



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: February 8, 2023

Immediate Withdrawal by the United States Fish and Wildlife, Asheville Ecological Field Office (Asheville USFWS) and Anticipated Withdrawal by the United States Fish and Wildlife, Raleigh Ecological Field Office (Raleigh USFWS) from the Standard Local Operating Procedures for Endangered Species (SLOPES) for Wilmington District, Department of the Army Permits Affecting Northern Long-Eared Bats in North Carolina

The SLOPES is an agreement between the Wilmington District, U.S. Army Corps of Engineers (USACE), the United States Fish and Wildlife Service Raleigh Ecological Field Office (Raleigh USFWS), and the Asheville USFWS. It details how the USACE makes determinations of effect to the federally threatened Northern long-eared bat (NLEB) (*Myotis septentrionalis*) and ensures compliance with the Endangered Species Act (ESA). The purpose of this public notice is to announce that the Asheville USFWS has formally withdrawn from this SLOPES agreement, and it is anticipated that the Raleigh USFWS office will withdraw on March 31, 2023.

In a letter to the USACE dated December 1, 2022, the Asheville USFWS state:

“On March 23, 2022, the Service published a proposal to reclassify the NLEB as endangered under the Endangered Species Act (Case 1:15-cv-00477, March 1, 2021). On November 30, 2022, the Service published a final rule (87 FR 73488) that reclassified NLEB from threatened to endangered. The final reclassification will become effective on January 30, 2023, and remove the 4(d) rule for the NLEB, as these rules may be applied only to threatened species. The SLOPES and associated Alternative Local Procedures will no longer be valid consultation frameworks for NLEB. We hereby provide notice of our intent to withdraw from the SLOPES pursuant to Section VIII (B) of the Agreement (attached).”

The language in the SLOPES state that it may be terminated, in its entirety, by written, mutual agreement of the parties. An individual party to this agreement may withdraw from the agreement after providing 30 days written notice of such intent to withdraw to the other participating signatories. Therefore, the Asheville USFWS are hereby considered withdrawn from this agreement. The Raleigh USFWS remains an active participant in this agreement until the 4(d) rule is officially terminated, anticipated for 31 March 2023. This Public Notice serves as official notice for both termination dates.

Having immediately withdrawn from the agreement, effects to the NLEB in the Asheville USFWS area of interest are reliant on the remaining Programmatic Biological Opinion, and the ensuing final 4(d) rule (published January 14, 2016). This is important due to

the extension of the reclassification of the NLEB to March 31, 2023, thus extending the applicability of the 4(d) rule through March 2023. The effect to the NLEB from these documents results in a “may affect” determination to the species for certain actions when in the range of the species. This effect determination is essential when evaluating a USACE, Clean Water Act, Section 404 and/or Section 10 General Permit against General Condition #18 Endangered Species, which states in part:

“No activity is authorized under any NWP which “may affect” a listed species or critical habitat unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed.”

The completion of ESA Section 7 (as stated above) for a “may affect” determination requires written concurrence from the Asheville USFWS. Therefore, a Preconstruction Notification (PCN) is now required for all activities covered under any General Permit regardless of other considerations of the project if the project is in the range of the NLEB and if project-related activities result in a may affect determination. The written concurrence requirement, as stated in Section 7 of the ESA, will take place between the USACE and the Asheville USFWS after the submittal and evaluation of the PCN. Please allow adequate time for this evaluation and consultation. For your convenience a map of the Asheville USFWS work area is below:

Figure 1: Work Areas of Asheville and Raleigh Service Offices

