

# Standard Local Operating Procedures for Endangered Species Act Compliance for the Northern Long-Eared Bat in North Carolina

## I. Background and Purpose

The U.S. Fish and Wildlife Service (Service) listed the Northern long-eared bat (NLEB) (*Myotis septentrionalis*) as threatened on April 2, 2015. The primary threat to the NLEB is from white-nose syndrome (WNS), which has caused a drastic decline in population numbers. Actions involving impacts to roost trees or to caves/mines which serve as hibernacula are expected to exacerbate the population decline. On January 14, 2016, the Service finalized a special rule under the authority of Section 4(d) of the Endangered Species Act (ESA); this final 4(d) rule is supported by a Programmatic Biological Opinion (PBO) which evaluated activities that the Service either (1) prohibits, or (2) excepts/exempts from take prohibitions under the final 4(d) rule.

The ESA and its implementing regulations (50 Code of Federal Regulations (CFR) 17) define take as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct.” “Incidental taking” is defined at 50 CFR 17.3 as “any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, an otherwise lawful activity.” Incidental take within the context of the final 4(d) rule is regulated in distinct and separate manners relative to the geographic location of the proposed activity and the occurrence of WNS. The final rule does not prohibit incidental take resulting from otherwise lawful activities in areas not yet affected by WNS (i.e., areas outside of the WNS zone).

Within the WNS zone, the final 4(d) rule prohibits incidental take of NLEBs in their hibernacula (which includes cave, mines, and other location where bats hibernate in winter). Take of NLEBs inside of hibernacula may be caused by activities that disturb or disrupt hibernating individuals when they are present, as well as physical or other alteration of the hibernaculum’s entrance or environment when bats are not present, if the activity would impair essential behavioral patterns and cause harm.

For NLEBs outside of hibernacula within the WNS zone, the final 4(d) rule establishes separate incidental take prohibitions for activities involving tree removal and those that do not involve tree removal. Incidental take of NLEBs outside of hibernacula resulting from activities other than tree removal is not prohibited provided they do not result in the incidental take of NLEBs inside hibernacula or otherwise impair essential behavioral patterns at known hibernacula. Incidental take resulting from tree removal is prohibited if it: (1) occurs within 0.25 mile of known NLEB hibernacula; or (2) cuts or destroys known, occupied maternity roost trees or any other trees within a 150’ radius around the known, occupied maternity tree during the pup season (June 1- July 31).

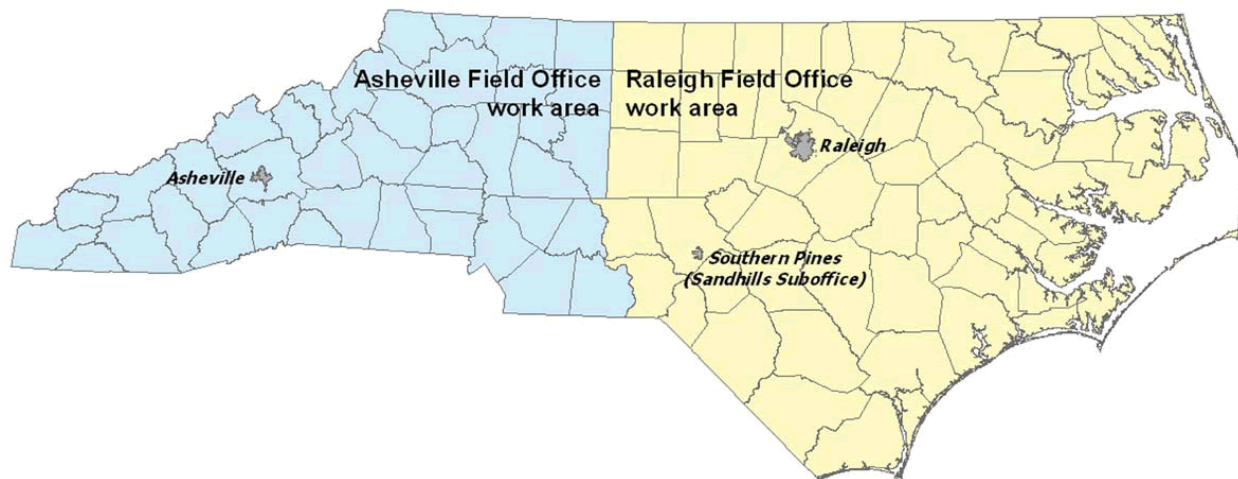
The final 4(d) rule defines tree removal as, “cutting down, harvesting, destroying, trimming, or manipulating in any other way the trees, saplings, snags, or any other form of woody vegetation that is likely to be used by the northern long-eared bat.” For the purposes of this Standard Local Operating Procedures for Endangered Species (SLOPES) agreement between the U.S. Army Corps of Engineers, Wilmington District (USACE), and the Service’s Asheville and Raleigh Ecological Offices, a “tree” is defined as a live, dead, dying, or snag tree greater than 3-inches diameter at breast height (DBH), or any other form of woody vegetation that is likely to be used by the NLEB.

While the final rule does not prohibit incidental take that results from otherwise lawful activities in areas not yet affected by WNS, this does not necessarily mean that certain activities that occur outside of the WNS zone, such as certain percussive activities, would not have an effect on the NLEB. There are one hundred (100) counties in North Carolina. According to the Service’s Midwest Region, as of July 28, 2016, eighty-nine (89) of these 100 counties are located in the range of the NLEB and eighty-eight (88) of these counties are located in the WNS zone. The USACE, Wilmington District has determined that in order to adequately evaluate potential effects to the NLEB from activities regulated pursuant to Section 404 of the Clean Water Act (CWA) and/or Section 10 of the Rivers and Harbors Act (RHA) of 1899, the NLEB range will be used to initially screen all activities in the USACE defined action area. Additionally, when certain percussive activities, such as blasting, would occur in the USACE defined action area, the USACE will evaluate notifying activities (i.e., those activities that require a submission of an application or preconstruction notification) for potential effects to NLEB resources regardless of where these activities occur in North Carolina. Non-notifying activities have set screening criteria and are discussed further in Section V of this document.

The final 4(d) rule provides an optional framework that federal agencies can use to satisfy their ESA Section 7(a)(2) responsibilities when they determine that an activity may affect the NLEB, but would not cause prohibited incidental take. This SLOPES agreement further streamlines that optional framework by providing an Alternative Local Procedure (ALP) for use, when appropriate. Proper application of the procedures outlined in this SLOPES will ensure that activities regulated under Section 404 of the CWA and/or Section 10 of the RHA in North Carolina are processed in accordance with the requirements of Section 7(a)(2) of the ESA.

This SLOPES details how the USACE will make determinations of effect to the NLEB when the USACE is the lead federal agency for a project, and it is applicable to activities regulated pursuant to Section 404 of the CWA and/or Section 10 of the RHA in the western 41 counties of North Carolina, to include North Carolina Department of Transportation (NCDOT) non-federal aid projects. This SLOPES is also applicable to non-NCDOT projects in the eastern 59 counties of North Carolina. This SLOPES does not address NCDOT projects (either federal or state funded) in the eastern 59 counties, as separate consultation was conducted for these projects and a PBO was issued on March 25, 2015. Note that if another federal agency is the lead for a project, procedures for satisfying the requirements of Section 7(a)(2) of the ESA will be dictated by that agency and will not be applicable for consideration under this SLOPES.

Two Service offices are responsible for ESA Section 7(a)(2) compliance in North Carolina; the Asheville Ecological Services Office is responsible for the western 41 counties and the Raleigh Ecological Services Office is responsible for the eastern 59 counties.



This SLOPES (1) details the different paths available to the USACE for Section 7(a)(2) compliance for the NLEB; (2) formalizes the coordination agreement/ALP between the USACE, Wilmington District, and the Asheville and Raleigh Ecological Services Field Offices; and, (3) ensures that USACE non-notifying permits are not authorized in North Carolina if they would result in prohibited incidental take of the NLEB.

The action area for this SLOPES is the USACE's defined action area (action area) and those areas that may be indirectly affected by percussive activities which are located in the action area. As noted previously, the NLEB range will be used to initially screen all activities that occur in the action area. Additionally, when percussive activities would occur in the action area, the USACE will evaluate these activities for potential effects to NLEB resources, regardless of where these activities occur in North Carolina.

This SLOPES addresses effects to the NLEB only. Effects to other federally listed species (listed species) and/or to federally-designated critical habitat (critical habitat) will be processed via traditional consultation methods, unless separate SLOPES or other agreements with the Service have been reached for those species and/or critical habitat.

Section IV of this document describes how the USACE will determine the appropriate effects to the NLEB for notifying projects, including Individual Permits. Section V details how USACE non-notifying general permits will be processed. The following information is included as appendices to this document:

- Appendix A – a flow chart of the USACE determination processes for notifying permits
- Appendices B-E – email templates for ALP Situations 1-4
- Appendix F – Questions and Answers (Qs & As)

## **II. Statutory Requirements and Authorities**

**A. Endangered Species Act (ESA) (16 USC § 1531 *et seq.*)** - Section 7(a)(2) requires that federal agencies, in consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, take such actions as necessary to ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary of the Interior or Commerce, as appropriate, to be critical.

**B. Section 404 Clean Water Act (CWA) (33 USC § 1344)** requires authorization from the Secretary of the Army, acting through the USACE, for the discharge of dredged or fill material into all waters of the U.S., including wetlands. Discharges of fill material generally include, without limitation, placement of fill that is necessary for the construction of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for intake and outfall pipes and sub-aqueous utility lines; fill associated with the creation of ponds; and any other work involving the discharge of fill or dredged material. A USACE permit is required whether the work is permanent or temporary.

**C. Section 10 of the Rivers and Harbors Act (RHA) of 1899 (33 USC § 403)** requires authorization from the Secretary of the Army, acting through the USACE, for the construction of any structure in or over navigable waters of the U.S., and to conduct certain activities under navigable waters of the U.S. Work or structures outside the limits defined for navigable waters of the U.S. require a Section 10 permit if the work or structure affects the course, location, or condition of the water body. The law applies to any dredging or disposal of dredged materials, excavation, filling, re-channelization, or any other modification of a navigable waters of the U.S., and it applies to all structures, from the smallest floating dock to the largest commercial undertaking. It further includes, without limitation, any wharf, dolphin, weir, boom breakwater, jetty, groin, bank protection (e.g., riprap, revetment, bulkhead), mooring structure such as a piling, aerial or sub-aqueous power transmission line, intake or outfall pipe, permanently moored floating vessel, tunnel, artificial canal, boat ramp, aid to navigation, and any other permanent or semi-permanent obstacle or obstruction.

## **III. Life History of the NLEB**

The range of the NLEB extends from North Carolina to Maine on the Atlantic coast, then westward to Oklahoma spreading north to eastern Montana and Wyoming. In cooler climates, such as the North Carolina Mountains, these bats spend the winter hibernating in moist caves and/or mines, but during the summer, NLEBs typically roost singly or in colonies in a wide

variety of forested habitats, underneath bark or in cavities/crevices of both live trees and snags. In the North Carolina Coastal Plain, NLEBs appear to roost in trees year-round. NLEBs do not appear to be species specific to any one type of roost tree, but seem to be opportunistic for any type of tree that can provide an adequate space for roosting. Rarely, this bat can be found roosting in man-made structures such as barns, buildings, and possibly wells, culverts, and bridges.

NLEBs typically breed in late summer, then go through a delayed fertilization during hibernation. Pups are born the following summer, then typically roost in small colonies of 30 to 60 young and female bats. Young bats are able to fly after approximately 21 days from birth.

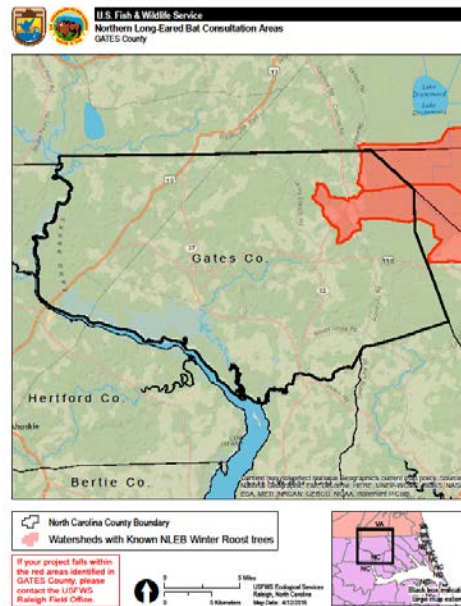
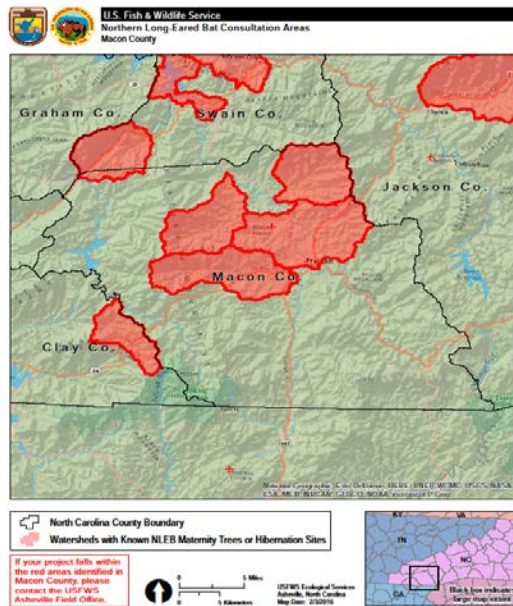
It is estimated that the number of NLEBs found in the Northeast have declined by up to 99 percent, largely due to WNS. This disease has now spread to include the core of the NLEB's range where they were most common prior to the emergence of WNS. The majority of counties within North Carolina fall within the WNS zone. The Service has not designated critical habitat for the NLEB.

#### **IV. NLEB Coordination between the Service and the USACE for Notifying General Permits and Individual Permits**

“Notifying Permit” or “Notification” means that an applicant is required to submit an application or Preconstruction Notification (PCN) to the USACE prior to conducting work in waters of the U.S. While this term is typically used in association with general permits [i.e., Nationwide Permits (NWPs) or Regional General Permits (RGPs)], Individual Permits (IPs) are included in this category as well, as all activities authorized by an IP require submission of an application.

For all applications, the USACE will first determine (1) if the action area is located in the range of the NLEB, and/or (2) if percussive activities (if applicable to a project) in the action area might affect NLEB resources in the range by examining the map at <http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf>. While the majority of North Carolina is already included in the range of the NLEB, the boundaries are subject to expansion. Because of this, the website should be checked frequently for those counties that are not currently included in the range.

If the action area is located in the NLEB range, and/or percussive activities in the action area might affect any portion of the NLEB range, the USACE will then check the website of the Asheville Service Office (western 41 counties) or the Raleigh Service Office (eastern 59 counties) for NLEB county maps and information. The red areas depicted on these county maps are 12-digit Hydrologic Unit Codes (“red HUCs”) that contain known NLEB hibernacula and/or maternity roost trees. Only those counties with known NLEB hibernacula and/or maternity roost trees in North Carolina are represented by individual county maps; there are no maps for those counties that do not have these NLEB resources. The red HUC maps for Macon and Gates Counties are shown below as examples:



For counties covered by the Asheville Ecological Services Field Office, the USACE will check the project location against the maps found at: [http://www.fws.gov/asheville/htmls/project\\_review/NLEB\\_in\\_WNC.html](http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html). For counties covered by the Raleigh Ecological Services Field Office, the USACE will check the project location against the maps found at: [https://www.fws.gov/raleigh/NLEB\\_RFO.html](https://www.fws.gov/raleigh/NLEB_RFO.html). As with the range boundary map, these county maps will be updated as NLEB resources are discovered, so the USACE will need to check the online county map for each project. Note that once the data for the red HUCs are accessible to the USACE through a map server, the USACE will only need to check the project location against the red HUC layer on SimSuite.

“Percussive activities,” as used in this document, are generally defined as activities that result from “the striking of one body against another with some sharpness; impact.” “Percussive activities” refers to (1) blasting, and (2) activities that are conducted by machines, such as jackhammers and mechanized pile drivers used to drive piles into soil to provide foundational support for buildings or other structures such as bridges. Activities that are conducted by hand-powered tools (e.g., hammer, sledgehammer, etc.) are not included in the definition of percussive activities for this SLOPES. Percussive activities, and particularly blasting, are a concern if these activities will disturb or disrupt NLEBs in their hibernacula (caves, mines, etc.), or result in a physical or other alteration of a hibernaculum's entrance or its environment. For the purpose of this document, when blasting will occur in an action area, it is presumed that any blasting within 0.25 mile of a red HUC boundary has the potential to cause prohibited incidental take of the NLEB. As such, consultation with the Service using Situations 3 or 4 of the ALP, which is detailed below, will be necessary when blasting occurs within 0.25 mile of a red HUC. This is not the presumption with other forms of percussive activities, however, and the USACE will consider impacts from other percussive activities on a case-by-case basis.

**The USACE will make one of the following decisions for each application or PCN received:**

- A. Determine that there is no obligation under Section 7(a)(2) of the ESA to consider effects to the NLEB**
- B. Determine "no effect" to the NLEB**
- C. Use the Alternative Local Procedure (ALP Situations 1-4) for the NLEB**
- D. Consult in the tradition manner for the NLEB**

**A. USACE determines that there is no obligation under Section 7(a)(2) of the ESA to consider effects to the NLEB**

If the USACE action area is not located in the range of the NLEB, and percussive activities (if applicable to a project) will not occur within 0.25 mile of a red HUC, the USACE has no further obligation under Section 7(a)(2) of the ESA to consider effects to the NLEB for a particular project.

**B. USACE determines "no effect" to the NLEB**

If an action area is located in the range of the NLEB, the USACE will determine "no effect" to the NLEB unless any of the following activities occur in the action area:

- tree cutting/removal;
- blasting within 0.25 mile of a red HUC;
- other percussive activities (other than blasting) where the USACE determines that these other percussive activities “may affect” a red HUC;
- construction/installation of wind turbines;
- bridge removal or maintenance when (1) the bridge has not been inspected for bat usage, or (2) the bridge has been inspected and there is evidence of bat use.

If, after consideration of all of the above, the USACE determines “no effect” to the NLEB, the USACE will not notify the Service but will document the rationale for the “no effect” determination in the project file.

*Note about bridge removal/maintenance –if a bridge survey/inspection was conducted and no evidence of bat use (e.g., bats, staining, guano, etc.) was found, the USACE will determine that the bridge removal/maintenance activity, by itself, will have no effect on the NLEB. If the bridge was not inspected, the USACE will ask the applicant to inspect the bridge for evidence of bat use and notify the USACE with the results; until the applicant submits this information, the USACE cannot move forward with an effect determination for the NLEB.*

*If, after inspection of the bridge:*

*- NO evidence of bat use is found, the USACE will determine that the bridge removal/maintenance activity, by itself, will have no effect on the NLEB.*

*- evidence of bat use IS found, the USACE will consult with the Service in the traditional manner. See Appendix F (Qs & As) for more information and photographs.*

### **C. USACE uses the Alternative Local Procedure (Situations 1-4) for the NLEB**

If an action area is located in the range of the NLEB, and if the activities in that action area do not meet the requirements of “no effect”, the USACE will determine if coordination with the Service using ALP Situations 1-4 is appropriate for a given project. To determine this, the USACE will (1) use the information from the Service red HUC maps or the red HUC layer on SimSuite (once accessible to the USACE through a map server) and; (2) evaluate the criteria under Situations 1-4 below to determine if the activities conducted in the action area fit into one of the four ALP situations. See Appendix F (Qs & As) for more information.

*Note about blasting - if blasting will occur in the action area, and the action area is located within 0.25 mile of a red HUC boundary, go directly to "Situation 3" (if consulting on only the NLEB), or to "Situation 4" (if consulting on the NLEB and other species and/or effects to critical habitat).*



## ALP Situation 1

Situation 1 will apply to a project if:

- the action area is located outside of a red HUC and there is no pile driving, blasting, or other percussive activities; OR
- the action area is located outside of a red HUC and there will be pile driving or other percussive activities (not including blasting), and the USACE determines that pile driving and other percussive activities will not affect NLEB resources in a red HUC; AND/OR
- the action area is located outside of a red HUC and there will be blasting, but the blasting will not occur within 0.25 mile of a red HUC boundary.

Situation 1 is used when the NLEB is the only listed species under consideration for a project and no critical habitat is involved. If the project requires the USACE to consult on other listed species or effects to critical habitat, go to Situation 2.

If the USACE determines that a project meets Situation 1, the USACE will send an email to the Service with the agreed upon information; this information, and an email template for Situation 1, can be found in Appendix B.

**Under Situation 1, the USACE is not required to wait 30 days before issuing authorization for a project; authorization can be issued once the email is sent to the Service.**

## ALP Situation 2

Situation 2 will apply to a project if conditions for the NLEB are the same as described under Situation 1, but the USACE is also consulting on other listed species or effects to critical habitat.

For Situation 2, the USACE will send an email to the Service with the agreed upon information; this information, and an email template for Situation 2, can be found in Appendix C.

**Under Situation 2, the USACE cannot issue authorization for a project until the Service concurs with the determinations for the other species and/or critical habitat; this correspondence from the Service will include their NLEB response, as well.**

### ALP Situation 3

Situation 3 will apply to a project if:

- the action area is located in a red HUC; OR
- blasting in the action area will occur within 0.25 mile of a red HUC (whether or not the action area is located inside or outside of a red HUC); AND/OR,
- other percussive activities will occur in the action area and the USACE determines that these activities “may affect” a red HUC (whether or not the action area is located inside or outside of a red HUC).

If the USACE determines that a project meets Situation 3, the USACE will send an email to the Service with the agreed upon information; this information, and an email template for Situation 3, can be found in Appendix D.

The Service will notify the USACE as to whether the action area is or is not located in, or would or would not affect, (1) a hibernaculum; (2) within 0.25-mile of a known hibernaculum, or; (3) within 150’ radius of a known maternity (tree) site. If the action area is located in, or activities would affect, (1)-(3) above, the USACE will initiate traditional consultation with the Service for the NLEB.

**Under Situation 3, the USACE cannot issue authorization until (1) 30 days have passed after notifying the Service, or (2) the Service notifies the USACE that there will be no prohibited incidental take of the NLEB. If the Service does not respond in 30 days, the USACE will document that the project does not involve prohibited incidental take of the NLEB and will issue authorization for the project.**

### ALP Situation 4

Situation 4 will apply to a project if the conditions for the NLEB are the same as described as under Situation 3, but the USACE is also consulting on other listed species or critical habitat.

For Situation 4, the USACE will send an email to the Service with the agreed upon information; this information, and an email template for Situation 4, can be found in Appendix E.

**Under Situation 4, the USACE cannot issue authorization for a project until the Service concurs with the determinations for the other species and/or critical habitat; this correspondence from the Service will include their NLEB response, as well.**

Appendix F contains common questions and answers concerning effect determinations for the NLEB.

#### **D. USACE consults in the traditional manner for the NLEB**

For activities that would cause prohibited incidental take of the NLEB, or incidental take of the NLEB associated with bridge removal, repair, or maintenance when evidence of bat use is present, the USACE cannot use the ALP (i.e., Situations 1-4) described above and will instead consult with the Service in the traditional manner.

For an activity that is located in or would affect a red HUC AND involves tree cutting and/or percussive activities – if, after coordination/consultation with the Service under Situations 3 or 4, the Service notifies the USACE that an activity in the action area would cause prohibited incidental take [i.e., it would involve activities that: result in the disruption or disturbance of NLEBs in their hibernacula; result in the physical or other alternation of a hibernaculum’s entrance or it’s environment at any time of year; involve tree clearing activities within 0.25 mile of a known NLEB hibernaculum; or involve tree clearing activities that result in cutting or destroying known, occupied maternity roost trees or any other trees within a 150’ radius around the roost tree during the pup season (June 1- July 31)], the USACE will consult with the Service in the traditional manner.

Because the Service has provided NLEB resources (i.e., known roost trees and hibernacula) in the red HUC format, vs. via point data, prior to coordinating Situation 3 or 4 emails with the Service for a project, the USACE will typically not know if a specific activity in the action area could cause prohibited incidental take, so ALP Situations 3 or 4 will be used. However, there may be circumstances when the USACE does have this knowledge before the application is submitted (e.g., information gathered during a pre-application site visit with the Service or other agencies, information from the applicant or consultant, evidence of bat use is found on bridges to be removed, maintained, repaired, etc.); if this occurs, the USACE will not use the ALP and will consult in the traditional manner. See Appendix F (Qs and As) for more information.

#### **V. NLEB Coordination between the Service and the USACE for Non-notifying Permits**

“Non-notifying Permit” or “non-notification” means that an applicant is not required to submit an application or PCN to the USACE prior to conducting work in waters of the U.S. Non-notification applies to certain NWP and RGP in North Carolina, and is only applicable to activities that meet specific criteria. Non-notifying permits typically involve minor impacts to waters of the U.S., such as certain maintenance, bank stabilization, or road activities. All NWPs and RGPs are conditioned so that activities authorized, including those activities that qualify for non-notification, can only occur if the requirements of Section 7(a)(2) of the ESA have been satisfied.

In order to preserve the ability of the USACE to continue to use non-notifying general permits in North Carolina, the following condition shall be included in (1) the 2017 Wilmington District NWP Regional Conditions, and (2) those RGPs that allow non-notifying activities:

The Wilmington District, U.S. Army Corps of Engineers (USACE) has consulted with the United States Fish and Wildlife Service (Service) in regards to the threatened Northern long-eared bat (NLEB) (*Myotis septentrionalis*) and Standard Local Operating Procedures for Endangered Species (SLOPES) have been approved by the USACE and the Service. This condition concerns effects to the NLEB only and does not address effects to other federally listed species and/or to federally-designated critical habitat.

A. Procedures when the USACE is lead federal agency\* for a project:

The permittee must comply with (1) and (2) below when:

- the project is located in the western 41 counties of North Carolina, to include non-federal aid North Carolina Department of Transportation (NCDOT) projects, OR;
- the project is located in the 59 eastern counties of North Carolina, and is a non-NCDOT project.

\*generally, if a project is located on private property or on non-federal land, and the project is not being funded by a federal entity, the USACE will be the lead federal agency due to the requirement to obtain Department of the Army authorization to impact waters of the U.S. If the project is located on federal land, contact the USACE to determine lead federal agency.

(1) A permittee using a NWP (or an RGP) must check to see if their project is located in the range of the NLEB by using the following website:

<http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf>.

If the project is within the range of the NLEB, or if the project includes percussive activities (e.g., blasting, pile driving, etc.), the permittee is then required to check the appropriate website in the paragraph below to discover if their project:

- is located in a 12-digit Hydrologic Unit Code area (“red HUC” - shown as red areas on the map), AND/OR;
- involves percussive activities within 0.25 mile of a red HUC.

Red HUC maps - for the western 41 counties in NC (covered by the Asheville Ecological Services Field Office), check the project location against the electronic maps found at:

[http://www.fws.gov/asheville/htmls/project\\_review/NLEB\\_in\\_WNC.html](http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html). For the eastern 59 counties in NC (covered by the Raleigh Ecological Services Field Office), check the project location against the electronic maps found at: [https://www.fws.gov/raleigh/NLEB\\_RFO.html](https://www.fws.gov/raleigh/NLEB_RFO.html).

(2) A permittee must submit a PCN to the district engineer, and receive written authorization from the district engineer, prior to commencing the activity, if the activity will involve any of the following:

- tree clearing/removal and/or construction/installation of wind turbines in a red HUC, AND/OR;

- bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, (applies anywhere in the range of the NLEB), AND/OR:
- percussive activities in a red HUC, or within 0.25 mile of a red HUC.

The permittee may proceed with the activity without submitting a PCN to either the USACE or the Service, provided the activity complies with all applicable NWP terms and general and regional conditions, or all applicable RGP terms and general and special conditions, and if the permittee's review under A.(1) and A.(2) above shows that the project is:

- located outside of a red HUC (and there are no percussive activities), and the activity will NOT include bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, OR;
- located outside of a red HUC and there are percussive activities, but the percussive activities will not occur within 0.25-mile of a red HUC boundary, and the activity will NOT include bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, OR;
- located in a red HUC, but the activity will NOT include: tree clearing/removal; construction/installation of wind turbines; bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, and/or; any percussive activities.

#### B. Procedures when the USACE is not the lead federal agency:

For projects where another federal agency is the lead federal agency - if that other federal agency has completed project-specific ESA Section 7(a)(2) consultation for the NLEB, and has (1) determined that the project would not cause prohibited incidental take of the NLEB, and (2) completed the coordination/consultation that is required by the Service (per the directions on the respective Service office's website), that project may proceed without notification to either the USACE or the Service, provided the activity complies with all applicable NWP terms and general and regional conditions, or all applicable RGP terms and general and special conditions.

The NLEB SLOPES can be viewed on the USACE website at the following World Wide Web Page: <http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/ESA/> . Permittees who do not have internet access may contact the USACE at (910) 251- 4633.

## **VI. Emergency Situations - RGP 297**

Regional General Permit 199200297 (RGP 297) authorizes the discharge of dredged or fill material in non-tidal waters of the U.S. in North Carolina associated with forest management and wildfire control and suppression when performed by the U.S. Forest Service (USFS), the North Carolina Forest Service (NCFS), or when conducted on federal or state-owned property.

One of the activities authorized by this RGP is the discharge of dredged or fill material associated with the installation and maintenance of firebreaks for the purpose of wild-fire control during emergency wild-firefighting situations; it is anticipated that these situations will involve tree removal to some degree.

This SLOPES allows the USFS, the NCFS, or those authorized to conduct emergency wild-firefighting, to conduct tree removal activities associated with the installation and maintenance of firebreaks for the purpose of wild-fire control during emergency wild-firefighting situations without notification to either the USACE or the Service.

## **VII. Annual Reporting**

Because tree cutting/removal is a habitat modification that may affect the NLEB, the Service is collecting information about tree removal in the range of the NLEB. Tracking tree removal under non-notifying permits is difficult due to the fact that the USACE does not receive notification about these activities; however, non-notifying permits typically result in a small amount of federal control and scope due to the overall restrictions from permit conditions. For example, under NWP #14 Linear Transportation Projects, non-notifying permits are only valid if there is no discharge within a special aquatic site, or if the loss of waters of the U.S. is less than 1/10 of an acre.

Other NWPs, such as # 3 Maintenance, allow for a wider array of actions before triggering notification; however, these actions center around repairing, rehabilitating, or replacing existing serviceable structures or fill and only minor deviations in the original filled area are allowed. It is anticipated that only minor tree removal would be needed from these non-notifying actions.

In order to capture the number (or acres) of trees removed in the NLEB range due to non-notifying general permits, the USACE will report an estimate of (1) the number of non-reporting general permits used, and (2) an estimate of trees removed in the action areas. The USACE will report these estimates to the respective Service office by November 15<sup>th</sup> of each year; the first report will be submitted by November 15, 2016. The reported estimates should approximate and capture actions authorized under non-notifying general permits used in North Carolina.

## **VIII. Administration of this SLOPES**

**A.** This SLOPES may be modified or amended only by written, mutual agreement of the parties.

**B.** This SLOPES 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.

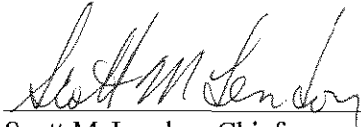
C. Acknowledgement that the authority and responsibilities of the parties under their respective jurisdictions are not altered by this SLOPES.

D. This SLOPES is intended only to improve the working relationships of the participating parties in connection with decisions regarding compliance with Section 7(a)(2) of the ESA for the federally listed Northern long-eared bat, and pertains to permitting actions in North Carolina pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbor Act of 1899 when the USACE is the lead federal agency for a project.

E. The terms of this SLOPES are not intended to be enforceable by any party other than the signatories hereto.

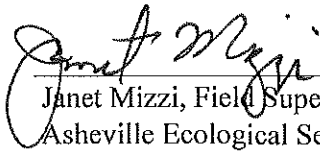
F. The participating parties intend to fully carry out the terms of this SLOPES.

ACCORDINGLY, the parties have signed this SLOPES on the dates set forth below and it shall be effective as of the date last signed.



\_\_\_\_\_  
Scott McLendon, Chief  
Regulatory Division  
U.S. Army Corps of Engineers  
Wilmington District

Date: 30 JAN 2017



\_\_\_\_\_  
Janet Mizzi, Field Supervisor  
Asheville Ecological Services Field Office  
U.S. Fish and Wildlife Service

Date: 1/18/2017

\_\_\_\_\_  
Pete Benjamin, Field Supervisor  
Raleigh Ecological Field Services Office  
U.S. Fish and Wildlife Service

Date: \_\_\_\_\_

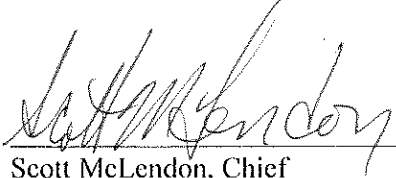
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D. This SLOPES is intended only to improve the working relationships of the participating parties in connection with decisions regarding compliance with Section 7(a)(2) of the ESA for the federally listed Northern long-eared bat, and pertains to permitting actions in North Carolina pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbor Act of 1899 when the USACE is the lead federal agency for a project.

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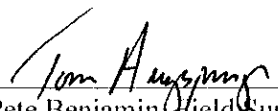
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Scott McLendon, Chief  
Regulatory Division  
U.S. Army Corps of Engineers  
Wilmington District

Date: 30 JAN 2017

\_\_\_\_\_  
Janet Mizzi, Field Supervisor  
Asheville Ecological Services Field Office  
U.S. Fish and Wildlife Service

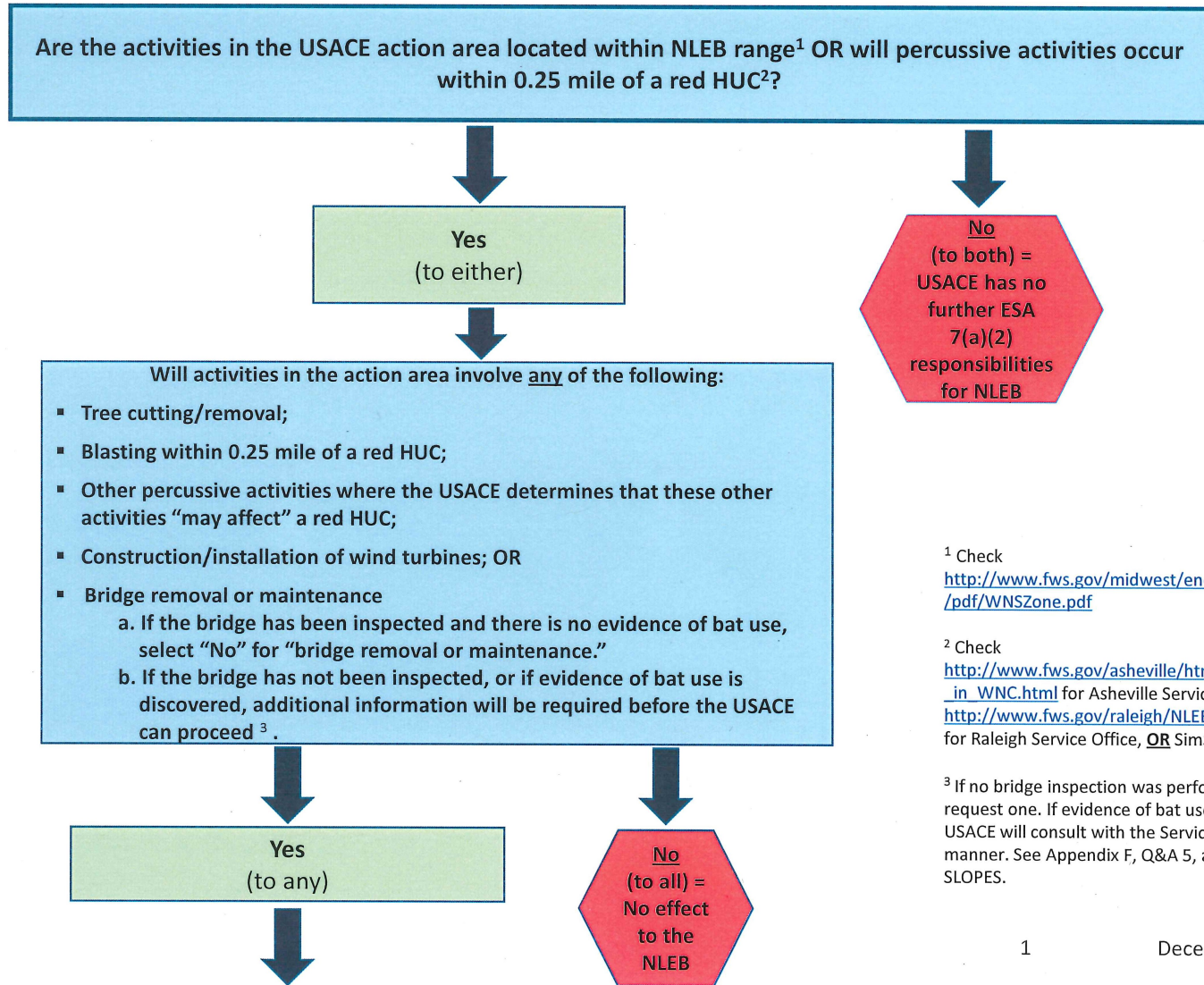
Date: \_\_\_\_\_

*Acting for*  
  
\_\_\_\_\_  
Pete Benjamin, Field Supervisor  
Raleigh Ecological Field Services Office  
U.S. Fish and Wildlife Service

Date: 01/10/2017



# USACE Decisional Flow Chart for Notifying Permits



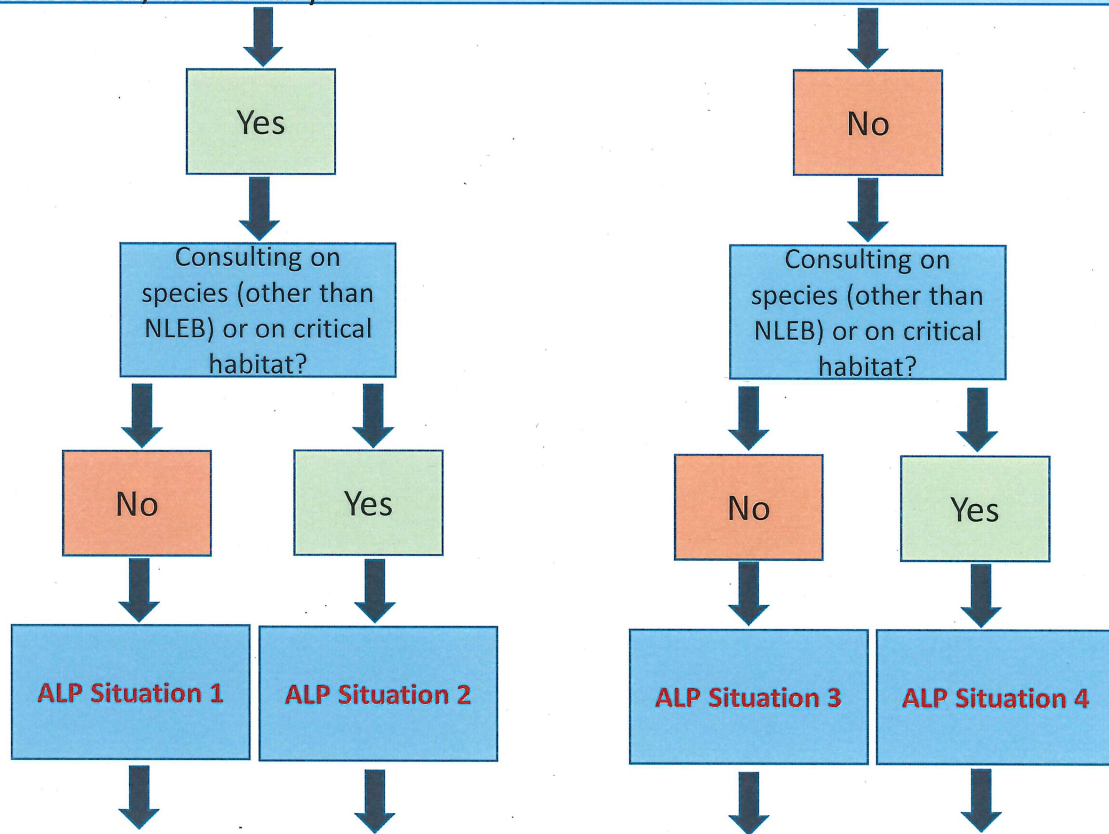
<sup>1</sup> Check <http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf>

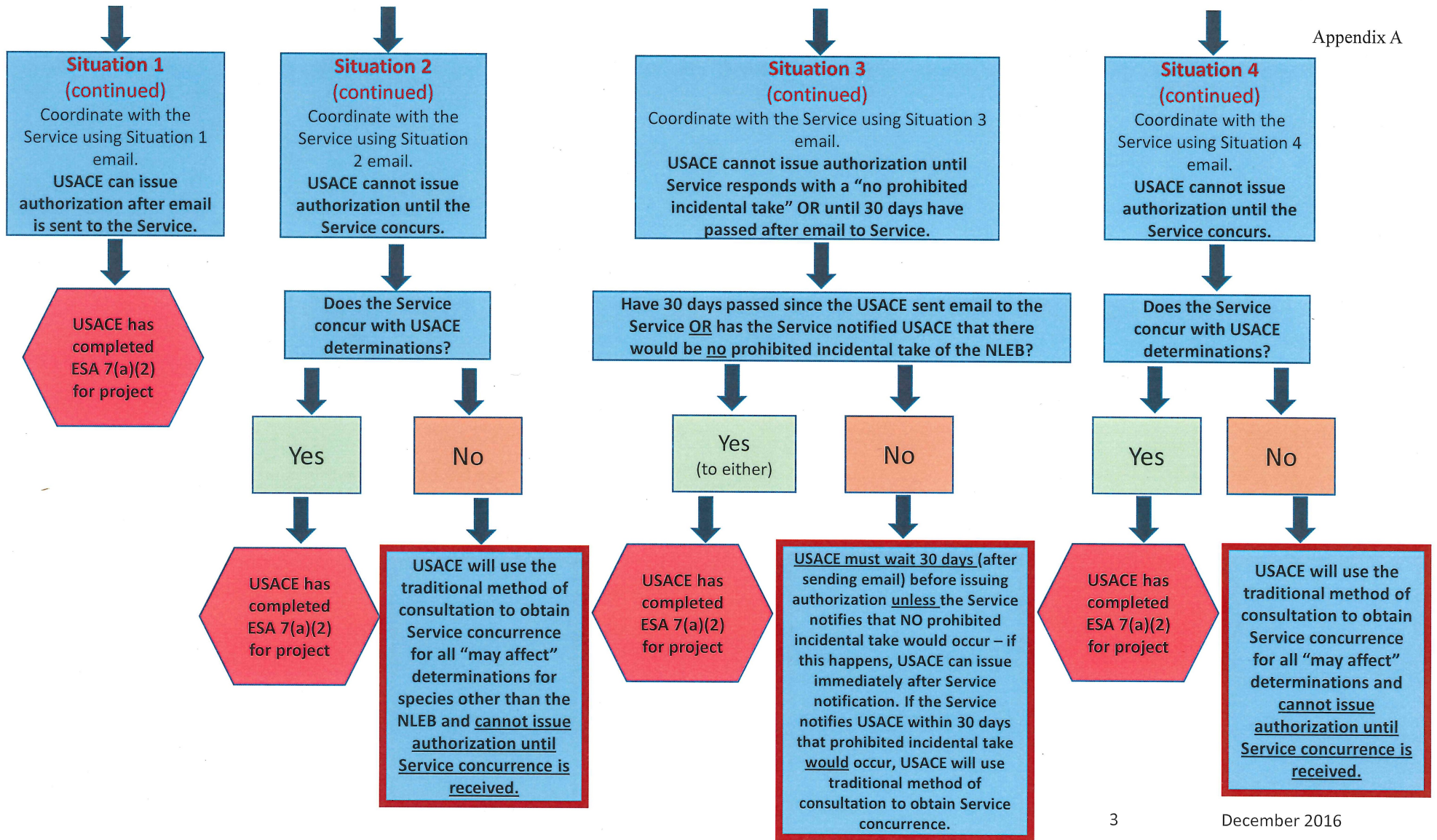
<sup>2</sup> Check [http://www.fws.gov/asheville/htmls/project\\_review/NLEB\\_in\\_WNC.html](http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html) for Asheville Service Office, **OR** [http://www.fws.gov/raleigh/NLEB\\_RFO.html](http://www.fws.gov/raleigh/NLEB_RFO.html) for Raleigh Service Office, **OR** SimSuite.

<sup>3</sup> If no bridge inspection was performed, the USACE will request one. If evidence of bat use is discovered, the USACE will consult with the Service in the traditional manner. See Appendix F, Q&A 5, and Section IV.D. in the SLOPES.

Is the action area located outside of a red HUC, AND:

- there will be no percussive activities in the action area; OR,
- there will be blasting in the action area, but it will not occur within 0.25 mile of a red HUC; AND/OR,
- there will be other percussive activities in the action area (i.e., other than blasting), but they will not affect any part of a red HUC (if not sure about the effect, choose "no").





## Email Template for ALP Situation 1

The highlighted text is instructional only – remove before sending to the Service.

The USACE will send this email to the Service when a project qualifies as Situation 1, which is applicable when:

- the action area is located outside of a red HUC and there is no pile driving, blasting, or other percussive activities; OR

- the action area is located outside of a red HUC and there will be pile driving or other percussive activities (not including blasting), and the USACE determines that pile driving and other percussive activities will not affect NLEB resources in a red HUC; AND/OR

- the action area is located outside of a red HUC and there will be blasting, but the blasting will not occur within 0.25 mile of a red HUC boundary.

The USACE does not need to wait 30 days after sending this email to issue authorization for a project.

Put the following text in the subject line of the email and fill out the county:

NLEB (Situation 1), \_\_\_\_\_ County

### Body of email:

This email serves as the USACE notification for the NLEB (Situation 1), Action ID No. SAW-\_\_\_\_\_.

1) Brief project description (note percussive activities if applicable): \_\_\_\_\_

2) Project latitude and longitude in decimal degrees: \_\_\_\_\_

3) Estimate of tree clearing in the USACE action area in either acreage or number of trees cleared: \_\_\_\_\_

Species: Northern long-eared bat (NLEB) (*Myotis septentrionalis*)

This project qualifies for Situation 1 –

[CHOOSE ONE (OR TWO IF BLASTING AND OTHER PERCUSSIVE ACTIVITIES ARE INVOLVED) AND DELETE THE OTHER(S)]

- i.e., the action area is located outside of a red HUC and there is no pile driving, blasting, or other percussive activities; **OR**

- the action area is located outside of a red HUC and there will be pile driving or other percussive activities (not including blasting), and the USACE has determined that pile driving and other percussive activities will not affect NLEB resources in a red HUC; **AND/OR**

- the action area is located outside of a red HUC and there will be blasting, but the blasting will not occur within 0.25 mile of a red HUC boundary;

USACE Rationale and Determination: The USACE conducted a GIS review of the project and surrounding areas and also reviewed the most current maps of confirmed/known hibernation and maternity (tree) sites for the NLEB at

**(CHOOSE ONE AND DELETE THE OTHERS)**

- [http://www.fws.gov/asheville/htmls/project\\_review/NLEB\\_in\\_WNC.html](http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html) **OR**

- [http://www.fws.gov/raleigh/NLEB\\_RFO.html](http://www.fws.gov/raleigh/NLEB_RFO.html) **OR**

- via SimSuite -

and has determined that the action area for this project is located outside of the highlighted areas/red 12-digit HUCs and activities in the action area do not require prohibited incidental take; as such, this project meets the criteria for the 4(d) rule and any associated take is exempted/excepted.

U.S. Fish and Wildlife Service (Service) Concurrence: This notice is being sent to the Service in accordance with the surrogate consultation procedure/SLOPES that was established between the Service's Asheville and Raleigh Ecological Offices and the USACE, Wilmington District, for the NLEB. This project does not require prohibited intentional take of the NLEB and meets the criteria for the 4(d) rule; therefore any associated take is exempt and it is not necessary for the USACE to wait 30 days for the Service to object or concur.

Also, based on the information presented in the PCN and from our GIS database, the USACE is not aware of any other issues concerning listed species and/or critical habitat and has determined that the project would have no effect on any other species and/or critical habitat.

## Email Template for ALP Situation 2

The highlighted text is instructional only –remove before sending to the Service.

Situation 2 occurs if conditions for the NLEB are the same as described under Situation 1, but the USACE is also consulting on other listed species or effects to critical habitat.

The USACE will send this email to the Service when a project qualifies as Situation 2, which is applicable when:

-the action area is located outside of a red HUC and there is no pile driving, blasting, or other percussive activities; OR

- the action area is located outside of a red HUC and there will be pile driving or other percussive activities (not including blasting), and the USACE determines that pile driving and other percussive activities will not affect NLEB resources in a red HUC; AND/OR

- the action area is located outside of a red HUC and there will be blasting, but the blasting will not occur within 0.25 mile of a red HUC boundary, AND

-the USACE is ALSO consulting on other listed species or effects to critical habitat.

Because, under Situation 2, the USACE is consulting on other species or critical habitat, the USACE cannot issue authorization for a project until the Service concurs with the determinations for the other species and/or critical habitat; this correspondence from the Service will include their NLEB response, as well.

Put the following text in the subject line of your email and fill out the county:

NLEB and consulting on other species (Situation 2), \_\_\_\_\_ County

Body of email:

This email serves as the USACE (1) notification for the NLEB, and (2) consultation request for other species (Situation 2), Action ID No. SAW-\_\_\_\_\_.

1) Detailed project description (note percussive activities if applicable): \_\_\_\_\_

2) Project latitude and longitude in decimal degrees: \_\_\_\_\_

3) Estimate of tree clearing in the USACE action area in either acreage or number of trees cleared: \_\_\_\_\_

Coordination and consultation concerning: Northern long-eared bat (NLEB) (*Myotis septentrionalis*) and XXXXXXXXXXXX (list the other species you're consulting on – e.g., Indiana bat (*Myotis sodalis*), Appalachian elktoe (*Alasmidonta raveneliana*), etc.).

For the NLEB - this project qualifies for Situation 2 –

[CHOOSE ONE (OR TWO IF BLASTING AND OTHER PERCUSSIVE ACTIVITIES ARE INVOLVED) AND DELETE THE OTHER(S)]

- i.e., the action area is located outside of a red HUC and there is no pile driving, blasting, or other percussive activities; **OR**

- the action area is located outside of a red HUC and there will be pile driving or other percussive activities (not including blasting), and the USACE has determined that pile driving and other percussive activities will not affect NLEB resources in a red HUC; **AND/OR**

- the action area is located outside of a red HUC and there will be blasting, but the blasting will not occur within 0.25 mile of a red HUC boundary.

USACE Rationale and Determination: The USACE conducted a GIS review of the project and surrounding areas and also reviewed the most current maps of confirmed/known hibernation and maternity (tree) sites for the NLEB at

(CHOOSE ONE AND DELETE THE OTHERS)

- [http://www.fws.gov/asheville/htmls/project\\_review/NLEB\\_in\\_WNC.html](http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html) **OR**

- [http://www.fws.gov/raleigh/NLEB\\_RFO.html](http://www.fws.gov/raleigh/NLEB_RFO.html) **OR**

- via SimSuite -

and has determined that the action area for this project is located outside of the highlighted areas/red 12-digit HUCs and activities in the action area do not require prohibited incidental take; as such, this project meets the criteria for the 4(d) rule and any associated take is exempted/excepted.

U.S. Fish and Wildlife Service (Service) Concurrence for the NLEB: This notice is being sent to the Service in accordance with the surrogate consultation procedure/SLOPES that was established between the Service's Asheville and Raleigh Ecological Offices and the USACE, Wilmington District, for the NLEB. This project does not require prohibited intentional take of the NLEB and meets the criteria for the 4(d) rule; therefore any associated take is exempt and it is not necessary for the USACE to wait 30 days for the Service to object or concur.

USACE determination for other species and/or critical habitat under consultation – **The USACE will provide the appropriate language here for traditional consultation.**

Also, based on the information presented in the PCN and from our GIS database, the USACE is not aware of any other issues concerning listed species and/or critical habitat and has determined that the project would have no effect on any other species and/or critical habitat. Please let us know if you have information to the contrary and/or if you need additional information.

**\*The USACE will attach the PCN/application to this email.**



### Email Template for ALP Situation 3

The highlighted text is instructional only – remove before sending to the Service.

The USACE will send this email to the Service when a project qualifies as Situation 3.

Situation 3 is applicable when:

- the action area is located in a red HUC; OR

- blasting in the action area will occur within 0.25 mile of a red HUC (whether or not the action area is located inside or outside of a red HUC); AND/OR,

- other percussive activities will occur in the action area and the USACE determines that these activities “may affect” a red HUC (whether or not the action area is located inside or outside of a red HUC).

The USACE cannot issue authorization until (1) 30 days have passed after notifying the Service, OR (2) the Service notifies the USACE that there will be no prohibited incidental take of the NLEB. If the Service does not respond in 30 days, the USACE will document that the project doesn’t involve prohibited incidental take and will issue authorization for the project.

Put the following text in the subject line of the email and fill out the county:

NLEB (Situation 3), \_\_\_\_\_ County

Body of email:

This email serves as the USACE request for coordination/consultation for the NLEB (Situation 3), Action ID No. SAW-\_\_\_\_\_.

1) Detailed project description (note percussive activities if applicable): \_\_\_\_\_

2) Project latitude and longitude in decimal degrees: \_\_\_\_\_

3) Estimate of tree clearing in the USACE action area in either acreage or number of trees cleared: \_\_\_\_\_

Species: Northern long-eared bat (NLEB) (*Myotis septentrionalis*)

Determination for NLEB: The USACE conducted a GIS review of the project and surrounding areas and also reviewed the most current maps of confirmed/known hibernation and maternity (tree) sites for the NLEB at

**(CHOOSE ONE AND DELETE THE OTHERS)**

- [http://www.fws.gov/asheville/htmls/project\\_review/NLEB\\_in\\_WNC.html](http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html) . **OR**

- [http://www.fws.gov/raleigh/NLEB\\_RFO.html](http://www.fws.gov/raleigh/NLEB_RFO.html) . **OR**

- via SimSuite. -

The action area for this project is located in an area with known NLEB hibernation or maternity (tree) sites/a red HUC.

We are requesting your input on this proposed project relative to known NLEB hibernation and/or maternity (tree) sites. If activities in the action area (1) would not affect a known hibernation site; (2) are not located within ¼ mile of a known hibernation site, or; (3) are not located within a 150' radius of a known maternity (tree) site, we will determine that the activities described above are excepted from incidental take prohibitions as defined in the final 4(d) rule. If this is the case, and if you have the opportunity to respond prior to the end of this 30 day period and your response indicates that there is no additional information for us to consider, we will consider our Section 7(a)(2) responsibilities for the NLEB for this project complete and may issue the authorization prior to the end of the 30 days.

If the activities in the action area are located in, or would affect, one of the areas listed above (1-3), please consider this message an initiation of informal consultation and notify us accordingly.

In accordance with the SLOPES, if we do not receive a response from the Service within 30 days of the date of this email, we will document that the project does not involve prohibited incidental take and will issue authorization for the project.

Also, based on the information presented in the PCN and from our GIS database, the USACE is not aware of any other issues concerning listed species and/or critical habitat and has determined that the project would have no effect on any other species and/or critical habitat. Please let us know if you have information to the contrary and/or if you need additional information.

**\*The USACE will attach the PCN/application to this email.**

## Email Template for ALP Situation 4

The highlighted text is instructional only – remove before sending to the Service.

Situation 4 occurs if conditions for the NLEB are the same as described under Situation 3, but the USACE is also consulting on other listed species or effects to critical habitat.

The USACE will send this email to the Service when a project qualifies as Situation 4, which is applicable when:

- the action area is located in a red HUC; OR

- blasting in the action area will occur within 0.25 mile of a red HUC (whether or not the action area is located inside or outside of a red HUC); AND/OR,

- other percussive activities will occur in the action area and the USACE determines that these activities “may affect” a red HUC (whether or not the action area is located inside or outside of a red HUC); AND,

the USACE is ALSO consulting on other listed species or effects to critical habitat.

Under Situation 4, the USACE cannot issue authorization for a project until the Service concurs with the determinations for the other species and/or critical habitat; this correspondence from the Service will include their NLEB response, as well.

Put the following text in the subject line of the email and fill out the county:

NLEB (Situation 4), \_\_\_\_\_County

Body of email:

This email serves as the USACE request for (1) coordination/consultation for the NLEB, and (2) consultation for other species (Situation 4), Action ID No. SAW-\_\_\_\_\_.

1) Detailed project description (note percussive activities if applicable): \_\_\_\_\_

2) Project latitude and longitude in decimal degrees: \_\_\_\_\_

3) Estimate of tree clearing in the USACE action area in either acreage or number of trees cleared: \_\_\_\_\_

Coordination and consultation concerning: Northern long-eared bat (NLEB) (*Myotis septentrionalis*) and XXXXXXXXXXXX (list the other species you're consulting on – e.g., Indiana bat (*Myotis sodalis*), Appalachian elktoe (*Alasmidonta raveneliana*), etc.).

Determination for NLEB: The USACE conducted a GIS review of the project and surrounding areas and also reviewed the most current maps of confirmed/known hibernation and maternity (tree) sites for the NLEB at

**(CHOOSE ONE AND DELETE THE OTHERS)**

- [http://www.fws.gov/asheville/htmls/project\\_review/NLEB\\_in\\_WNC.html](http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html) . OR

- [http://www.fws.gov/raleigh/NLEB\\_RFO.html](http://www.fws.gov/raleigh/NLEB_RFO.html) . OR

- via SimSuite. -

The action area for this project is located in an area with known NLEB hibernation or maternity (tree) sites/a red HUC.

We are requesting your input on this proposed project relative to known NLEB hibernation and/or maternity (tree) sites. If activities in the action area (1) would not affect a known hibernation site; (2) are not located within ¼ mile of a known hibernation site, or; (3) are not located within a 150' radius of a known maternity (tree) site, we will determine that the activities described above are excepted from incidental take prohibitions as defined in the final 4(d) rule.

If the activities in the action area are located in, or would affect, one of the areas listed above (1-3), please include the NLEB in our request for consultation along with the following:

USACE determination for other species and/or critical habitat under consultation – **The USACE will provide the appropriate language here for traditional consultation.**

Also, based on the information presented in the PCN and from our GIS database, the USACE is not aware of any other issues concerning listed species and/or critical habitat and has determined that the project would have no effect on any other species and/or critical habitat. Please let us know if you have information to the contrary and/or if you need additional information.

**\*The USACE will attach the PCN/application to this email.**

## NLEB SLOPES

### Questions and Answers

**Q1:** While a project involves tree cutting in the action area, there are no red HUCs shown on the Service's map for the subject county. Is it appropriate to determine "no effect" to the NLEB because there are no red HUCs in that county if trees will be cut?

**A1:** No, it is not appropriate to determine "no effect" simply because there are no red HUCs in the county. If the action area for a project is located in the range of the NLEB, tree cutting will have some effect on the NLEB (i.e., it "may affect" the NLEB and will have "incidental take"). This incidental take from tree removal is not prohibited by the final 4(d) rule unless it:

- Occurs within 0.25 mile (0.4 km) of known NLEB hibernacula;
- Cuts or destroys known, occupied maternity roost trees or any other trees within a 150' (45 meter) radius around known, occupied tree during the pup season (June 1 – July 31).

In this example, if the incidental take (tree cutting) is prohibited (because it would occur in the areas listed above), the USACE will consult with the Service in the traditional manner. If the incidental take (tree cutting) is not prohibited (because it would not occur in the areas listed above), go to the alternative local procedure (ALP - Situations 1-4) to determine if that process can be used to satisfy USACE's ESA Section 7(a)(2) responsibilities.

**Q2:** When it is appropriate to use the ALP (Situations 1-4)?

**A2:** It is appropriate to use the ALP for projects in North Carolina if the activities in the USACE action area (1) would not cause prohibited incidental take, or (2) do not involve bridge removal or maintenance projects when there is evidence of bat use. Note that prohibited incidental take, such as affecting hibernacula in a red HUC, may be caused by percussive activities (mainly blasting), even if that blasting occurs outside of a red HUC.

The following general categories of activities are prohibited under the final 4(d) rule within the WNS zone (i.e., these activities are "prohibited incidental take"):

- Activities that result in the disruption or disturbance of NLEBs in their hibernacula.
- Activities that result in the physical or other alternation of a hibernaculum's entrance or it's environment at any time of year.
- Tree clearing activities within 0.25 mile of a known NLEB hibernaculum.
- Tree clearing activities that result in cutting or destroying known, occupied maternity roost trees or any other trees within a 150' radius around the roost tree during the pup season (June 1- July 31).

**Q3:** When is it inappropriate to use the ALP (Situations 1-4)?

**A3:** It is inappropriate to use the ALP if the USACE has knowledge that activities in the action area would cause “prohibited incidental take” or would involve bridge removal/maintenance when evidence of bat use is present; if activities in the action area would involve either one of these, do not use the ALP and consult with the Service in the traditional manner. Initiating traditional consultation because of prohibited incidental take of the NLEB should not typically be the USACE’s first step in the review process, as point data are not shown on the Service’s county maps or on the red HUC layer in SimSuite (i.e., so the USACE will not know specific distances between the activity and known hibernacula or maternity roost trees).

**Q4:** Why can’t the USACE just use the Natural Heritage layer to determine the locations of NLEB resources vs. using the Service’s county maps or SimSuite maps with the red HUCs?

**A4:** NLEB resources are constantly being discovered, especially maternity trees in eastern North Carolina. During the SLOPES development process, the USACE and the Service acknowledged that having up-to-date access to NLEB information would be vital to the SLOPES process and that the only way to ensure this was to have the Service produce maps and the USACE to use them. The Service determined that the best way to release this data for use by agencies and the public was to buffer NLEB hibernacula and maternity roost trees in 12-digit HUCs vs. showing point data for the hibernacula and maternity roost trees. While this means that the USACE has larger areas to consider (i.e., the red HUCS vs. point data), the ALP developed during the SLOPES process allows the USACE to issue authorizations immediately after the email is sent to the Service for Situation 1 activities; the national process involves waiting 30 days after sending notice to the Service. In addition, by entering into this SLOPES agreement, which includes use of the red HUCs, the public’s ability to use non-notifying general permits for projects that will not result in prohibited incidental take of the NLEB in North Carolina has been preserved.

**Q5:** How are bridge removal and/or maintenance activities evaluated?

**A5:** Bridge removal and maintenance are discussed in Section IV of the SLOPES under the “no effect” discussion. While a bridge survey/inspection is not required for a complete USACE application/PCN, if a survey/inspection was conducted and no evidence of bat use (e.g., bats, staining, guano, etc.) was found, the USACE will determine that the bridge removal/maintenance activity, by itself, will have no effect on the NLEB. If the bridge was not inspected, the USACE will ask the applicant to inspect the bridge for evidence of bat use and notify the USACE with the results; until the applicant submits this information, the USACE cannot move forward with an effect determination for the NLEB.

If, after inspection of the bridge:

- NO evidence of bat use is found, the USACE will determine that the bridge removal/maintenance activity, by itself, will have no effect on the NLEB.

- evidence of bat use IS found, the USACE will consult with the Service in the traditional manner. In counties where other bats are federally listed, it will be important to determine which species of bats are using/have recently used the bridge, as there are different time-of-year concerns associated with each species. You may choose to contact the appropriate Service POC to discuss the proposed project, or request that the applicant conduct a survey to determine which species of bat are present.

The photographs shown below are from Appendix B of the April 17, 2015, Federal Highway and Federal Railroad Administrations Range-wide Biological Assessment for Transportation Projects for Indiana Bat and Northern Long-Eared Bat. Photographs are courtesy of Tom Cervone, Bernardin, Lochmueller and Associates; Jeff Gore, Florida Fish and Wildlife Conservation Commission; Rick Reynolds, Virginia Department of Game and Inland Fisheries; and Kraig McPeck, U.S. Fish & Wildlife Service.



Photo 1: Bats hanging from cracks along support beams



Photo 2: Visible bats within an expansion joint



Photo 3: Guano deposits visible from bridge deck, on top of pier



Photo 4: Guano deposit on pier, obscuring structural features





Photo 5: Bat guano on rip rap



Photo 6: Staining along longitudinal joint. Note guano deposits on the ground.



Photo 7: Staining on underside of expansion joint from bat use



Photo 8: Staining on sides of pier caps



Photo 9: Bats roosting and associated staining



Photo 10: NLEBs roosting under a timber-decked bridge

**Q6:** Construction/installation of wind turbines is discussed in Section IV of the SLOPES under the “no effect” discussion. If wind turbines will not be constructed/installed in the action area, the USACE will determine no effect to the NLEB, for this activity by itself.

How does the USACE proceed next if wind turbines will be constructed/installed in the action area?

**A6:** Note that the first paragraph in this question goes to a “no effect” determination. The construction/installation of wind turbines in the action area may still qualify for the ALP in certain situations.

If there are no other listed bat species for a county, then the USACE can determine that construction/installation of wind turbines qualifies for the ALP Situation 1 (if NLEB is the only species under consideration), or Situation 2 (if the USACE is also consulting on other species and/or effects to critical habitat). However, in those counties that have other federally listed bat species, such as the federally endangered Indiana bat, the USACE will require surveys or initiate consultation with the Service in the traditional manner. If bats are discovered, the USACE will consult with the Service in the traditional manner.

**Q7:** How does the USACE document its rationale when using the ALP?

**A7:** The USACE project file will contain (1) copies of the web pages from the respective Service office that show which counties have red HUCs in them; (2) the Service’s county map (if that county is linked on the web page – it will be if there is a red HUC located in it); (3) the SimSuite map with the red HUC layer selected, and; (4) the USACE rationale for each determination. Once the data for the red HUCs are accessible to the USACE through a map server on SimSuite, the USACE file will contain only numbers (3) and (4) noted above.