However, reducing protections for endangered species is not a core value of Pennsylvanians, who understand that protecting imperiled plants and animals and the habitats we share with them is key not only to preserving the long-term health of the environment, but also to protecting the nation's long-term economic security.

I am concerned that Monday's hearing on the northern long-eared bat furthers the false dichotomy imbedded in H.B. 1576 that protecting endangered species comes at

an unbearable economic price for our state and our nation. The reality is that Pennsylvania has a long track record of helping to prevent the extinction of the Indiana bat, which has been protected under the Endangered Species Act since 1967. There is simply no factual reason to believe that protecting the northern long-eared bat under the Endangered Species Act will be any different from protecting the Indiana bat. If the best available scientific information from our nation's top wildlife experts indicates that the bat should be protected, then we should all support that decision and move forward together in a constructive fashion to recover this species to the best of our collective ability.

Sincerely,

STEVE MCCARTER,
State Representative.

○