



U.S. Fish and Wildlife Service Reclassifies Northern Long-eared Bat as Endangered under the Endangered Species Act

What This Change Means for the Forestry, Power and Transportation Industries

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The northern long-eared bat was listed as threatened in 2015. Due to its expansive range, which includes all of Michigan as well as all the other Midwestern states, this has resulted in an impact on project and construction schedules. Now the US Fish and Wildlife Service, under authority of the Endangered Species Act of 1973, as amended, announced on November 29, 2022 a final rule to reclassify the bat as endangered. This ruling **will take effect on January 30, 2023.**

The northern long-eared bat occurs throughout the eastern half of the United States, including both peninsulas of Michigan. This species is among the numerous bat species affected by white-nose syndrome, which is a fungal disease affecting hibernating bats and decimating their populations in the eastern United States. The northern long-eared bat is the first bat species to be listed as protected under the Endangered Species Act due to the impact of the white-nose syndrome.

This change in status from threatened to endangered, when final, will nullify the 4(d) rule that gave certain projects automatic clearance to proceed. In Michigan, the 4(d) rule allows forest management, maintenance and expansion of existing rights-of-way and transmission corridors, minimal tree removal projects, and certain other activities to occur, as long as the proposed activity will not take place near or impact known locations of bat colonies or maternity roosts. Nullifying the 4(d)

rule will increase the regulatory burden, especially to those in the forestry, power, and transportation industries, further impacting project and construction scheduling.

The new listing could impact any federally funded project, as well as some state-funded projects, that include tree removal. Additionally, for some projects that entail significant tree removal, including those that are privately-funded, the Michigan Department of Environment, Great Lakes, and Energy is requiring habitat assessment and subsequent project clearance for protected bat species prior to granting wetland permits.

Contact ASTI professionals at 800-395-ASTI to determine if your project may need to consider potential impacts to bats as it moves forward.

UPDATE ON ASTM E1527-21

The American Society for Testing and Materials (ASTM) Committee on Environmental Assessment, Risk Management, and Corrective Action (Committee E-50) approved a new standard for conducting Phase I Environmental Site Assessments (ESAs) on November 1, 2021. This new standard, known as “E1527-21 – Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process”, will **take effect February 13, 2023.** ASTM E1527-21 provides significant updates to the current standard, E1527-13, which has been in place for the past nine years.

The updated standard, E1527-21, includes a new definition of “Recognized Environmental Condition” (REC). This updated definition is important because identifying RECs associated with a property is not only the goal of an E1527 compliant Phase I ESA, but RECs are critical in defining the scope of work for additional investigations, if needed. Under the previous E1527-13 Standard, an REC was defined as, “the presence or likely presence of any hazardous substances or petroleum products in, on or at a property: (1) due to a release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment.”

The ASTM Committee updated the definition to add clarity due to the use of the word “likely” included in all three conditions of the definition. In E1527-21 “likely” only appears in the second condition in the definition, specifically: “(1) the presence of hazardous substances or petroleum products in, on or at the subject property due to a release to the environment; (2) the likely presence of hazardous substances or petroleum products in, on or at the subject property due to a release or likely release to the environment; or (3) the presence of hazardous substances or petroleum products in, on or at the subject property under conditions that pose a material threat of a future release to the environment”. In addition, the new E1527-21 Standard contains an Appendix (Appendix X4) that further clarifies the new definition and contains a flow chart to help in making a determination.

Another significant update included in E1527-21 is a requirement to use Standard Historical Sources. E1527-21 requires that, at a minimum, historical aerial photographs, historical city directories, historical topographic maps, and historical fire insurance (Sanborn) maps be reviewed in association with the subject property and adjoining properties. Prior to this update, E1527-13 required that as many standard historical sources be reviewed as was deemed necessary by the Environmental Professional, which could mean only one source was reviewed. The Standard also prescribes that if one or more of these sources cannot be reviewed, there must be a statement included in the Phase I ESA report detailing why the source could not be reviewed. ASTI

would recommend that additional Standard Historical Sources also continue to be reviewed, as needed.

Guidance on emerging contaminants of concern, such as per- and polyfluoroalkyl substances (PFAS), is also included in E1527-21. The EPA continues to consider possible regulation for these contaminants, but has not yet listed them as federally regulated hazardous substances under CERCLA. Because they are not listed under CERCLA, emerging contaminants like PFAS have not been required to be included as a scope item in performing Phase I ESAs under previous standards. The new guidance states that inclusion of such substances can be added to the Phase I ESA as a “Non-Scope Consideration.” This will allow the Environmental Professional to address them in the report when applicable, as they can still be a substantial issue for the redevelopment or operation of the subject property.

ASTI Environmental has been incorporating both E1527-13 and E1527-21 requirements for over a year, but will now specifically state that all reports are compliant with E1527-21, and will no longer reference the previous standard. All Phase I updates, and new Phase Is for refinancing, will now be conducted according to the E1527-21 standard. For more information, please contact us at 1-800-395-ASTI, or visit our web site to review the February 2022 Tech Bits article “Updates to the Michigan Brownfield Act and Phase I Environmental Site Assessment ASTM E1527 Standard”.



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-2160. For a free subscription call 800-395-ASTI or visit www.asti-env.com