

**Written Testimony Of
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**Before the House Committee on Natural Resources
Subcommittee on Water, Wildlife and Fisheries**

Regarding the ESA Flexibility Act (H.R. 6784)

February 14, 2024

Chair Bentz, Ranking Member Huffman, and members of the subcommittee, thank you for the opportunity to testify in support of H.R. 6784, the ESA Flexibility Act.

My name is Ray Higgins, executive vice president of the Minnesota Timber Producers Association, a trade organization founded in 1937 representing loggers, truckers, small sawmills, and other businesses in our state's forest products industry.

Over the past ten years we've seen the importance of allowing the US Fish & Wildlife Service the flexibility to incorporate the 4(d) rules in its "endangered" listings in addition to the "threatened" designation. Had this flexibility been available, states like Minnesota, and federal agencies like the US Fish and Wildlife Service and the USDA Forest Service could have saved considerable time and taxpayer money while dealing with the decline of the northern long-eared bat (NLEB).

The US Fish & Wildlife Service began considering listing the northern long-eared bat in 2014, finalizing a "threatened" listing in 2015. However, it also utilized the 4(d) rule under the Endangered Species Act to mitigate the impacts of the threatened designation to forest management.

During the summertime, northern long-eared bats—like many bat species—roost in trees. In the interest of preserving the bat's habitat, the USFWS could have limited our ability to manage forests by precluding the harvesting of trees. However, the USFWS recognized that the bat's decline wasn't due to habitat issues, but to a fungal disease called white-nose syndrome that spreads among bat populations while hibernating, mostly in caves and mines during winter months.

The 4(d) rule in the Endangered Species Act allows the USFWS to tailor protections to those needed to prevent further decline of listed species and facilitate their recovery. Recognizing that summer habitat wasn't at issue, the USFWS rightly utilized the 4(d) rule. Rather than halting all tree harvesting across the bat's range, which is much of our state—not to mention 37

other states—the USFWS exempted “take” due to forest management practices. The USFWS did limit harvesting within 150 feet of known, occupied, maternity roost trees, as well as within a quarter-mile of known hibernation sites during the roosting months of June and July, provisions that did not materially harm forest management activities in Minnesota.

These steps taken by the USFWS were effective. In Minnesota, I’m not aware of a single northern long-eared bat that was “taken” during timber harvesting activities. Unfortunately, the decline of the species was and is due to white-nose syndrome—not habitat—and an endangered listing was inevitable.

Immediately after the threatened listing was finalized by the USFWS in 2015, and with the expected endangered listing looming, the Minnesota Department of Natural Resources, the state agency tasked with overseeing forest management in our state, began preparing to apply for a Habitat Conservation Plan. The Minnesota DNR knew USFWS didn’t have the ability to utilize a 4(d) rule with an endangered listing. Partnering with Departments of Natural Resources from Wisconsin and Michigan, the process of drafting and gaining approval of the HCP—which contained provisions nearly identical to those in the 4(d) rule—was finally completed eight years later, in 2023, as the endangered listing of the northern long-eared bat was going into effect.

The ESA Flexibility Act would give the US Fish and Wildlife Service the same ability to tailor protections under endangered listings as it has for threatened listings, saving state governments across the country millions of dollars in staff time and other resources. The ESA Flexibility Act would also greatly streamline and expedite the development of Habitat Conservation Plans, saving resources of our federal government. Of course, the USFWS would not be obligated to allow 4(d) rule flexibility in every instance, but it would have an additional tool in its toolbox to tailor protections, as it did with its threatened listing of the northern long-eared bat.

Unfortunately, other bat species are being negatively affected by white-nose syndrome. The tricolored bat is currently under consideration for an endangered listing, while populations of the big brown bat and little brown bat have also declined. Allowing the USFWS to utilize the 4(d) rule will give the agency more flexibility as it considers these important listing decisions. This flexibility will be paramount as additional bat species, whose range covers the vast majority of North America, continue declining due to white-nose syndrome.

In Minnesota, our forests are healthy. According to data from the US Forest Service, we have more trees than we had 60 years ago, more “big” trees (19-inches in diameter and greater), and more forestland—meaning more bat habitat. By any measure, Minnesota has outstanding habitat for thousands of wildlife species, including the northern long-eared bat when it’s ready to make a comeback, as well as the other bat species under consideration. The protections implemented by the US Fish & Wildlife Service, aided by the 4(d) rule and then the HCP, have been effective in preserving bat habitat. Forest management helps create habitat over time and across the landscape, allowing species with diverse habitat needs to flourish. An inflexible

Endangered Species Act will not only do nothing to stem the decline of species suffering from wildlife diseases, it will discourage private landowners and non-federal agencies from working with the USFWS to determine the range and abundance of listed or candidate species.

In Minnesota, we harvest roughly one percent of our forestland each year, and we grow three times as much wood as we harvest. All this while employing roughly 68,000 people in our forest products industry, paying approximately \$2 billion in wages, while injecting more than \$17 billion dollars into our state's economy. We are actively managing our forests. In Minnesota, we like to say, "Jobs grow on trees, and we grow a lot of trees." We are proof that effective forest management can improve forest health, grow our economy, and protect wildlife species that rely on the forest. The ESA Flexibility Act will aid in continuing to achieve those goals, and I urge your approval.

I thank Representative Stauber for bringing forward this bill, and also Chair Bentz, Ranking Member Huffman, and members of the subcommittee for the opportunity to share my thoughts on this important topic.