



Testimony before
Committee on Natural Resources
U.S. House of Representatives

**The Northern Long-Eared Bat: The Federal Endangered
Species Act and Impacts of a Listing on Pennsylvania and
Other States**

September 8, 2014
Harrisburg, Pennsylvania

Offered by
Jim Brubaker
On Behalf of
Pennsylvania Farm Bureau

Good morning, Chairman Hastings, Ranking Member DeFazio, and members of the Committee. I am Jim Brubaker, a grain and livestock farmer in Union County, Pennsylvania. I operate Buffalo Valley Farms with my two sons. We have 900 acres of corn and soybeans, 18,000 market hogs and one million kosher broilers. I currently serve on the Board of Directors for Pennsylvania Farm Bureau (PFB), and on the Board's Executive Committee. I also serve as the chairman of the Natural and Environmental Resources Committee for PFB. In addition to my Farm Bureau activities, I am a member of the Buffalo Township Planning Commission and the Union County Commissioners' Ag Advisory Committee.

I offer these remarks on behalf of Pennsylvania Farm Bureau and our nearly 60,000 members, and the more than six million member families of the American Farm Bureau Federation. My testimony will focus on Farm Bureau's understanding of the proposal to list the northern long-eared bat as a protected species under the Endangered Species Act (ESA) and the potential impact on agriculture.

Before I begin, however, I want to be clear that Farm Bureau agrees that federal agencies and citizens must take responsible action when wildlife species are in danger of extinction to facilitate recovery of species populations. Farmers enjoy the benefits of having wildlife on their properties. I know I do. And farmers already take measures on their own to provide for wildlife and their habitat on farmland. But, at the same time, Farm Bureau believes that the ESA must be modernized, so that we can protect endangered species without imposing excessive burdens and restrictions on landowners' use of land that provide marginal enhancement of species recovery. Unfortunately, the ESA is often ineffective at protecting endangered species, unnecessarily hurting people's livelihoods in the process. And, in the case of the northern long-eared bat, listing this species has the potential to negatively affect farmers within the bat's range.

Potential Impacts of Listing the NLE Bat

The decision to list the northern long-eared bat should not be taken lightly. With a range of 38 states and the District of Columbia, and the fact that this species of bat is 15-20 times more common than other non-listed bats in some areas, the potential scope of this listing and the impact on agriculture could be unprecedented. Even more concerning is the basis for the proposed listing is not related to human activity, but because of the U.S. Fish and Wildlife Service's anticipated impact of the white-nose syndrome. Page 61058 of the October 2, 2013 Federal Register Notice¹ ("Notice") states:

"... we have found no other threat that is as severe and immediate to the northern long-eared bat's persistence as the disease, white-nose syndrome (WNS) ... if WNS had not emerged or was not affecting the northern long-eared bat populations to the level that it has, we presume the species would not be experiencing the dramatic declines it has since WNS emerged."

In addition, the Notice's² summary of "other natural or manmade factors affecting [the northern long-eared bat's] continued existence" indicates that though the factors identified (which included wind energy and natural gas development, contaminants, etc) do occur, there is:

¹ Federal Register. Volume 78, Number 191. October 2, 2013. Docket No. FWS-R5-ES-2011-0024; 4500030113; Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Endangered or Threatened Species; Listing the Northern Long-Eared Bat as an Endangered Species.

² Page 61072

“... no evidence that these activities alone have significant effects on either species [eastern and northern long-eared bat], because their effects are often localized and not widespread throughout the species’ ranges.”

Furthermore, concerns have been voiced by commenters in response to the FWS’s request for comments about the validity of survey data conducted for the proposed listing was based on inaccurate and insufficient NLE bat data collected during winter surveys. In fact, in the Notice³, the FWS discusses the winter habitat and specifically states that, “Northern long-eared bats are typically found roosting in small crevices or cracks in cave or mine walls or ceilings, often with only the nose and ears visible, thus are easily overlooked during surveys.”

The summer roosting locations are more likely to impact agriculture. Per the Notice, in the summer, the NLE bats, “typically roost ... underneath bark or in cavities or crevices of both live trees and snags,” and “they have also been observed roosting in colonies in human made structures, such as buildings, barns, a park pavilion, sheds, cabins, under eaves of buildings, behind window shutters and in bat houses.”⁴ Many of these roosting sites are likely to be found on farms across Pennsylvania and within the stated range of these bats.

Once listed, the ESA makes it unlawful for any person – including private and public entities – to “take” a NLE bat. The ESA defines “take” to mean “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” Further, the Act prohibits potential “harm” to include significant habitat modification or degradation which “actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.” Violation of ESA take prohibitions carries civil penalties of up to \$25,000 per violation, and criminal penalties of up to \$50,000 and one year imprisonment per violation.

These take prohibitions, along with the designation of critical habitat, have the potential to adversely impact a broad range of industries/activities including natural gas and wind energy development; application of pesticides, insecticides and herbicides; highway construction; and timber harvesting. And, if there’s one thing in common with this list, it’s that they all impact agriculture. How would such a listing impact a livestock farmer with vast shale gas resources under her land, when the sale of subsurface rights would provide a much-needed infusion of capital? And what of a dairy farmer who can’t easily get a milk truck onto the farm because construction of a nearby bridge has stalled?

For the purposes of this testimony, I’ll discuss the issue of pesticides and forest land in a little more detail.

Pesticides

In asserting the possible cumulative effects to the NLE from other natural or manmade factors – specifically the application of pesticides – FWS’s proposed listing seeks to tie the chemical application of agricultural use of organochlorine pesticides⁵, organophosphate, carbamate and neonicotinoid insecticides, polychlorinated biphenols and polybrominated diphenyl ethers, and pyrethroid insecticides to species decline. However, at the end of the section

³ Page 61054

⁴ Page 61045-5

⁵ The Federal Register (page 61070) notice acknowledges that “most organochlorine pesticides have been banned in the United States ...”

of the Federal Register notice⁶ discussing the effects of these and other contaminants, the FWS concludes:

“... the best available data indicate that contaminant exposure can pose an adverse effect to individual northern long-eared and eastern small-footed bats, although it is not an immediate and significant risk in itself at a population level.”

Pesticide applications are covered by state laws and the Federal Insecticide, Fungicide and Rodenticide Act, and farmers have well-established practices concerning the application of pesticides. These practices spanned decades in which the NLE bat populations were not in decline. It was only after WNS was introduced to the NLE bat, that we began to see documented impacts to species health and population decline. In light of this, it is inappropriate for the FWS to link the application of pesticides by farmers to species decline without documented scientific analysis.

As a farmer, linking between pesticides and the NLE bat is very concerning. It's scary to think that my access to an important on-farm tool could be restricted. I – like many of my fellow farmers in PA – am a certified pesticide applicator. On our farm, we don't use more pesticides, herbicides and insecticides than we have to and choose our treatments/preventive measures carefully. For example, on my farm we choose our herbicides based on weed pressure and field history. As I mention later, we also use cover crops which helps reduce weed pressure and the amount of herbicides we have to apply.

Forest Land

With 59 percent or nearly 17 million acres of Pennsylvania covered by forest, many agricultural operations include forested acres. Given the statement on page 61075 of the Notice that, “Other sources of mortality to the species include ... habitat modification, destruction and disturbance,” and the summer habitats of the NLE bat discussed earlier, listing the NLE bat as an endangered species is likely to pose very serious challenges to farmers who have forested land on their farms.

While I personally do not have much forested land on my property, many farmers do. What happens if the NLE bat is found to be roosting in an area of a farmer's property? How will that impact the farmer's ability to clear trees for firewood or planting, implement forest management plans and undertake managed harvesting and other recommended activities? Restricting these activities has the potential to adversely affect on-farm production activities, forest habitat management, and farm revenue.

On the timbering side, I know you'll be receiving testimony from the PA Forest Products Association, however, I do want to mention that Pennsylvania has one of the nation's largest concentrations of hardwood growing stock and is a leading producer of hardwood lumber. This industry sustains jobs and contributes to both the state and national economies. In addition, Pennsylvania is a national leader in the implementation and promotion of sustainable forestry practices.

⁶ Page 61071

Based on potential impacts on pesticide use and forest management alone, agriculture has much to be concerned about if the NLE bat is listed as an endangered species. But let's explore this issue even further.

Farmer Concerns

Looking at a Fish and Wildlife Service map⁷, there are confirmed or suspected cases of White Nose Syndrome in many of the counties surrounding Union County, where I live. This leads me to suspect that if the NLE bat was listed, I – or my neighbors – could face immediate restrictions on our farms and properties.

You may be wondering if I have the NLE bat on my property. My answer is *I don't know*. And I'd bet that a majority of my fellow farmers – in Pennsylvania or elsewhere – would answer the same way. I do have bats on my farm. I see them in buildings and in houses on my farm. In fact, there is one particular farmstead where I have a larger concentration of bats. But I don't know the species.

What if the bats in my own barn were found to be the northern long-eared bat? Would I face restrictions on how I could use my barn? Would I be able to repair or tear down an existing structure if were found to house NLE bats? And, what if I had to take land out of production or change the way I farmed the land because it was too close to a roosting site?

Consider this: if I had to take four acres of a corn field out of production, that would amount to approximately 800 bushels of corn. At \$4.30 a bushel, that's a \$3,440 in income. Or, what if I wasn't able to spray the correct pesticide and, as a result, I lost 40 percent loss of my four-acre crop? That's a loss of \$1,376. On a farm, every bit of land counts, and losing even just a small parcel of land can have serious consequences on our bottom line and the success of our farm.

Farmers Care

I do know this: farmers care about the environment and conservation. We want to preserve our land and the environment. We want to pass our land onto the next generation without ruining it for them and the generations that follow. We want practical solutions that work for agriculture – and the environment.

On my farm, we do everything reasonably possible to be good stewards of the land. For example, we've been 100 percent no-till for the last 10-12 years; every year we sow cover crops on our soy stubble and use them to spread manure on in the fall; we have – and follow – a nutrient management plan; we test our soil before applying nitrogen to make sure we don't over apply nutrients and we've installed sod waterways.

On the conservation side, while most of our land is tillable with very little wooded land, we mow along streams to allow for habitat for rabbits and pheasants, and we try to keep a healthy, but manageable deer population. Due to the practices we use at Buffalo Valley Farms, our land has become much more productive over the 40 years that we've been farming it. I've seen our crop yields improve, and we're looking at our best crop year ever in 2014.

⁷ <http://www.fws.gov/midwest/endangered/images/mammals/nlba/nlebrangeAndWNSmapV4High.jpg>

Finding a Solution

During my years as a farmer, I've learned many things, especially this: excessive regulations do not benefit either the person regulated or that which is intended to be protected. Paperwork doesn't solve problems. Practical, workable solutions can – and do – solve problems. As I mentioned earlier, we need practical solutions to protect wildlife and the environment, but we need to ensure that agriculture can continue to operate effectively and efficiently. If we fail, then we jeopardize the ability of agriculture to produce safe, affordable and abundant food and fiber for consumers in Pennsylvania, the United States and the world.

As the FWS and Congress try to make the right decisions regarding the NLE bat, they might want to look at the Pennsylvania Game Commission (PGC) as a case study. As you might know, several years ago, the PGC considered placing the northern long-eared bat and two other species impacted by white-nose syndrome on the state's endangered species list. Following a public comment period, the PGC decided not to list the three bat species. In a press release on the decision, Carl Roe, the PGC's Executive Director stated:

“... it is clear that more discussion, research and coordination need to be done on WNS and the other outside factors that are impacting our bat populations, as well as how we can craft solutions that protect bats without threatening the industries that employ thousands of Pennsylvanians.”⁸

Based upon my understanding of the issue, I'd say that we're facing the same issue almost two years later. I'd say Pennsylvania made the right decision then, and I do hope that the federal government will make the right decision now. Because making the wrong decision will have ripple effects on the environment and agriculture right on to the consumer.

As a farmer, I believe that using both common sense and science is a logical way to approach not just farming, but regulations. It seems to me that this proposal to list the northern long-eared bat is flawed from both a scientific and common sense perspective. If the U.S. Fish and Wildlife Service recognizes that human activities have not had an appreciable effect on the species to date, why would we focus on human-induced impacts to try to slow population decline?

It just doesn't make sense.

Why hurt farmers, landowners, builders and service providers – to just name a few – when there is no guarantee that this will stop NLE bat declines? Instead, shouldn't we focus on the root cause of the problem – white nose syndrome?

Agriculture has long been willing to step up and do our part whether it's helping out in our communities or responsibly managing the environment or wildlife. We're more than willing to work with states and the federal government to do our part to ensure the longevity of the northern long-eared bat. But let's make sure we're solving the problem, not making new ones, because we're not targeting the root cause. And, in this case, it's white-nose syndrome.

Farm Bureau recommends that the U.S. Fish and Wildlife Service not list the northern long-eared bat as an Endangered Species. And we urge Congress and the members of the U.S. House Committee on Natural Resources to help prevent this listing from happening.

⁸ PGC News Release #121-12 (October 4, 2012)

Additionally, I'd like to commend Chairman Hastings and members of the Natural Resources Committee for their continued efforts to identify and develop commonsense legislative reforms to the Endangered Species Act. The passage of H.R. 4315 in the House of Representatives demonstrates your commitment to update and improve the processes and procedures that the ESA put in place 40 years ago. We look forward to working with Congress to make the ESA more workable for private landowners and thus more beneficial for the species that it is supposed to help.

Thank you again for the opportunity to testify today, and I would be happy to respond to your questions.