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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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CENTER FOR BIOLOGICAL DIVERSITY,	)	
	)	
Plaintiff,	)	
v.	)	Case Number: 1:15-cv-00477-EGS
	)	Honorable E. G. Sullivan
DANIEL M. ASHE, Director, U.S. Fish	)	
and Wildlife Service,	)	
S.M.R. JEWELL, Secretary of the Interior,	)	
U.S. FISH AND WILDLIFE SERVICE	)	
	)	
Defendants,	)	

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**DEFENDANTS' ANSWER**

Defendants Daniel M. Ashe, Director of the United States Fish and Wildlife Service, S.M.R. Jewell, Secretary of the Interior, and the U.S. Fish and Wildlife Service (“Service”) hereby respond to the allegations in Plaintiff’s Complaint for Declaratory Judgment and Injunctive Relief (“Complaint”). The numbered paragraphs in this Answer correspond to the numbered paragraphs of the Complaint.

1. The allegations of the first sentence of this paragraph constitute Plaintiff’s characterization of its case, to which no response is required. To the extent a response is required, the allegations are denied. Defendants deny the allegations of the second sentence and admit that the range of the northern long-eared bat includes the Northeast, Appalachia, and the Midwest, and that the bats play a role in keeping insect populations in check. Defendants deny the allegations of the third sentence and admit that bat population has declined. Defendants deny the allegations of the fourth sentence and admit that the decline of the bat species is due in part to the spread of a fungal bat disease commonly referred to as White-Nose Syndrome. With respect to the allegations of the fifth sentence, Defendants admit that, in 2010, Plaintiff petitioned to list the northern long-eared bat under the Endangered Species Act and further admit that species was proposed to be listed as endangered in 2013. The remaining allegations of the fifth sentence purport to characterize provisions of the proposed listing, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

2. Defendants deny the allegations the first sentence of this paragraph and admit that in January 2015, the Service proposed to list the bat as a threatened species under the ESA. Federal Defendants deny the allegations of the second sentence and admit that the Service proposed exemptions to the listing decision’s restrictions, pursuant to Section 4(d) of the ESA. Defendants admit the allegations of the third sentence. The allegations of the fourth sentence

and the citations immediately following purport to characterize provisions of the interim rule, of the cited regulations, and of a Service press release, all of which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

3. Defendants deny the allegations of this paragraph.

4. The allegations of this paragraph constitute Plaintiff's characterization of its case, to which no response is required. To the extent a response is required, the allegations are denied.

5. The allegations of this paragraph constitute legal conclusions to which no response is required.

6. The allegations of this paragraph constitute legal conclusions to which no response is required.

7. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

8. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

9. The allegations of this paragraph constitute Plaintiff's characterization of its case, to which no response is required.

10. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations of the first sentence of this paragraph and on this basis deny them.

Defendants admit the allegations of the second sentence. Defendants deny the allegations of the third sentence and admit that Plaintiff and the Service entered into a settlement agreement, the terms of which speak for themselves and are the best evidence of their contents. The allegations of the fourth sentence purport to characterize provisions of the settlement agreement, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the

plain language are denied. Defendants admit the allegations of the fifth sentence. The allegations of the sixth sentence are vague and thus Defendants are unable to form a belief as to their truth, and on this basis denies them.

11. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations of the first and second sentences of this paragraph and on this basis deny them. Defendants deny the allegations of the third sentence.

12. Defendants deny the allegations of this paragraph.

13. Defendants deny the allegations of the first sentence of this paragraph. The allegations of the second sentence constitute legal conclusions, to which no response is required.

14. The allegations of this paragraph constitute legal conclusions to which no response is required.

15. The allegations of this paragraph constitute legal conclusions to which no response is required.

16. Defendants admit the allegation of the first sentence of this paragraph that Daniel M. Ashe is the Director of the U.S. Fish and Wildlife Service, a federal agency within the Department of the Interior. The remaining allegations of the first sentence constitute legal conclusions, to which no response is required. The allegations of the second sentence constitute legal conclusions, to which no response is required. Defendants deny the allegations of the third sentence and admit that acting director signed the challenged 4(d) rule. The allegations of the fourth sentence constitute Plaintiff's characterization of its case, to which no response is required.

17. Defendants admit the allegations of the first sentence of this paragraph. The allegations of the second sentence constitute Plaintiff's characterization of its case, to which no response is required.

18. Defendants admit the allegations of this paragraph.

19. The allegations of this paragraph purport to characterize provisions of the National Environmental Policy Act ("NEPA") and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

20. The allegations of this paragraph purport to characterize provisions of NEPA's implementing regulations and the cited judicial authorities, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

21. The allegations of this paragraph purport to characterize provisions of NEPA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

22. The allegations of this paragraph purport to characterize provisions of NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

23. The allegations of this paragraph purport to characterize provisions of NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

24. The allegations of this paragraph purport to characterize provisions of NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

25. The allegations of this paragraph purport to characterize provisions of NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

26. The allegations of this paragraph purport to characterize provisions of NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

27. The allegations of this paragraph purport to characterize provisions of NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

28. The allegations of this paragraph purport to characterize provisions of NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

29. The allegations of this paragraph purport to characterize provisions of NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

30. The allegations of this paragraph purport to characterize provisions of NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

31. The allegations of this paragraph purport to characterize provisions of NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

32. The allegations of this paragraph purport to characterize provisions of NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

33. Defendants deny the allegations the first sentence of this paragraph and admit that Congress has created statutory exemptions from NEPA's requirements. The allegations of the second sentence purport to characterize provisions of the Endangered Species Act, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

34. The allegations of this paragraph purport to characterize provisions of the Endangered Species Act ("ESA") and Interior's NEPA procedures, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

35. The allegations of this paragraph purport to characterize the cited judicial authority, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language are denied.

36. The allegations of this paragraph purport to characterize provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

37. The allegations of this paragraph purport to characterize provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

38. The allegations of this paragraph purport to characterize provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

39. The allegations of this paragraph purport to characterize provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

40. The allegations of this paragraph purport to characterize provisions of the ESA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

41. The allegations of this paragraph purport to characterize provisions of the ESA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

42. The allegations of this paragraph purport to characterize provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

43. The allegations of this paragraph purport to characterize provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

44. The allegations of this paragraph purport to characterize provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.



45. The allegations of this paragraph purport to characterize provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

46. The allegations of this paragraph purport to characterize provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

47. The allegations of this paragraph purport to characterize provisions of the ESA implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

48. The allegations of this paragraph purport to characterize provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

49. The allegations of this paragraph purport to characterize provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

#### **FACTUAL ALLEGATIONS**

50. Defendants admit the allegations of this paragraph.

51. Defendants admit the allegations of this paragraph.

52. Defendants admit the allegations of this paragraph.

53. Defendants admit the allegations of this paragraph.

54. Defendants admit the allegations of this paragraph.

55. Defendants deny the allegations of this paragraph and admit that the pup season occurs approximately between June 1 and July 31 each year.

56. Defendants admit the allegations of this paragraph.

57. The allegations of this paragraph purport to characterize provisions of unspecified documents, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

58. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

59. Defendants admit the allegations of this paragraph.

60. Defendants admit the allegations of this paragraph.

61. Defendants admit the allegations of this paragraph.

62. Federal Defendants deny the allegations contained in paragraph 62 and admit that Northern long-eared bats may not return to the same specific hibernaculum every year, although the species is documented to return to an established group of hibernacula over the long term.

63. Defendants deny the allegations of this paragraph.

64. Defendants deny the allegations of this paragraph and admit that the swarming season fills the time between summer and winter seasons and the purpose of swarming behavior may include the introduction of juveniles to potential hibernacula, copulation, and stopping over sites on migratory pathways between summer and winter regions.

65. Defendants admit the allegations of this paragraph.

66. Defendants admit the allegations of this paragraph.

67. Defendants deny the allegations of this paragraph and admit that White-Nose Syndrome is currently documented in 26 out of the 37 states in the northern long-eared bat's range.

68. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

69. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

70. Defendants admit the allegations of this paragraph.

71. Defendants admit the allegations of this paragraph.

72. Defendants admit the allegations of this paragraph.

73. Defendants admit that Plaintiff, in 2010, petitioned the Service under the ESA to protect the bats, and deny the remaining allegations of this paragraph, based on lack of knowledge and information sufficient to form a belief as to the truth of the allegations.

74. The allegations of this paragraph purport to characterize provisions of the September 9, 2011 settlement agreement which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

75. Defendants admit the allegations of this paragraph.

76. Federal Defendants deny the allegations of this paragraph and admit that they received comments on the proposed rule from the timber industry, energy industry, and many others, including Plaintiff.

77. Defendants admit the allegations of this paragraph.

78. The allegations of this paragraph purport to characterize provisions of the cited interim guidance which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

79. The allegations of this paragraph purport to characterize provisions of the cited interim guidance which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

80. Defendants admit the allegations of this paragraph.

81. Defendants admit the allegations of this paragraph.

82. Defendants admit the allegations of this paragraph.

83. The allegations of this paragraph purport to characterize provisions of the cited proposed 4(d) rule, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

84. The allegations of this paragraph purport to characterize provisions of the cited proposed 4(d) rule, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

85. The allegations of this paragraph purport to characterize provisions of the cited proposed 4(d) rule, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

86. The allegations of this paragraph purport to characterize provisions of the cited proposed 4(d) rule, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

87. The allegations of this paragraph purport to characterize provisions of the cited proposed 4(d) rule, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

88. The allegations of this paragraph purport to characterize provisions of the cited proposed 4(d) rule, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

89. The allegations of this paragraph purport to characterize provisions of the cited proposed 4(d) rule, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

90. The allegations of this paragraph purport to characterize provisions of the cited proposed 4(d) rule, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

91. Defendants admit the allegations of this paragraph.

92. Defendants admit the allegations of this paragraph and contend that such NEPA process or review is not required prior to publishing the Proposed Rule or Interim Final Rule. Further, Defendants aver that have initiated a NEPA process which will be completed prior to issuing the Final 4(d) Rule.

93. Defendants admit the allegations of this paragraph.

94. Defendants admit the allegations of this paragraph.

95. The allegations of this paragraph purport to characterize provisions of the cited proposed 4(d) rule, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

96. The allegations of this paragraph purport to characterize provisions of the cited proposed 4(d) rule, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

97. The allegations of this paragraph purport to characterize provisions of the cited proposed 4(d) rule, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

98. Defendants admit the allegations of this paragraph.

99. Defendants admit the allegations of this paragraph.

100. Defendants admit the allegations of this paragraph.

101. The allegations of this paragraph purport to characterize provisions of the cited proposed 4(d) rule, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

102. Defendants deny the allegations of this paragraph.

103. The allegations of this paragraph purport to characterize provisions of the proposed 4(d) rule and the Interim Rule, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

104. The allegations of this paragraph are speculative and thus Defendants are unable to form a belief as to their truth, and on this basis denies them.

#### **CLAIMS FOR RELIEF**

105. Defendants incorporate by reference all preceding paragraphs.

106. The allegations of this paragraph purport to characterize provisions of NEPA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language are denied.

107. The allegations of this paragraph constitute legal conclusions to which no response is required.

108. The allegations of this paragraph constitute legal conclusions to which no response is required.

109. Defendants deny the allegations of this paragraph.

110. Defendants deny the allegations of this paragraph.

111. Defendants deny the allegations of this paragraph.

112. Defendants deny the allegations of this paragraph.

113. The allegations of this paragraph constitute legal conclusions to which no response is required.

114. Defendants deny the allegations of this paragraph.

#### **PRAYER FOR RELIEF**

Defendants deny that Plaintiff is entitled to declaratory relief, injunctive relief, or attorneys' fees and costs. Defendants further deny that Plaintiff is entitled to any relief.

#### **GENERAL DENIAL**

Defendants deny any allegations in the Complaint, whether express or implied, that are not specifically admitted, denied, or qualified herein.

#### **DEFENSES**

1. This Court may lack subject matter jurisdiction over some or all of Plaintiff's claims.
2. The complaint fails in whole or in part to state a claim upon which relief may be granted.
3. Defendants reserve the right to assert such affirmative defenses that may appear applicable during the course of this litigation.

Wherefore, Defendants pray that this Court enter judgment in their favor

and against Plaintiff, dismiss the complaint against the Defendants, deny all of Plaintiff's claims for relief and costs, and grant such other relief as the Court may deem just and proper.

Respectfully submitted this 15th day of June, 2015,

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