

# Northern long-eared Bat

## And its effects on the MDOT Construction Program FAQ

March, 3<sup>rd</sup>, 2014

### **1. Appearance of NLEB**

The northern long-eared bat is a medium-sized bat about 3 to 3.7 inches in length, with a wingspan of 9 to 10 inches. Its fur color can be medium to dark brown on the back and tawny to pale-brown on the underside. As its name suggests, this bat is distinguished by its long ears, particularly as compared to other bats in the genus *Myotis*, which are actually bats noted for their small ears (*Myotis* means mouse-eared).

### **2. Why is the NLEB in danger of extinction?**

No other threat is as severe and immediate as the disease known as white-nose syndrome. If this disease had not emerged, it is unlikely the NLEB population would be declining so dramatically. Since symptoms were first observed in New York in 2006, white-nose syndrome has spread rapidly from the Northeast to the Midwest and into the Southeast region of the United States; an area that includes the core of the species range where it was most common before this disease. Numbers have declined by 99 percent in the Northeast. However, uncertainty exists about the rate that white-nose syndrome will spread throughout the United States and the ultimate effect on mortality.

### **3. What is the schedule for listing the bat?**

The NLEB will likely be listed around November 1, 2014. 30 days past the listing date no projects or activities may harm the bat. FWS has indicated that the listing is likely to occur given white nose-syndrome mortality rate.

### **4. Does this affect our 2014 construction program?**

2014 projects are not affected as long as tree removals occur prior to November 1, 2014 when the bat is likely to be listed.

### **5. How will the NLEB listing affect projects after November 1, 2014?**

If the tree clearing takes place between October 15 and March 31st (NLEB hibernation period) the project can receive NEPA classification.

Prior to environmental certification, the Environmental Services Section must complete consultation and receive concurrence from the USFWS. This Informal Consultation process may take in excess of 30 days.

For tree clearing activities planned to occur between April 1st and October 14th, the Environmental Services Section cannot classify the project until we show USFWS that the NLEB is not present in the area of tree removals. There two phases of study needed to prove the bat is not present:

Completion of a habitat level assessment - A qualified biologist would field review the project area and assess the trees for their potential to serve as bat habitat. The NLEB has a wide range of habitat including live or dead trees greater than three inches in diameter with cracks, crevices, holes, or exfoliating bark, so almost any tree could be habitat. Habitat assessments can occur in any season. If the assessment does not identify suitable habitat the project can be classified following completion of informal consultation with USFWS.

Field survey for the presence /absence of the NLEB - Typically this is done using acoustical recording, mist netting or other scientifically approved methods between May and August. If the survey does not locate a bat or bats, then informal consultation would be completed and NEPA classification can occur. If the bat is present, Formal Section 7 consultation with the USFWS will be initiated. This process typically takes 18 to 24 months to complete. Once consultation is complete, NEPA classification can occur.

**6. Who would conduct the habitat level assessment or field survey?**

A qualified biologist from MDOT or a consultant firm will conduct the habitat level assessments. US FWS approves qualifications for individual biologist who perform presence/absence surveys. Currently, Michigan has one biologist approved by the US FWS to perform mist net surveys. Other consultants in the Midwest also perform these surveys.

**7. Design plans can specify tree removals, but if the contractor determines a tree needs to be removed due to a constructability issue/condition, how will this situation be handled?**

Separate guidance on construction will be forthcoming.

**8. The contractor asks to change the staging specifications or change/adjust the timeline?**

Changes will require USFWS approval, which may delay construction.

**9. How long does a bat survey take?**

Getting someone to do the survey takes a lot longer than actually performing. Currently, Michigan has one biologist approved by the US FWS to perform mist net surveys, for example. Also, there are two different phases of survey. A habitat assessment requires fieldwork which needs to be scheduled. The fieldwork can take anywhere from a day to a week, depending on the project.

A presence/absence survey can take about a week of fieldwork, then time for analysis, report writing, and consultation with US Fish and Wildlife Service.

**10. How much does a bat survey cost and who will pay for this service?**

The costs are usually under \$10,000 for a presence/absence survey. A habitat assessment would cost less.

**11. Is a bat survey seasonal?**

Yes, the survey window is approximately May through August when the species is in flight.

**12. Can maintenance remove trees this winter?**

Yes, until the NLEB is listed on November 1, 2014.

**13. What about Local Agency Program projects?**

Local agencies must also comply with the federal Endangered Species Act.

**14. What about billboard permits and tree removals?**

Billboard companies must also comply with the federal Endangered Species Act.

**15. When will a Special provision for this species/work be completed?**

We are working on a Notice to Bidders addressing the seasonal cutting restriction that we hope to make available soon.

**16. If there are a few trees to be removed in an urban city (i.e. downtown Detroit) can a habitat level survey be completed so the trees can be removed in the summer?**

A habitat level survey could be conducted at any time of the year, but depending on the survey results, mist netting or acoustical surveys may be required. Refer to Question No. 5.

**17. Who is going to enforce the tree cutting prohibition and what happens if we violate it?**

MDOT and FHWA are responsible for compliance of the Endangered Species Act, the US Fish and Wildlife Service is responsible for the enforcement that would involve an immediate work stoppage and consultation with the USFWS. FHWA may withdraw funding for a project since it is not in compliance with federal law.

**18. Is there a change in mitigation for tree removals now? Will all trees removed require replacements?**

Currently no change is expected and replacements would be determined on a project-by-project basis with involvement of the Resource Specialist.

**19. Can maintenance crews remove trees in the summer? What about those tree cutting contracts already established?**

Yes, through 2014 but after that if the species is listed, future cutting work would require a habitat level assessment or field survey to be conducted for the species prior to the removals. See No 5 and winter maintenance Question above. Maintenance activities still need to comply with the federal Threatened and Endangered Species act which applies regardless of the funding source.

**20. How do you write the NLEB into Design/Build RFPs?**

Separate guidance on innovative contracting will be forthcoming.

**21. Is a tree exempt if it is dead/diseased/dying?**

No. If the tree is three inches in diameter or greater with cracks, crevices, holes, or exfoliating bark, it may be prime habitat for the NLEB and therefore needs evaluation.

**22. Does it make a difference if the tree is a conifer or deciduous?**

No, this species uses both types of trees.