

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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CENTER FOR BIOLOGICAL DIVERSITY, *et al.*

Plaintiff,

v.

DANIEL M. ASHE, Director, U.S. Fish and Wildlife Service, *et al.*,

Defendants,

and

AMERICAN FOREST & PAPER ASSOCIATION, *et al.*,

Intervenors-Defendants.

Civil Action No. 1:15-CV-00477- EGS

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DEFENDERS OF WILDLIFE

Plaintiff,

v.

DANIEL M. ASHE, Director, U.S. Fish and Wildlife Service, *et al.*,

Defendants,

and

AMERICAN FOREST & PAPER ASSOCIATION, *et al.*,

Intervenors-Defendants.

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Civil Action No. 1:16-CV-00910-EGS

**COMBINED ANSWER OF INTERVENOR-DEFENDANTS AND [PROPOSED]  
ANSWER OF PUTATIVE INTERVENOR-DEFENDANTS  
TO PLAINTIFF DEFENDERS OF WILDLIFE’S COMPLAINT**

Intervenor-Defendants American Forest and Paper Association, Black Hills Forest Resource Association, Forest Landowners Association, Inc., Forest Resources Association, Inc., Hardwood Federation, Great Lakes Timber Professionals Association, National Alliance of Forest Owners, New Hampshire Timberland Owners Association, and Southeastern Lumber Manufacturer’s Association, and Proposed Intervenor-Defendants American Exploration & Production Council, American Farm Bureau Federation, American Petroleum Institute, Chamber of Commerce of the United States of America, Independent Petroleum Association of America, Marcellus Shale Coalition, National Association of Home Builders of the United States, Ohio Oil and Gas Association, Pennsylvania Independent Oil & Gas Association, and West Virginia Oil and Natural Gas Association (collectively, the “Associations”) hereby file this Answer to Plaintiff Defenders of Wildlife’s Complaint in Case No. 1:16-cv-00910 (Dkt. 1) pursuant to Federal Rules of Civil Procedure 12 and 24.

Any allegation not specifically admitted below is denied. Answering the numbered paragraphs of the Complaint, the Associations admit, deny, and aver as follows:

**INTRODUCTION**

1. The Associations admit that the U.S. Fish & Wildlife Service (“Service”) proposed to list the northern long-eared bat as a threatened species under the Endangered Species Act (“ESA”) in January 2015, and also proposed exemptions pursuant to section 4(d) of the ESA. The rest of the allegations in this paragraph contain Plaintiff’s characterizations of this lawsuit and conclusions of law, which require no response. To the extent a response is required, the allegations are denied.

2. The allegations in this paragraph contain Plaintiff's characterizations of this lawsuit and conclusions of law, which require no response. To the extent a response is required, the allegations are denied. This paragraph further contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response. The Associations also lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations.

3. The allegations in this paragraph contain Plaintiff's characterizations of this lawsuit and conclusions of law, which require no response. To the extent a response is required, the allegations are denied. The Associations also lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations.

4. The Associations admit that the Service listed the northern long-eared bat as a threatened species under the Endangered Species Act ("ESA"), and a species-specific rule under section 4(d) of the ESA. This paragraph also contains Plaintiff's characterization of the final 4(d) rule, which speaks for itself and which requires no response. The rest of the allegations in this paragraph contain conclusions of law and Plaintiff's characterization of this case, which require no response. To the extent a response is required, these allegations are denied.

5. This paragraph contains Plaintiff's characterization of a biological opinion, which speaks for itself and which requires no response. The remaining allegations in this paragraph contain conclusions of law which require no response. To the extent a response is required, these allegations are denied.

6. This paragraph contains Plaintiff's requested relief in this lawsuit and conclusions of law, which require no response. To the extent a response is required, the Associations deny Plaintiff is entitled to any relief and deny the remainder of the allegations in this paragraph.

## **JURISDICTION AND VENUE**

7. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, these allegations are denied.

8. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, these allegations are denied.

9. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, these allegations are denied.

10. This paragraph contains allegations for which the Associations lack sufficient information to form a belief as to their truth, and therefore the Associations deny those allegations. This paragraph also contains conclusions of law, which require no response. To the extent a response is required, these allegations are denied.

11. This paragraph contains allegations for which the Associations lack sufficient information to form a belief as to their truth, and therefore the Associations deny those allegations.

12. This paragraph contains allegations for which the Associations lack sufficient information to form a belief as to their truth, and therefore the Associations deny those allegations.

13. This paragraph contains allegations for which the Associations lack sufficient information to form a belief as to their truth, and therefore the Associations deny those allegations. This paragraph also contains conclusions of law, which require no response. To the extent a response is required, these allegations are denied.

14. This paragraph contains conclusions of law, which require no response. To the extent a response is required, these allegations are denied.

## **PARTIES**

15. This paragraph contains allegations about Plaintiff for which the Associations lack sufficient information to form a belief as to their truth, and therefore the Associations deny those allegations.

16. This paragraph contains allegations about Plaintiff for which the Associations lack sufficient information to form a belief as to their truth, and therefore the Associations deny those allegations.

17. This paragraph contains allegations about Plaintiff for which the Associations lack sufficient information to form a belief as to their truth, and therefore the Associations deny those allegations. This paragraph also contains conclusions of law and Plaintiff's characterization of this case and its requested remedy, to which no response is required. To the extent a response is required, these allegations are denied and the Associations deny Plaintiff is entitled to any relief.

18. The Associations admit that Daniel M. Ashe is the Director of the Service and admit the allegations concerning his responsibilities to implement the ESA and to comply with all other federal laws that apply to the agency in the first sentence of this paragraph. The remainder of this paragraph contains conclusions of law which require no response. To the extent a response is required, these allegations are denied.

19. The Associations admit that Sally Jewell is the U.S. Secretary of the Interior and admit the allegations concerning her responsibilities to comply with the ESA and all other applicable federal laws in the first sentence of this paragraph. The remainder of this paragraph contains conclusions of law which require no response. To the extent a response is required, these allegations are denied.

20. Admitted.

## **STATUTORY AND REGULATORY FRAMEWORK**

### **A. The Endangered Species Act**

21. This paragraph contains Plaintiff's characterizations of and purported quotes from the Endangered Species Act, which speaks for itself and which requires no response.

22. This paragraph contains Plaintiff's characterizations of and purported quotes from the Endangered Species Act, which speaks for itself and which requires no response.

23. This paragraph contains Plaintiff's characterizations of and purported quotes from judicial decisions, which speak for themselves and which require no response.

24. This paragraph contains Plaintiff's characterization of a federal regulation, which speaks for itself and which requires no response.

#### **1. Section 4**

25. This paragraph contains Plaintiff's characterizations of the Endangered Species Act, which speaks for itself and which requires no response.

26. This paragraph contains Plaintiff's characterizations of and purported quotes from the Endangered Species Act, which speaks for itself and which requires no response.

27. This paragraph contains Plaintiff's characterizations of and purported quotes from the Endangered Species Act, a federal regulation, and a judicial opinion, which speak for themselves and which require no response.

28. This paragraph contains Plaintiff's characterizations of and purported quotes from the Endangered Species Act, which speaks for itself and which requires no response.

29. This paragraph contains Plaintiff's characterizations of and purported quotes from the Endangered Species Act, a regulation, and a rulemaking, which all speak for themselves and require no response.

30. This paragraph contains Plaintiff's characterizations of the Endangered Species Act, which speaks for itself and which requires no response.

31. This paragraph contains Plaintiff's characterizations of and purported quotes from the Endangered Species Act and regulations, which speak for themselves and which require no response.

32. This paragraph contains Plaintiff's characterizations of and purported quotes from the Endangered Species Act, which speaks for itself and which requires no response.

33. This paragraph contains Plaintiff's characterizations of the Endangered Species Act, which speaks for itself and which requires no response.

34. This paragraph contains Plaintiff's characterizations of and purported quotes from the Endangered Species Act and an agency memorandum, which speak for themselves and which require no response.

35. This paragraph contains Plaintiff's characterization of litigation and judicial opinions, which speak for themselves and which require no response.

36. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, these allegations are denied.

## **2. Section 7**

37. This paragraph contains Plaintiff's characterizations of and purported quotes from the Endangered Species Act and regulations, which speak for themselves and which require no response.

38. This paragraph contains Plaintiff's characterizations of the Endangered Species Act, which speaks for itself and which requires no response.

39. This paragraph contains Plaintiff's characterizations of and purported quotes from the Endangered Species Act and regulations, which speak for themselves and which require no response.

40. This paragraph contains Plaintiff's characterizations of the Endangered Species Act and regulations, which speak for themselves and which require no response.

41. This paragraph contains Plaintiff's characterizations of and purported quotes from the regulations and judicial opinions, which speak for themselves and which require no response.

42. This paragraph contains Plaintiff's characterizations of the Endangered Species Act and regulations, which speak for themselves and which require no response.

43. This paragraph contains a purported quote from the Endangered Species Act, which speaks for itself and which requires no response.

44. This paragraph contains Plaintiff's characterizations of the Endangered Species Act, which speaks for itself and which requires no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

#### **B. The Administrative Procedure Act**

45. This paragraph contains Plaintiff's characterizations of the Administrative Procedure Act, which speaks for itself and which requires no response.

46. This paragraph contains Plaintiff's characterizations of the Endangered Species Act, the Administrative Procedure Act, and a judicial opinion, which speak for themselves and which require no response.

47. This paragraph contains Plaintiff's characterizations of and purported quotes from the Administrative Procedure Act and a judicial opinion, which and which require no response.



## **FACTUAL BACKGROUND**

### **A. The Northern Long-eared Bat and White-nose Syndrome**

48. This paragraph contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response. The Associations also lack sufficient information to form a belief as to the truth of the remaining allegations, and therefore deny those allegations.

49. This paragraph contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response. The Associations also lack sufficient information to form a belief as to the truth of the remaining allegations, and therefore deny those allegations.

50. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations.

51. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations.

52. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations.

53. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations.

54. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations.

55. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations.

56. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations.

57. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations.

58. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

59. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

60. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

61. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

62. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

63. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

64. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

65. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

66. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

67. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

68. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains

Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

**B. Proposed Rule to List the Northern Long-Eared Bat as Endangered**

69. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

70. This paragraph contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

71. This paragraph also contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

72. This paragraph also contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

73. This paragraph also contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

74. This paragraph also contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

75. This paragraph also contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

76. This paragraph also contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

77. This paragraph also contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

78. This paragraph also contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

**C. The Service's Actions Between the Proposed and Final Rules**

79. Admitted.

80. Admitted.

81. This paragraph also contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

82. The Associations admit that the Service reopened the comment period on November 18, 2014, and held a public hearing in Wyoming on December 2, 2014. The Associations lack sufficient information to form a belief as to the truth of the remaining allegations, and therefore deny those allegations.

83. Admitted.

84. Admitted.

85. The Associations admit the Service promulgated an interim 4(d) rule when it listed the northern long-eared bat as threatened. The remainder of the allegations in this paragraph purport to characterize the 4(d) rule, which speaks for itself and which requires no response.

86. This paragraph contains Plaintiff's characterization of the 4(d) rule and a regulation, which speak for themselves and which require no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, those allegations are denied.

87. Admitted.

**D. The Service's Reversal of Position Regarding the Status of the Northern Long-eared Bat and Refusal to Consider Whether the Species is Endangered in a Significant Portion of Its Range**

## **1. The Service's Reversal of Position**

88. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains Plaintiff's characterization of rulemakings, which speaks for themselves and which require no response.

89. This paragraph contains Plaintiff's characterization of and purported quotes from rulemakings, which speaks for themselves and which require no response.

90. This paragraph contains Plaintiff's characterization of and purported quotes from rulemakings, which speaks for themselves and which require no response.

91. This paragraph contains Plaintiff's characterization of and purported quotes from rulemakings, which speaks for themselves and which require no response.

92. This paragraph contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

93. This paragraph contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

94. This paragraph contains Plaintiff's characterization of and purported quotes from rulemakings, which speaks for themselves and which require no response.

95. This paragraph contains Plaintiff's characterization of and purported quotes from rulemakings, which speaks for themselves and which require no response.

96. This paragraph contains Plaintiff's characterization of rulemakings, which speaks for themselves and which require no response.

97. This paragraph contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

98. This paragraph contains Plaintiff's characterization of rulemakings, which speaks for themselves and which require no response.

99. This paragraph contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

100. This paragraph contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

101. This paragraph contains Plaintiff's characterization of and purported quotes from an agency memorandum and a rulemaking, which speak for themselves and which require no response.

102. This paragraph contains Plaintiff's characterization of an agency memorandum and statements made during litigation, which speak for themselves and which require no response.

103. This paragraph contains Plaintiff's characterization of and purported quotes from an agency memorandum, which speaks for itself and which requires no response.

104. This paragraph contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

## **2. The Service's Reliance on the Unlawful SPR Policy**

105. This paragraph contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

106. This paragraph contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

107. This paragraph contains Plaintiff's characterization of an agency memorandum, which speaks for itself and which requires no response.

108. This paragraph contains Plaintiff's characterization of an agency memorandum and a rulemaking, which speak for themselves and which require no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

109. This paragraph contains Plaintiff's characterization of a rulemaking, which speaks for itself and which requires no response.

110. This paragraph contains Plaintiff's characterization of and purported quotes from an agency memorandum, which speaks for itself and which requires no response.

111. This paragraph contains Plaintiff's characterization of and purported quotes from an agency memorandum, which speaks for itself and which requires no response.

112. This paragraph contains Plaintiff's characterization of and purported quotes from an agency memorandum, which speaks for itself and which requires no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

113. This paragraph contains Plaintiff's characterization of and purported quotes from an agency memorandum, which speaks for itself and which requires no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

114. This paragraph contains Plaintiff's characterization of and purported quotes from an agency memorandum, which speaks for itself and which requires no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.



115. This paragraph contains Plaintiff's characterization of and purported quotes from an agency memorandum and a judicial opinion, which speak for themselves and which require no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

**3. Consequences of Listing the Northern Long-Eared Bat as Threatened Rather than Endangered**

116. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

117. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied. This paragraph also contains Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

118. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

119. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

**E. The Service's Decision to Confer Irrationally Narrow Protections from Take on the Northern Long-eared Bat**

120. This paragraph contains Plaintiff's characterization of and purported quotes from a regulation, which speaks for itself and which requires no response.

121. The Associations admit that the Service issued a final 4(d) rule. The rest of the allegations in this paragraph contain conclusion of law, to which no response is required. To the extent a response is required, these allegations are denied.

122. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

123. This paragraph contains Plaintiff's characterization of the interim and final 4(d) rules, which speak for themselves and which require no response.

124. This paragraph contains Plaintiff's characterization of the interim and final 4(d) rules, which speak for themselves and which require no response.

125. This paragraph contains Plaintiff's characterization of the final 4(d) rule, which speaks for itself and which requires no response.

126. This paragraph contains Plaintiff's characterization of and purported quotes from the final 4(d) rule, which speaks for itself and which requires no response.

127. This paragraph contains Plaintiff's characterization of and purported quotes from the final 4(d) rule, which speaks for itself and which requires no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

128. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations.

129. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations.

130. The Associations lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and therefore deny those allegations. This paragraph contains

Plaintiff's characterization of and purported quotes from a rulemaking, which speaks for itself and which requires no response.

131. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

132. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

133. This paragraph contains Plaintiff's characterization of and purported quotes from the final 4(d) rule, and which requires no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

134. This paragraph contains Plaintiff's characterization of the final 4(d) rule, which speaks for itself and which requires no response.

135. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

136. This paragraph contains Plaintiff's characterization of the final 4(d) rule, which speaks for itself and which requires no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

137. This paragraph contains Plaintiff's characterization of and purported quotes from the final 4(d) rule, which speaks for itself and which requires no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

138. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

139. This paragraph contains Plaintiff's characterization of and purported quotes from the final 4(d) rule, and which requires no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

140. This paragraph contains Plaintiff's characterization of and purported quotes from the final 4(d) rule, which speaks for itself and which requires no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

#### **F. The Service's Biological Opinion on the 4(d) Rule**

141. The Associations admit that the Service finalized a biological opinion on the 4(d) rule on January 5, 2016. The Associations lack sufficient information to form a belief as to the truth of the remaining allegations in this paragraph, and thus denies those allegations. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

142. This paragraph contains Plaintiff's characterization of the Service's biological opinion, which speaks for itself and which requires no response.

143. This paragraph contains Plaintiff's characterization of and purported quotes from the Service's biological opinion, which speaks for itself and which requires no response.

144. This paragraph contains Plaintiff's characterization of the Service's biological opinion, which speaks for itself and which requires no response. This paragraph also contains

conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

145. This paragraph contains Plaintiff's characterization of and purported quotes from the Service's biological opinion, which speaks for itself and which requires no response.

146. This paragraph contains Plaintiff's characterization of the Service's biological opinion, which speaks for itself and which requires no response.

147. This paragraph contains Plaintiff's characterization of the Service's biological opinion, which speaks for itself and which requires no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied. The Associations also lack sufficient information to form a belief as to the truth of the allegations in this paragraph, and thus deny those allegations.

148. This paragraph contains Plaintiff's characterization of and purported quotes from the Service's biological opinion, which speaks for itself and which requires no response. This paragraph also contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

149. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

150. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

151. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

152. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, these allegations are denied.

## CLAIMS FOR RELIEF

153. The Associations incorporate by reference all of their foregoing responses to Plaintiff's allegations.

### FIRST CLAIM

#### **Defendants' Decision to List the Northern Long-eared Bat as Threatened Instead of Endangered Violates the Endangered Species Act and the Administrative Procedure Act**

154. This paragraph contains Plaintiff's characterization of and purported quotes from the ESA, which speaks for itself and which requires no response.

155. This paragraph contains Plaintiff's characterization of and purported quotes from a regulation, which speaks for itself and which requires no response.

156. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

157. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied. This paragraph also contains allegations for which the Associations lack sufficient information to form a belief as to the truth of those allegations. The Associations thus deny those allegations.

158. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

159. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied. This paragraph also contains allegations for which the Associations lack sufficient information to form a belief as to the truth of those allegations. The Associations thus deny those allegations.

160. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied. This paragraph also contains

allegations for which the Associations lack sufficient information to form a belief as to the truth of those allegations. The Associations thus deny those allegations.

161. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

162. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied. This paragraph also contains allegations about Plaintiff and their members for which the Associations lack sufficient information to form a belief as to the truth of those allegations. The Associations thus deny those allegations and deny that Plaintiff is entitled to any relief.

## **SECOND CLAIM**

### **Defendants' SPR Policy's Interpretation of "Significant Portion of Its Range" Violates the ESA and APA**

163. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied. This paragraph also contains Plaintiff's characterization of a judicial opinion, which speaks for itself and which requires no response.

164. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied. This paragraph also contains Plaintiff's characterization of an agency memorandum, which speaks for itself and which requires no response.

165. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

166. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied. This paragraph also contains

Plaintiff's characterization of an agency memorandum, which speaks for itself and which requires no response.

167. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied. This paragraph also contains allegations about Plaintiff and their members for which the Associations lack sufficient information to form a belief as to the truth of those allegations. The Associations thus deny those allegations and deny that Plaintiff is entitled to any relief.

### **THIRD CLAIM**

#### **Defendants' Final 4(d) Rule for the Northern Long-eared Bat Violates the ESA and the APA**

168. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

169. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

170. This paragraph contains Plaintiff's characterization of and purported quotes from the ESA, which speaks for itself and which requires no response.

171. This paragraph contains Plaintiff's characterization of and purported quotes from the ESA, which speaks for itself and which requires no response.

172. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

173. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

174. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied. This paragraph also contains



allegations about Plaintiff and their members for which the Associations lack sufficient information to form a belief as to the truth of those allegations. The Associations thus deny those allegations and deny that Plaintiff is entitled to any relief.

#### **FOURTH CLAIM**

##### **Defendants' Final Biological Opinion for the 4(d) Rule Violates the ESA and APA**

175. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

176. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

177. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

178. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

179. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

180. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

181. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

182. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

183. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied. This paragraph also contains

allegations about Plaintiff and their members for which the Associations lack sufficient information to form a belief as to the truth of those allegations. The Associations thus deny those allegations and deny that Plaintiff is entitled to any relief.

#### **FIFTH CLAIM**

##### **Defendants' Finalization of the 4(d) Rule Violates the Service's ESA Section 7 Duty to Ensure against Jeopardy Because the Service Relied on an Unlawful and Inadequate Biological Opinion**

184. This paragraph contains Plaintiff's characterization of the Endangered Species Act and a regulation, which speak for themselves and which require no response. This paragraph also contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

185. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

186. This paragraph contains conclusions of law to which no response is required. To the extent a response is required, those allegations are denied. This paragraph also contains allegations about Plaintiff and their members for which the Associations lack sufficient information to form a belief as to the truth of those allegations. The Associations thus deny those allegations and deny that Plaintiff is entitled to any relief.

#### **PRAYER FOR RELIEF**

The Associations deny that Plaintiff is entitled to declaratory relief, injunctive relief, vacatur, remand, or attorneys' fees and costs. The Associations also deny that Plaintiff is entitled to any other relief.

#### **DEFENSES**

1. The Court lacks subject matter jurisdiction over all or some of Plaintiff's claims.

2. The Complaint fails to state a claim in whole or in part.
3. The Associations reserve the right to assert additional affirmative defenses during the course of litigation.

Respectfully submitted,

/s/John C. Martin

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*and Proposed Intervenor-Defendants American Exploration & Production Council, American Farm Bureau Federation, American Petroleum Institute, Chamber of Commerce of the United States of America, Independent Petroleum Association of America, Marcellus Shale Coalition, National Association of Home Builders of the United States, Ohio Oil and Gas Association, Pennsylvania Independent Oil & Gas Association, and West Virginia Oil and Natural Gas Association*

Dated: July 7, 2016

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## **CERTIFICATE OF SERVICE**

I hereby certify that on July 7, 2016, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants.

Respectfully submitted,

/s/John C. Martin

John C. Martin