

# United States Senate

WASHINGTON, DC 20510

March 3, 2015

The Honorable Dan Ashe  
Director  
U.S. Fish and Wildlife Service  
1849 C Street NW  
Washington, DC 20240

Dear Director Ashe:

We write to express our concerns regarding the proposed 4(d) rule, which may accompany a possible “threatened species” listing of the northern long-eared bat (NLEB), and to request your efforts to make sure the NLEB is protected without causing undue harm to, or imposing unnecessary regulatory burdens on, economic development, forestry, wind power generation, energy development, agriculture, and conservation projects – activities that, according to the preamble to the proposed rule “have not independently caused significant, population-level effects on the [NLEB]” and that are unrelated to the primary threat to this species – white nose syndrome (WNS).

We agree with the U.S. Fish and Wildlife Service (Service) Midwest Region Director who recently stated that “white-nose syndrome is having a devastating effect on the nation’s bat populations, which play a vital role in sustaining a healthy environment and save billions of dollars by controlling forest and agricultural pests.” We also agree that, the Service should continue “seeking public comment on how we can use the flexibilities inherent in the ESA to protect the bat and economic activity.”

Unfortunately, the proposed 4(d) rule does not adequately “protect... economic activit[ies]” that pose no significant risk to the NLEB, and it misdirects the Service’s efforts toward those activities and away from the battle against WNS. Moreover, the proposed 4(d) rule provides a major distinction between areas affected by WNS and areas unaffected by WNS, but it appears to be a distinction without any real effect. The proposed 4(d) provisions barring “take” of the NLEB by vitally important human activity would apply throughout the vast majority of the NLEB’s range, because most of the NLEB range is within 150 miles of a county where either WNS or the fungus *Pseudogymnoascus destructans* has been detected. As a result, under the proposed 4(d) rule, most communities within the NLEB range will be subject to full ESA constraints, with no exceptions from the “take” prohibition. Significant adverse economic impacts would be caused by the proposed 4(d) rule throughout the entire territory of at least 21 states<sup>1</sup> and major portions of the NLEB range in 12 additional states.<sup>2</sup>

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<sup>1</sup> Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

<sup>2</sup> Alabama, Arkansas, Georgia, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Nebraska, North Carolina, Oklahoma, and South Carolina.

Please provide a prompt response to each of the following items:

- Farming, forestry, energy production and development, and other similar human activities have occurred throughout the NLEB's range for generations, without leading to a significant decline in the NLEB population. What is the Service doing to directly respond to the threat of WNS, rather than simply targeting ancillary activities that have occurred throughout the NLEB's range for generations?
- The Service's FY2016 Budget request includes \$2.5 million to research WNS. Please provide a detailed justification for this budget request, including its size.
- Please provide a detailed description of the scientific analysis that the Service has used, is currently using, and/or plans to use to make decisions regarding:
  - (1) a potential listing of the NLEB,
  - (2) any potential critical habitat designations to be proposed concurrent to or subsequent to a potential listing of the NLEB, and
  - (3) the scope of the current proposed NLEB 4(d) rule.
- What meaningful risk, if any, does wind energy development (within areas affected by WNS) pose for the species and how will this activity be impacted under the proposed 4(d) rule, if the NLEB is listed as threatened?
- What meaningful risk, if any, does energy development other than wind energy (within areas affected by WNS) pose for the species and how will these activities be impacted under the proposed 4(d) rule, if the NLEB is listed as threatened? Specifically, please address, renewable energy, oil and gas development, and mining.
- What meaningful risk, if any, does farming (within areas affected by WNS), including the application of crop protection products as well as agricultural conservation measures, pose for the species and how will this activity be impacted under the proposed 4(d) rule, if the NLEB is listed as threatened?
- Within areas affected by WNS, how would new rights-of-way and transmission corridors (e.g. for transportation, utility transmission lines, and energy delivery) be impacted under the proposed 4(d) rule, if the NLEB is listed as threatened?
- The proposed 4(d) rule states that the "conversion of mixed forest into an intensively managed monoculture pine plantation" would not be free of the "take" prohibition.
  - What is the scientific basis for such a restriction?
  - What are the working definitions of monoculture and plantation?

- Given that naturally seeded pine regeneration can create stocking rates well above those seen in planted pine plantations, and that stand densities will vary over time, what is the rationale for placing an unnecessary restriction on forest management?
- Given that the Service is proposing such extensive regulation of and restrictions on ancillary activities throughout most of the NLEB's range, please provide a detailed description of the Service's scientific research efforts with partnering universities, cooperative wildlife research units, and other institutions to answer lingering questions regarding how to address and mitigate the threats posed by WNS. This description should cover the Service's science efforts from FY2006 through FY2015.
- How will you improve the proposed 4(d) rule to address these concerns and to ensure that the NLEB is protected without imposing undue regulatory burdens on economic development, forestry, wind power generation, energy development, agriculture, and conservation projects that are essentially unrelated to the primary threat to this species – WNS?

Due to the time-sensitive nature of this potential listing, we request your complete and thorough responses by March 13, 2015.

In sum, we believe the proposed 4(d) rule provides inadequate protections to both long-standing and new activities that are vital to communities throughout the NLEB's extensive range. We believe the impacts of these activities are "not expected to adversely affect conservation and recovery for the species," just as the Service stated in the proposed rule's preamble for the few activities on which it focused. These additional activities, along with the conservation measures contained in the proposed rule, should also be excepted from the burdensome "take" prohibition. We urge you to protect the NLEB from population loss associated with WNS, without unduly burdening impacted communities and citizens, by driving up costs for farmers, foresters, and families who ultimately will have to bear the burden of any unnecessarily onerous rules.

Sincerely,



John Boozman,  
U.S. Senator



James M. Inhofe,  
U.S. Senator



Thad Cochran,  
U.S. Senator



Tom Cotton,  
U.S. Senator



Jerry Moran,  
U.S. Senator



Shelley Moore Capito,  
U.S. Senator



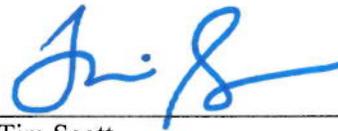
Pat Roberts,  
U.S. Senator



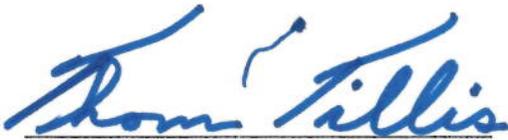
Roger F. Wicker,  
U.S. Senator



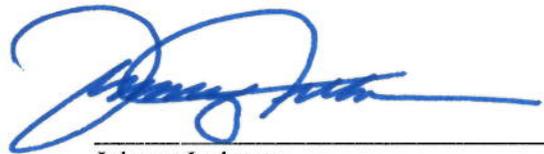
Chuck Grassley,  
U.S. Senator



Tim Scott,  
U.S. Senator



Thom Tillis,  
U.S. Senator



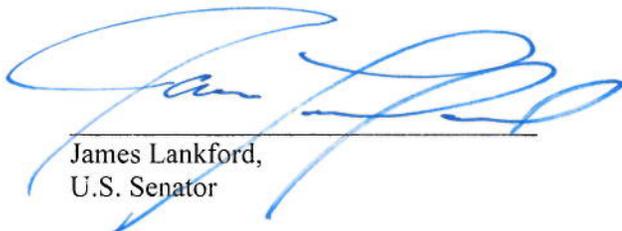
Johnny Isakson,  
U.S. Senator



Bill Cassidy,  
U.S. Senator



Roy Blunt,  
U.S. Senator



James Lankford,  
U.S. Senator



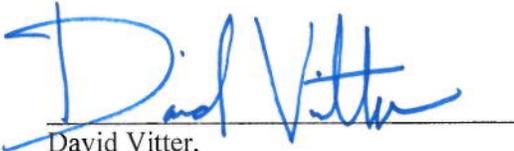
Deb Fischer,  
U.S. Senator



Richard Burr,  
U.S. Senator



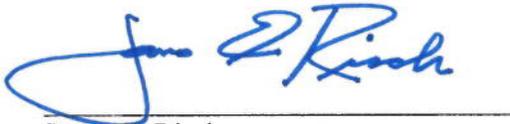
Mike Crapo,  
U.S. Senator



David Vitter,  
U.S. Senator



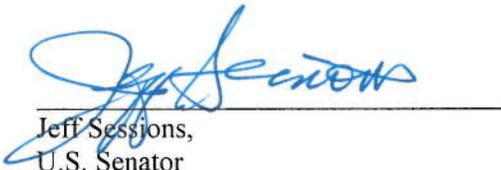
David Perdue,  
U.S. Senator



James E. Risch,  
U.S. Senator



Ben Sasse,  
U.S. Senator



Jeff Sessions,  
U.S. Senator