

Northern Long-eared Bat Guidance for Non-federal Actions

1. What changes have occurred for northern long-eared bat (NLEB)?

The northern long-eared bat is listed as **endangered** under the federal Endangered Species Act as of March 31, 2023. This change is in response to continued population declines, primarily due to white nose syndrome. The NLEB threatened 4(d) rule and associated consultation have been nullified.

2. What actions does this guidance apply to?

This guidance document is focused on **non-federal activities involving WisDOT**. This includes WisDOT's non-federal actions (e.g., maintenance activities) and non-WisDOT actions occurring on/adjacent to WisDOT ROW (e.g., non-federal entities seeking a highway ROW permit).

This guidance supersedes WisDOT FAQ guidance documents shared in February 2023.

3. What are the new NLEB requirements for *non-federal* actions under the Endangered Species Act?

Requirements under the federal Endangered Species Act are based on whether the action is federal or non-federal in nature, not based on the highway facility type.

Proponents of non-federal actions have the responsibility under the ESA Section 9 to ensure their actions will not result in prohibited take of northern long-eared bats unless they have received a Section 10 incidental take permit from FWS. Take means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."

FWS requirements for non-federal actions appear to be based on the action's proximity to known NLEB locations. WisDOT cannot give broad direction about what specific requirements are needed for non-federal actions. As such, non-federal project proponents are strongly encouraged to complete the **Northern Long-eared Bat Rangewide Determination Key** in FWS's [Information for Planning and Consultation \(IPaC\) tool](#) to understand if any restrictions or additional coordination applies to their action.

4. Is this the final non-federal guidance for NLEB?

Likely no. It is expected that guidance and processes will continue to evolve. WisDOT will share notable updates as they become available.

5. Who completes the Northern Long-eared Bat Rangewide Determination Key?

The determination key should be completed by the project proponent. It generally does not require technical expertise. FWS has training videos and FAQ on their IPaC website (scroll to bottom of page).

WisDOT staff can work with region environmental coordinators (RECs) if they have questions on the key.

WisDOT is developing a step-by-step guidance document to use the key for non-federal actions, but this will take some time before it is released.

6. How complex is the Northern Long-eared Bat Rangewide Determination Key?

It appears that FWS has integrated NLEB element occurrence data (WDNR's Natural Heritage Inventory data) into this key. As such, the key's questions and outcomes vary depending on if the project's action area falls within a NLEB occurrence buffer (which are not visible to users).

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- **If the non-federal project/action does not fall within a NLEB occurrence buffer**, it seems the key can be quite brief (as few as 4 questions) and avoidance/minimization measures (AMMs) from the federal ESA perspective are not required. That means no need to assess suitable habitat for NLEB. However, any requirements from WDNR for address their state Endangered Species Law still may be required (see question 7).
- **If the non-federal project/action is within known NLEB occurrence buffer** (e.g., within 0.5 mile of a hibernaculum), the key appears to result in the “may affect” determination quite frequently and requires coordination with FWS to understand requirements before proceeding with the action. These efforts will very likely require AMMs, such as tree clearing restrictions, to avoid NLEB take. These restriction dates may be narrower than April 1 – October 31 and would be proposed to FWS by the project proponent.

7. What are WI Department of Natural Resources (WDNR) requirements for NLEB?

The northern long-eared bat is listed as **threatened** under the WI Endangered Species Law. WDNR has not indicated they intend to reclassify the NLEB at this time.

Project proponents should continue to use the [WDNR Natural Heritage Inventory Public Portal](#) and/or have an [Endangered Resources Review](#) conducted for the project to understand **state** NLEB requirements/recommendations. Some actions may be covered under [WDNR cave bat broad incidental take permit/authorization](#).

Receiving clearance for NLEB under state regulations/requirements does not obviate the need for compliance under the federal Endangered Species Act.

WDNR has indicated that it will take several months before they can incorporate federal ESA guidance/buffers into their NHI public portal or guidance document (similar to what they did for the federal 4(d) rule). The **Northern Long-eared Bat Rangewide Determination Key** in IPaC is the best way for non-federal project proponents to understand federal ESA requirements.

8. What conditions related to NLEB will be placed on WisDOT highway right-of-way (ROW) permits?

WisDOT highway ROW permits include driveways, road/street connections, utilities, and other work on highway ROW actions. Permittees are responsible for compliance with all applicable federal, state, local and tribal laws, codes, regulations, and ordinances. WisDOT’s permit approval does not relieve a permittee from compliance and shall not be construed as superseding any other governmental agency’s more restrictive requirements.

WisDOT is strongly encouraging applicants to complete the **Northern Long-eared Bat Rangewide Determination Key** to understand federal ESA requirements for NLEB for their specific action. Results of the key and any follow up coordination with FWS are strongly encouraged to be shared with WisDOT to facilitate the permitting process.

WisDOT expects that permittees follow all federal and state required tree clearing restrictions as well as any other protective measures required for NLEB, such as bat inspections. WisDOT may condition permits with tree clearing restrictions that are more restrictive than required by state/federal

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requirements (e.g., clearing prohibited April 1 – October 31). This would be done when there is an increased need to protect the NLEB and its habitat.

9. What trees are considered suitable summer habitat for NLEB?

Suitable summer habitat for NLEB may be subject to tree clearing restrictions, which can be as broad as April 1 – October 31. For non-federal actions, refer to the determination key and FWS guidance for specific restrictions.

Per USFWS guidance: suitable summer habitat consists of a wide variety of forested/wooded habitats where NLEB roost, forage, and travel and may also include some adjacent and interspersed non-forested habitats such as emergent wetlands and adjacent edges of agricultural fields, old fields and pastures. This includes forests and woodlots containing potential roosts (i.e., live trees and/or snags ≥ 3 inches dbh that have exfoliating bark, cracks, crevices, and/or cavities), as well as linear features such as fencerows, riparian forests, and other wooded corridors. These wooded areas may be dense or loose aggregates of trees with variable amounts of canopy closure. NLEB seem to prefer intact mixed-type forests with small gaps (i.e., forest trails, small roads, or forest-covered creeks) in forest with sparse or medium vegetation for foraging and commuting rather than fragmented habitat or areas that have been clear cut. Individual trees may be considered suitable habitat when they exhibit characteristics of suitable roost trees and are within 1,000 feet of other forested/wooded habitat.

Examples of unsuitable habitat:

- Individual trees that are greater than 1,000 feet from forested/wooded areas;
- Trees found in highly-developed urban areas (e.g., street trees, downtown areas); and
- A pure stand of less than 3-inch dbh trees that are not mixed with larger trees

10. What type of manmade structures does NLEB use?

Northern long-eared bat may use bridges and culverts as roosts. NLEB may also utilize buildings and human-use structures such homes, rest areas, offices, sheds, outbuildings, barns and parking garages. This is not an exhaustive list.

Compliance with federal and/or state regulations may require a bat inspection prior to structure demolition. For non-federal actions, refer to the **Northern Long-eared Bat Rangewide Determination Key** for specific federal ESA restrictions. See the [WDNR cave bat broad incidental take permit/authorization](#) for state requirements.

Per WDNR, NLEB is unlikely to use billboards and signs as roosts in Wisconsin. There are presently no requirements to inspect these elements for bats prior to removal.

11. What other resources are available?

USFWS IPAC: <https://ipac.ecosphere.fws.gov/user/login>

USFWS NLEB Guidance: <https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis>

USFWS Endangered Listing FAQ:

https://www.fws.gov/sites/default/files/documents/FINAL.FWS_.FAQs_.NLEB%20final%20rule%20FAQs_.11222022%20%281%29.pdf

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WDNR NLEB Guidance:

<https://dnr.wi.gov/topic/EndangeredResources/Animals.asp?mode=detail&SpecCode=AMACC01150>

<https://dnr.wi.gov/files/PDF/pubs/er/ER0700.pdf>