United States Department of the Interior

FISH AND WILDLIFE SERVICE
9325 S. Alda Rd. STE B
Wood River, Nebraska 68883

In Reply Refer to:
FWS/R6

Dear Conservation Partners and Stakeholders,

As you may recall, the U.S. Fish and Wildlife Service extended the effective date of the final rule to reclassify the Northern Long-eared Bat from threatened to endangered to March 31, 2023 (87 FR 73488). We extended the effective date to allow our agency to continue working on interim guidance and management tools intended to aid stakeholders in assessing project impacts to the species prior to the final rule going into effect (88 FR 4908). The Service has completed our guidance and management tools. The tools include a Range-wide Determination Key and three interim guidance tools including an Interim Consultation Framework, Interim Habitat Modification Guidance, and Interim Wind Guidance. These tools will be valid for an interim period of March 31, 2023, through April 1, 2024, as the Service works to address the uncertainty behind where the Northern Long-eared Bat occurs across the landscape with the presence of white-nose syndrome. Below we describe the intended purpose of the tool and who is eligible to use it:

The Range-wide Northern Long-eared Bat Determination Key

The Range-wide Northern Long-eared Bat Determination Key (DKey) is now available in the Service's Information for Planning and Consultation (IPaC) Tool and replaces the previous 4(d) key that was based on our former *Programmatic Biological Opinion on the Final 4(d) Rule for the Northern Long-eared Bat and Activities Excepted from Take Prohibitions*. Projects with a federal nexus (*i.e.* projects being funded, authorized, or carried out by a federal agency) as well as those without a federal nexus that occur in the species' range are eligible to use this DKey. The DKey will screen a project by asking users a logically-structured set of questions and utilize underlying GIS data to determine if the Action Area of the project (as demarcated by the user) overlaps within a 0.50-mile of a known Northern Long-eared Bat hibernacula, a spring staging or fall swarming area, 3.00 miles of a recorded capture or acoustic detections, or within 1.50 miles of a known roost to determine if a project has the potential to adversely affect the species. For additional information on how this DKey screens projects and determines conservation outcomes, please refer to the Service's *Standing Analysis and Implementation Plan – Northern Long-eared Bat Assisted Determination Key*, a consultation document that provides the Service's analytical basis behind the DKey. This DKey is a living key that will be reviewed annually to ensure it is based on the best available information and considers any new information that will be used in making decisions to ensure conservation outcomes.

Interim Consultation Framework

The Interim Consultation Framework (framework) was developed to provide a mechanism to facilitate efficiency and consistency in completing Section 7 consultation with the Service during the interim period of March 31, 2023, through April 1, 2024. Ongoing federal projects with construction that began before the effective date, already completed section 7 consultation with the Service, and were consistent with the former 4(d) rule framework and still have discretion of the project, are eligible to use this framework, as well as new federal projects that are reasonably certain to result in adverse effects (*i.e.* formal consultation is required) to the Northern Long-eared Bat. The Service for this interim period concludes that take is only

reasonably certain to occur if the project activity occurs in suitable habitat with documented presence of the species.

The framework applies to a wide variety of activity types including but not limited to, ongoing transportation and non-transportation work, timber harvest, prescribed fire, habitat management, and infrastructure projects. It is the lead federal action agency's responsibility to determine if their project can qualify and comply with the Endangered Species Act. To assist federal agencies with making their decision and complete consultation obligations, the Service has developed a series of questions and associated tasks to guide agencies that wish to use this framework that starts on Page 5 under *Steps to Complete Consultation under the Interim Consultation Framework*. Federal projects are eligible to utilize this framework granted the project can comply with the former 4(d) Rule conservation measures. For those federal projects that utilize the Service's Northern Long-eared Bat Rangewide Determination Key and receive a May Affect Consistency Letter, they will also be directed to this framework to determine if the project qualifies.

For ongoing federal projects, the Service will issue a Biological Opinion (BO) and Incidental Take Statement (ITS) within 15 days if a sufficiently completed Biological Assessment is provided. For new federal projects, the Service will issue a BO and ITS within 15 days provided a sufficiently completed Biological Assessment is provided and consultation is already complete for other species that may be affected by project activities.

As a reminder, this Interim Consultation Framework provides incidental take coverage for federal projects that occur during the interim period of March 31, 2023, to April 1, 2024, only. Therefore, any federal action agency issued a BO that relied on this Interim Consultation Framework and its supporting Standing Analysis will need to reinitiate consultation if the continuing, discretionary action is likely is expected to affect the Northern Long-eared Bat (*i.e.* cause incidental take) after April 1, 2024. If the federal action agency fails to reinitiate consultation on or before April 1, 2024, it's BO will no longer be based on the best available information which means the action agency's Section 7 compliance and incidental take exemptions provided by Section 7 (o)(2) will lapse.

Interim Habitat Modification Guidance

The Interim Habitat Modification Guidance applies to non-federal (*i.e.* private, state, and local) projects. This interim guidance is intended to assist non-federal projects to determine if take of Northern Long-eared Bats is reasonably certain to occur as a result of conducting activities that modify suitable forest/woodland habitat during the period of March 31, 2023, through April 1, 2024. There are a variety of ways take can occur through forest habitat modification, depending on the circumstances of the activity and its location. Non-federal projects that are reasonably certain to take Northern Long-eared Bats are subject to Section 10(a)(1)(B) of the ESA and incidental take permit coverage is necessary.

Non-federal projects can utilize the Service's Northern Long-eared Bat Range-wide Determination Key to determine if this guidance applies to their project. If your project receives a May Affect Consistency Letter from the DKey, you will be directed to this guidance. It is the non-federal project proponent's responsibility to determine if your project qualifies. This guidance is valid during the interim period of March 31, 2023, through April 1, 2024, only.

Interim Wind Guidance

The Interim Wind Guidance provides recommendations applicable to new and existing land-based wind energy facilities on how to site and operate in a manner in which incidental take of the Northern Long-eared

Bat is not reasonably certain to occur through the use of a curtailment strategy (*i.e*. reduction in electricity generation) at lower wind speeds. This guidance also describes the standard post-construction monitoring needed to validate the effectiveness of a facility's operations at not taking the species. This guidance is also supplemented with a list of Frequently Asked Questions for additional background information on how this guidance could be applicable to your project. Please note, this guidance is applicable during the interim period of March 31, 2023, through April 1, 2024, only.

During this interim period, while the interim tools are in effect, the Service will continue to work on evaluating potential methods to address the uncertainty behind where the Northern Long-eared Bat occurs across the landscape with the presence of white-nose syndrome and develop final future guidance for stakeholders to follow April 1, 2024. The Service will seek stakeholder input on the final future guidance once it is ready to be shared. We encourage you to monitor our Northern Long-eared Bat website for updates. Alternatively, our office will provide updates as they become available.

Thank you for your patience while we developed these tools.