



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

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## **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 purpose of this public notice is to announce that the Wilmington District, U.S. Army Corps of Engineers (USACE), and the United States Fish and Wildlife Service (Service) developed a SLOPES agreement concerning potential effects to the federally-threatened Northern long-eared bat (NLEB) (*Myotis septentrionalis*).

Section 7(a)(2) of the Endangered Species Act (ESA) requires that federal agencies, in consultation with the Services (both 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.

This SLOPES agreement details how the USACE will make determinations of effect to the NLEB when the USACE is the lead federal agency for a project, and is applicable to 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 in the western 41 counties of North Carolina, to include North Carolina Department of Transportation (NCDOT) non-federal aid projects. The SLOPES is also applicable to non-NCDOT projects in the eastern 59 counties of North Carolina. The SLOPES does not address NCDOT projects (either federal or state funded) in the eastern 59 counties, as separate consultation was conducted for these projects. 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.

The Service listed the NLEB 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 ESA; this final 4(d) rule is supported by a Programmatic Biological Opinion which evaluated activities that the Service either (1) prohibits, or (2) excepts/exempts from take prohibitions under the final 4(d) rule.

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. The 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 the 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.

#### GEOGRAPHIC AREA COVERED BY THE SLOPES

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 CWA and/or Section 10 of the RHA, 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 (PCN)) for potential effects to NLEB resources regardless of where these activities occur in North Carolina. Non-notifying/non-reporting activities have set screening criteria and are discussed later in this public notice.

*\*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 the SLOPES.*

#### PURPOSE OF THE SLOPES

The 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/non-reporting permits are not authorized in North Carolina if they would result in prohibited incidental take of the NLEB.

The SLOPES addresses effects to the NLEB only. Effects to other federally listed species and/or to federally-designated 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.

TIMEFRAME

The SLOPES was signed and became effective on January 30<sup>th</sup>, 2017. While there is not an expiration date for the SLOPES, it may be revisited at any time if new information becomes available that warrants re-initiation of consultation.

WHICH ACTIVITIES ARE ADDRESSED IN THE SLOPES?

The SLOPES covers all activities that would require Department of the Army authorization from the USACE (both notifying and non-notifying/non-reporting projects), and applies 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 NCDOT non-federal aid projects. The SLOPES is also applicable to non-NCDOT projects in the eastern 59 counties of North Carolina. The SLOPES does not address NCDOT projects (either federal or state funded) in the eastern 59 counties.

WHAT INFORMATION IS NEEDED FROM THE APPLICANT?

Notifying projects – for activities that would otherwise qualify as a notifying project (i.e., those projects that require submission of an application or PCN), the applicant will detail in the application/PCN whether or not trees will be cut and if percussive activities will occur. If percussive activities are part of a project, the applicant will provide details (e.g., what kind of percussive activities, proximity to the impact(s) in waters of the U.S., and duration of the percussive activity – see previous definition of percussive activities for additional information). After reviewing the application/PCN, the USACE will notify the applicant if additional information is required.

Non-notifying/non-reporting projects – for activities that would otherwise qualify as a non-notifying/non-reporting project under a Nationwide or Regional General Permit, the permittee is required to comply with the following condition:

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**Regional Condition 3.13 Northern Long-eared Bat – Endangered Species Act Compliance.** 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 – see Figure 1 below), 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 – see Figure 1 below), 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 Endangered Species web page at the following World Wide Web Page:

<http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/ESA/>

or directly downloaded the SLOPES document from this link:

[http://saw-reg.usace.army.mil/NLEB/1-30-17-signed\\_NLEB-SLOPES&apps.pdf](http://saw-reg.usace.army.mil/NLEB/1-30-17-signed_NLEB-SLOPES&apps.pdf)

Permittees who do not have internet access may contact the USACE at (910) 251- 4633.

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WHAT IF MY PROJECT DOES NOT QUALIFY FOR THE ALP IN THE SLOPES?

If a proposed project would either (1) involve prohibited incidental take, or (2) involve other forms of direct take, such as bridge removal, repair, or maintenance when evidence of bat use is present, the USACE will consult with the Service in the traditional manner.

WHO CAN I CALL IF I HAVE QUESTIONS ABOUT A PROPOSED PROJECT?

If you need assistance, please call the main number of the Wilmington District Corps of Engineers regulatory program at (910) 251- 4633.

Detailed contact information is in the NLEB SLOPES document. The NLEB SLOPES can be viewed on the USACE website Endangered Species web page at the following World Wide Web Page: <http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/ESA/> or directly downloaded the SLOPES document from this link: [http://saw-reg.usace.army.mil/NLEB/1-30-17-signed\\_NLEB-SLOPES&apps.pdf](http://saw-reg.usace.army.mil/NLEB/1-30-17-signed_NLEB-SLOPES&apps.pdf)

Figure 1: Work Areas of Asheville and Raleigh US Fish and Wildlife Service Offices

