

PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF THE RULE SUBMITTED BY THE UNITED STATES FISH AND WILDLIFE SERVICE RELATING TO “ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED SPECIES STATUS FOR NORTHERN LONG-EARED BAT”

JUNE 5, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WESTERMAN, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.J. Res. 49]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the joint resolution (H.J. Res. 49) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to “Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat”, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.J. Res. 49 is to provide for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to “Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat”.

BACKGROUND AND NEED FOR LEGISLATION

On January 21, 2010, the U.S. Fish and Wildlife Service (USFWS) received a petition from the Center for Biological Diversity (CBD), requesting that the eastern small-footed bat and northern long-eared bat be listed as endangered or threatened and that

critical habitat be designated under the Endangered Species Act.¹ Six months later, CBD sued the USFWS for failing to make a 90-day finding as required by the ESA² and in September 2011 a settlement agreement was approved by the U.S. District Court for the District of Columbia.³ As part of this settlement agreement, the USFWS agreed to complete a status review for the eastern small-footed bat and northern long-eared bat (NLEB), and if warranted for listing, publish a proposed listing rule.⁴

In 2015, the NLEB was listed as threatened.⁵ In the United States, the species' range reaches from Maine west to Montana, south to eastern Kansas, eastern Oklahoma, Arkansas, and east to the Florida panhandle.⁶ In its final rule, however, the USFWS concluded that "critical habitat is not determinable for the northern long-eared bat at this time."⁷ Citing that they "lack sufficient information to define the physical and biological features or primary constituent elements with enough specificity . . . are not able to determine how habitats affected by WNS [white-nose syndrome] (where populations previously thrived and are now extirpated) may contribute to the recovery of the species or whether those areas may still contain essential physical and biological features."⁸ In addition, the final rule stated that "no other threat is as severe and immediate to the northern long-eared bat's persistence as the disease, white-nose syndrome (WNS)."⁹

The Center for Biological Diversity, Defenders of Wildlife, Sierra Club, Coal River Mountain Watch and Ohio Valley Environmental Coalition challenged the 2015 listing contending that the species should have been listed as endangered, rather than threatened.¹⁰ In 2020, U.S. District Court for the District of Columbia judge Emmet G. Sullivan overturned the decision by the USFWS to list the NLEB as threatened rather than endangered¹¹ and in 2021 the same judge ordered the USFWS to determine whether the northern long-eared bat warrants listing as an endangered species by December 2022.¹²

As a result, the agency proposed the up-listing of the species in March 2022.¹³ In November 2022, USFWS published its final rule,

¹ Center for Biological Diversity, PETITION TO LIST THE EASTERN-SMALL FOOTED BAT MYOTIS LEIBII AND NORTHERN LONG-EARED BAT MYOTIS SEPTENTRIONALIS AS THREATENED OR ENDANGERED UNDER THE ENDANGERED SPECIES ACT. https://www.biologicaldiversity.org/species/mammals/eastern_small-footed_bat/pdfs/petition-Myotisleibii-Myotisseptentrionalis.pdf.

² 16 U.S.C. 1533(b)(3)(A).

³ Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Northern Long-Eared Bat With 4(d) Rule. 80 FR 17973.

⁴ Stipulated Settlement Agreement, 1:10-mc-00377-EGS (D.D.C. Jul., 12 2011).

⁵ Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Northern Long-Eared Bat With 4(d) Rule. 80 FR 17973.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Complaint, Ctr. for Biological Diversity v. Ashe, 1:15-cv-00252-EGS (D.D.C. Apr. 2, 2015).

¹¹ "Court: Northern Long-eared Bat Was Unlawfully Denied Endangered Species Protection" Center for Biological Diversity. January 29, 2020. <https://biologicaldiversity.org/w/news/press-releases/court-northern-long-eared-bat-was-unlawfully-denied-endangered-species-protection-2020-01-29/>.

¹² "Court Orders U.S. Fish and Wildlife Service to Determine Whether Northern Long-eared Bat Warrants Listing as Endangered Species" Center for Biological Diversity. March 2, 2021. <https://biologicaldiversity.org/w/news/press-releases/court-orders-us-fish-and-wildlife-service-to-determine-whether-northern-long-eared-bat-warrants-listing-as-endangered-species-2021-03-02/> email view/.

¹³ "Northern Long-eared Bat." U.S. Fish and Wildlife Service. Northern Long-eared Bat (*Myotis septentrionalis*) | U.S. Fish & Wildlife Service (fws.gov).

with the implementation date of the rule being January 30, 2023.¹⁴ After congressional and stakeholder backlash, including letters from Rep. Stauber and eleven other House members¹⁵ and twelve U.S. Senators,¹⁶ the USFWS extended the implementation date of the rule by 60 days to March 31, 2023.¹⁷ On March 6, 2023, USFWS announced interim guidance to assist stakeholders in the transition to the up-listing of the species as endangered.¹⁸

By up-listing the NLEB, USFWS will further restrict activities on both private and public lands throughout the NLEB's range. The NLEB, which primarily lives in caves and abandoned mines in winter months and forested areas in summer months, is found in 37 states, the District of Columbia, and Canada. As with the 2015 listing, the USFWS stated the main threat to the NLEB is WNS, not human activity.¹⁹

Management Implications of Threatened vs. Endangered

Once listed as endangered, the NLEB will no longer be eligible to be managed under section 4(d) of the ESA. Section 4(d) is intended to incentivize proactive management of species and allows for streamlined compliance for projects within species habitat that have a low risk of causing a “take” of the species. When managed under Section 4(d), prohibitions on activities within a species' habitat must be necessary and advisable. An endangered listing can lead to more restrictive management regimes.²⁰

The USFWS plans to focus its recovery efforts in wooded areas where the NLEB nests in summer months, while a vaccine or other remedies for WNS are developed.²¹ This plan of action creates additional red tape for forest management projects, timber sales, and public lands access within the NLEB's expansive 37 state range. This will increase the need for consultation with USFWS on any project that may affect NLEB habitat, which could potentially add years to the permitting process for certain projects. In fact, over the last three years, the USFWS has completed ESA consultations on 24,480 projects across the range of the NLEB.²² Many of those projects are in progress. The up-listing of the NLEB to endangered may cause greater exposure to litigation and additional regulatory obligations on these projects.²³ The USFWS has identified 3,095

¹⁴Id.

¹⁵Press Release: “Stauber Pushes Back on New U.S. Fish and Wildlife Service Restrictions on State-Led Conservation Plan” October 7, 2022. <https://stauber.house.gov/media/press-releases/stauber-pushes-back-new-us-fish-and-wildlife-service-restrictions-state-led>.

¹⁶Press Release: “FOLLOWING CAPITOL LETTER, U.S. FISH AND WILDLIFE SERVICE DELAYS NORTHERN LONG-EARED BAT LISTING” January 25, 2023. <https://www.capito.senate.gov/news/press-releases/following-capitol-letter-us-fish-and-wildlife-service-delays-northern-long-eared-bat-listing>.

¹⁷“U.S. Fish and Wildlife Service extends effective date to reclassify northern long-eared bat as endangered.” Georgia Parham. U.S. Fish and Wildlife Service. Effective date to reclassify northern long-eared bat as endangered extended | U.S. Fish & Wildlife Service (fws.gov).

¹⁸“Northern Long-eared Bat.” U.S. Fish and Wildlife Service. Northern Long-eared Bat (*Myotis septentrionalis*) | U.S. Fish & Wildlife Service (fws.gov).

¹⁹Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat, 87 FR 16442.

²⁰“Section 4(d) Rules Under the Endangered Species Act.” Frequently Asked Questions. October 2021. Section 4(d) Rules Under the Endangered Species Act (fws.gov).

²¹“Northern long-eared bat, devastated by a fungus, is now listed as endangered.” Associated Press. Nov 29, 2022. Northern long-eared bat declared as endangered. NPR.

²²Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-eared Bat; Delay of Effective Date.” Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-eared Bat; Delay of Effective Date (fws.gov).

²³Id.

new projects for which an incidental take statement will be needed as a result of the up-listing of the NLEB.²⁴

White-Nose Syndrome

The USFWS has long acknowledged that WNS is the primary driver for the NLEB's decline. First documented in 2006, WNS gets its name from the white, fuzzy spots that appear on infected bats. This disease primarily attacks wings, muzzles, and ears of hibernating bats in caves and abandoned mines.²⁵ The disease causes bats to wake early from hibernation, in some cases causing them to burn off winter fat stores and starve to death. Most recent estimates show that twelve species of bats have been infected by WNS and millions of bats have died as a result, with NLEB populations declining an estimated 97 percent.²⁶

The USFWS administers three grant programs for scientific research into fighting WNS: (1) research and development of biotechnological tools (\$1.5 million total, \$300,000 per grant in Fiscal Year 2023);²⁷ (2) grants to State and Tribes (\$1.8 million in Fiscal Year 2022);²⁸ and (3) White-nose Syndrome Research for Conservation Grants (\$1.5 million, \$20,000 to \$250,000 per grant in Fiscal Year 2022).²⁹

The USFWS has identified other sources of NLEB mortality including: wind energy-related mortality; summer habitat loss, including highway construction, commercial development, surface mining, and wind facility construction; winter habitat loss and disturbance, including construction of gates that block bat access to caves and mines, any change in airflow that causes increased temperatures, and human disturbance while hibernating; and climate change.³⁰ However, USFWS acknowledges that none of these factors have been shown to cause any significant population decline or habitat loss.³¹

Habitat Conservation Plans

To help mitigate against some of the effects of the up-listing, states and other stakeholders have acted. For example, the states of Minnesota, Wisconsin, and Michigan have reached agreement on a Habitat Conservation Plan (HCP) with the USFWS. Under the Lake States Forest Management Bat Habitat Conservation Plan, landowners voluntarily conserve NLEB habitat in exchange for ESA compliance of certain activities on their lands that may cause incidental harm to a covered species.³² Activities covered under this HCP include timber harvest and related forest management,

²⁴ Id.

²⁵ "Northern long-eared bat, devastated by a fungus, is now listed as endangered." Associated Press. Nov 29, 2022. Northern long-eared bat declared as endangered : NPR.

²⁶ Id.

²⁷ U.S. Fish and Wildlife Service, Grant Opportunity: Research and Development of Biotechnological Tool for White-nose syndrome. F23AS00037.

²⁸ U.S. Fish and Wildlife Service, Grant Opportunity: White-nose Syndrome Grants to States and Tribes 2022, F22AS00212.

²⁹ U.S. Fish and Wildlife Service, Grant Opportunity: White-nose Syndrome Research for Conservation Grants. 2022F22AS00291.

³⁰ "Northern Long-eared Bat." U.S. Fish and Wildlife Service. *Northern Long-eared Bat (Myotis septentrionalis)* | U.S. Fish & Wildlife Service (fws.gov).

³¹ Id.

³² "Lake States Forest Management Bat Habitat Conservation Plan." Wisconsin Department of Natural Resources. *Lake States Forest Management Bat Habitat Conservation Plan* | Wisconsin DNR.

road and trail construction, prescribed fire, and conservation strategy implementation.³³

Unfortunately, only six states within the NLEB range have approved HCPs, leaving many states with no protections for activities that could incidentally affect NLEB habitat.³⁴ However, even with the HCP in place, complications can still arise between USFWS and the U.S. Forest Service implementing the plan, including final guidance documents that contain additional habitat-related restrictions mandated by the agencies.³⁵ The additional red tape adds unnecessary delays to projects. An up-listing of the NLEB will only exacerbate the delays and associated economic impacts.

Congressional Review Act

The Congressional Review Act (CRA) was enacted in 1996 and provides Congress with a tool to overturn administrative regulations. If a CRA joint resolution is approved by both the House and Senate and signed by the President, the rule at issue cannot go into effect or continue in effect.

H.J. Res. 49 disapproves of the listing of the northern long-eared bat as endangered and would prevent the administration from implementing the rule or proposing future rules.

COMMITTEE ACTION

H.J. Res. 49 was introduced on March 30, 2023, by Rep. Pete Stauber (R-MN). The resolution was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Wildlife and Fisheries. On April 18, 2023, the Subcommittee on Water, Wildlife and Fisheries held a hearing on the resolution. On April 27–28, 2023, the Full Natural Resources Committee met to consider the resolution. The Subcommittee on Water, Wildlife and Fisheries was discharged by unanimous consent. Ranking Member Grijalva (D-AZ) offered an amendment designated Grijalva #1. The amendment offered by Ranking Member Grijalva was withdrawn by unanimous consent. The resolution was then ordered favorably reported to the House of Representatives by a roll call vote of 17 yeas to 12 nays, as follows:

³³“Lake State Forest Management Bat Habitat Conservation Plan.” Michigan Department of Natural Resources. January 2023. Paola Bernazzini. *Lake States Forest Management Bat Habitat Conservation Plan*.

³⁴Id.

³⁵Testimony before the House Water, Wildlife, and Fisheries Subcommittee of the Natural Resources Committee.” Rick Horton. Minnesota Forest Industries. 4/18/23. *horton_testimony.pdf* (house.gov).

Committee on Natural Resources

U.S. House of Representatives
118th Congress

Date: April 28, 2023

Recorded Vote #: 3

Meeting on / Amendment on: **Favorably reporting H.J. Res. 49 (Stauber)**, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to "Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat"

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman	X			Mr. Grijalva, AZ, Ranking		X	
Mr. Lamborn, CO				Ms. Napolitano, CA		X	
Mr. Wittman, VA				Mr. Sablan, CNMI			
Mr. McClintock, CA	X			Mr. Huffman, CA			
Mr. Gosar, AZ				Mr. Gallego, AZ		X	
Mr. Graves, LA	X			Mr. Neguse, CO			
Mrs. Radewagen, AS				Mr. Levin, CA		X	
Mr. LaMalfa, CA	X			Ms. Porter, CA		X	
Mr. Webster, FL	X			Ms. Leger Fernandez, NM		X	
Ms. González-Colón, PR				Ms. Stansbury, NM		X	
Mr. Fulcher, ID	X			Mrs. Peltola, AK		X	
Mr. Stauber, MN	X			Ms. Ocasio-Cortez, NY			
Mr. Curtis, UT	X			Mr. Mullin, CA		X	
Mr. Tiffany, WI	X			Ms. Hoyle, OR			
Mr. Carl, AL	X			Ms. Kamlager-Dove, CA			
Mr. Rosendale, MT	X			Mr. Magaziner, RI			
Mrs. Boebert, CO	X			Ms. Velázquez, NY			
Mr. Bentz, OR	X			Mr. Case, HI		X	
Ms. Kiggans, VA	X			Mrs. Dingell, MI		X	
Mr. Moylan, Guam				Ms. Lee, NV		X	
Mr. Hunt, TX							
Mr. Collins, GA	X						
Ms. Luna, FL							
Mr. Duarte, CA	X						
Ms. Hageman, WY	X						
				TOTAL:	17	12	

HEARINGS

For the purposes of clause 3(c)(6) of house rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Water, Wildlife and Fisheries held on April 18, 2023.

SECTION-BY-SECTION ANALYSIS

Congress disapproves the rule submitted by the United States Fish and Wildlife Service relating to “Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat” (87 Fed. Reg. 73488; published November 30, 2022), and such rule shall have no force or effect.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND
CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the resolution from the Director of the Congressional Budget Office:

H.J. Res. 49, a joint resolution providing for Congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to "Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat"			
As ordered reported by the House Committee on Natural Resources on April 28, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	*	*	*
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	*	*
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	Yes
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	< \$5 billion	Mandate Effects	
		Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

H.J. Res. 49 would disapprove the final rule titled “Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat,” submitted by the U.S. Fish and Wildlife Service (USFWS) and published in the *Federal Register* on November 30, 2022. The rule reclassified the northern long-eared bat

from threatened to endangered species under the Endangered Species Act (ESA), effective March 31, 2023.

Under current law, USFWS collects permitting fees for lawful activities that involve protected species including scientific research, conservation, and unintentional taking of the animals while performing permitted activities. Under H.J. Res. 49, the northern long-eared bat would be re-classified as a threatened species with reduced protections under the ESA; thus, some permits may no longer be required for such activities involving that species. Permitting fees are recorded in the budget as offsetting receipts, (or reductions in direct spending) and are available to be spent without further appropriation. Using information from USFWS, CBO estimates that any reductions in those collections or in spending as a result of implementing H.J. Res. 49 would be insignificant over the 2023–2033 period.

Violators of the ESA are subject to civil and criminal penalties, which are recorded in the budget as revenues; USFWS is authorized to spend those penalties without further appropriation. Using information from the agency, CBO estimates that any reductions in penalties and the associated direct spending would be insignificant because of the small number of related cases expected to occur over the 2023–2033 period.

Finally, CBO estimates that the administrative costs to void the regulation under H.J. Res. 49 would be insignificant; any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Lilia Ledezma. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this resolution is to provide for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to “Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat”.

EARMARK STATEMENT

This resolution does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

According to the Congressional Budget Office, this resolution contains no unfunded mandates as defined by the Unfunded Mandates Reform Act.

EXISTING PROGRAMS

Directed Rule Making. This resolution does not contain any directed rule makings.

Duplication of Existing Programs. This resolution does not establish or reauthorize a program of the federal government known to

be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

Any preemptive effect of this resolution over state, local, or tribal law is intended to be consistent with the resolution’s purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW

As reported by the Committee, H.J. Res. 49 makes no changes in existing law.

DISSENTING VIEWS

H.J. Res. 49 legislatively down-lists the northern long-eared bat (NLEB) from “endangered” to “threatened” under the Endangered Species Act of 1973 (ESA) by disapproving of a Fish and Wildlife Service (FWS) rule listing the bat as endangered. In doing so, the resolution would reinstate a 2015 rule and 4(d) rule listing the bat as threatened, and it would also prevent similar listings in the future, risking the extinction of the NLEB.

Bats are critically important to U.S. agriculture and timber industries. Bats provide up to \$53 billion yearly in pest control services to the U.S. agriculture industry.¹ The NLEB offers these services throughout the 37 states it inhabits.

The NLEB hibernates in caves and abandoned mines during winter and spends the rest of the year eating moths, flies, and beetles along forested hillsides.² The “hibernation conditions, prey availability, summer roosting habitat, and [habitat] connectivity” influence NLEB reproduction and population growth rates.³ Maintaining a healthy population and growth rates is essential for a given population to withstand environmental fluctuations and other stressors.⁴ The physical health of individual NLEB also influences the population’s overall growth and reproduction rates.

However, the NLEB population is currently under threat from white-nose syndrome. White-nose syndrome is a pervasive fungus growing in cool, wet caves where bats hibernate. It likely spread through trade and travel from Europe to the United States before identification in New York in 2006.⁵ White-nose syndrome has led to unprecedented mortality and widespread regional collapse⁶ of at least seven bat species. Some observers have deemed it the “most precipitous wildlife decline in the past century in North America.”⁷ Infected bats appear to have a “white, powdery substance on the bat’s face, tail, and wings.”⁸ The fungus makes bats restless during winter hibernation, causing them to lose energy and exhaust their fat reserves, often resulting in premature death. On average, bat colonies infected with white-nose syndrome lose 70% of their popu-

¹J. G. Boyles, P. M. Cryan, G. F. McCracken, T. H. Kunz. Economic Importance of Bats in Agriculture. *Science*, 2011; 332 (6025): 41 DOI: 10.1126/science.1201366.

²U.S. Fish and Wildlife Service. 2022. Species Status Assessment Report for the Northern long-eared bat (*Myotis septentrionalis*), Version 1.2. August 2022. Bloomington, MN. <https://www.fws.gov/media/species-status-assessment-report-northern-long-eared-bat>.

³*Id.* at 22.

⁴*Id.*

⁵Frick, W.F., Pollock, J.F., Hicks, A.C., Langwig, K.E., Reynolds, D.S., Turner, G.G., Butchkoski, C.M. and Kunz, T.H., 2010. An emerging disease causes regional population collapse of a common North American bat species. *Science*, 329 (5992), pp. 679–682.

⁶*Id.*

⁷Wisconsin Department of Natural Resources. Northern Long-Eared Bat Species Guidance. <https://dnr.wi.gov/files/PDF/pubs/er/ER0700.pdf>.

⁸*Id.*

lation.⁹ NLEB populations have been particularly hard hit, with infected populations declining by 97–100%.¹⁰

The FWS leads a national response combatting white-nose syndrome with advanced knowledge of the fungus and generated treatments to reduce the fatality and spread of the disease.¹¹ While research is underway to develop vaccines and assess genetic resistance among surviving populations, ESA protections for the NLEB are necessary to minimize additional stressors to the remaining population.

With NLEB populations depressed by white-nose syndrome, NLEB populations are now less resilient to other stressors, including incidental take from industrial activities and habitat destruction. Habitat fragmentation and clear-cutting of forests remove foraging and roosting habitats, making bats expend more energy searching for food and shelter. Less immediately, climate change is an ongoing stressor to the NLEB, with changing precipitation and temperature patterns impacting resource availability. While these factors previously did not pose significant threats to the species, in the wake of the devastation caused by white-nose syndrome, NLEB populations are now far less resilient to these stressors.

The recent spread of white-nose syndrome has negatively impacted the health of the NLEB across the U.S. and resulted in a severe and rapid population decline. In response to this rapid decline, FWS listed the NLEB as threatened under the ESA in 2015. A January 2020 court ruling remanded but did not vacate the threatened status, finding that the decision to list it as threatened rather than endangered was arbitrary and capricious.¹² Therefore, FWS reassessed the status and reclassified the NLEB as endangered in November 2022.¹³

H.J. Res. 49 provides for congressional disapproval under the Congressional Review Act (CRA) of the rule submitted by the FWS relating to “Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat.” If enacted, this resolution would reinstate the threatened status and accompanying regulations for the NLEB and prevent substantially similar endangered listings in the future.

This bill is another example of extreme Republican attempts to undermine species protections at the behest of industry desires, even though there is no documented evidence of harm or expense to industry because the NLEB is listed as endangered. Furthermore, anticipating the uplisting of the species to endangered, the U.S. Forest Service pre-emptively consulted with affected industries working in the National Forest system so that industry activities would not be affected. In general, best practices included in the 2015 4(d) rule that industries have already been doing reduce the

⁹Frick, W.F., Pollock, J.F., Hicks, A.C., Langwig, K.E., Reynolds, D.S., Turner, G.G., Butchkoski, C.M. and Kunz, T.H., 2010. An emerging disease causes regional population collapse of a common North American bat species. *Science*, 329 (5992), pp. 679–682.

¹⁰U.S. Fish and Wildlife Service. 2022. Species Status Assessment Report for the Northern long-eared bat (*Myotis septentrionalis*), Version 1.2., at iv, 35, August 2022. Bloomington, MN. <https://www.fws.gov/media/species-status-assessment-report-northern-long-eared-bat>.

¹¹U.S. FWS Final rule to reclassify the northern long-eared bat as endangered under the Endangered Species Act Questions and Answers https://www.fws.gov/sites/default/files/documents/FINAL.FWS_FAQs_NLEB%20final%20rule%20FAQs.11222022%20%281%29.pdf.

¹²https://www.biologicaldiversity.org/species/mammals/northern_long-eared_bat/pdfs/Dkt-96_Northern-Long-ear-Bat-Remedy-Order.pdf.

¹³<https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis>.

likelihood of take and may be enough to avoid take. FWS has also prepared guidance to address stakeholder concerns surrounding compliance with the endangered listing.

The science is clear that the NLEB is on the brink of extinction. Undermining the science and rolling back protections introduces political bias into what should be science-based species management. It sets a dangerous precedent of blatantly ignoring facts and science to benefit industries. While the value of preserving biodiversity is hard to quantify, the loss of the northern long-eared bat will only increase costs to agriculture and timber industries, which will become more reliant on pesticides and alternative pest control methods. Finally, using the CRA to roll back the rule leaves FWS with fewer options for sufficiently protecting and recovering the species in the future.

RAÚL M. GRIJALVA,

Ranking Member, House Committee on Natural Resources.

