



January 29, 2008

VIA FIRST CLASS MAIL AND FAX

Dirk Kempthorne, Secretary of the Interior
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Re: Open Letter for Emergency Action

Dear Secretary Kempthorne and Director Hall:

Heartwood and the Center for Biological Diversity (“Center”) formally request that the Secretary of Interior through the Fish and Wildlife Service (“FWS”) promptly stop all adverse actions on federal lands to endangered bats pursuant to your authorities under the Endangered Species Act (“ESA”) (16 U.S.C. § 1531 et seq.). Specifically, Heartwood and the Center ask that the agency close all hibernacula to recreational use where the following endangered bats may be found:

- gray bat (*Myotis grisescens*)
- Indiana bat (*Myotis sodalis*)
- Ozark big-eared bat (*Corynorhinus (Plecotus) townsendii ingens*)
- Virginia big-eared bat (*Corynorhinus (Plecotus) townsendii virginianus*).

Heartwood and the Center also ask the FWS to withdraw all Incidental Take Statements to the Forest Service to prevent further mortality in light of the deaths associated with the White Nose Syndrome (“WNS”) on the endangered bats. As you are likely aware, at least 8,000 bats were

killed last year in New York state hibernacula. This year, WNS has been found in Vermont hibernaculum as well. This is an unprecedented threat and constitutes a threat to the recovery of the species. With these mysterious deaths now recorded by scientists over two consecutive winters, and with limited if not minimal surveys having been conducted for the disease, it is confounding why this issue was not represented in the 2007 draft recovery plan or through direct analysis and recuperative action by the agency.

The FWS should immediately implement the following actions:

1. Hibernacula Closure:

Until the biologists have a grasp of what is killing the bats, caves and mines containing large populations of hibernating bats of any species, including but not necessarily limited to the Indiana, gray, Virginian big-eared, and little brown bats, should be closed to human traffic to help prevent the spread of WNS.

2. Education and Research:

The FWS needs to allocate funds to explain to the general public why access to caves has been restricted. This threat provides an opportunity to the state and federal agencies in charge of bat management to communicate the importance of a healthy ecosystem and how bats are an integral part of a healthy ecosystem. In addition, funds and personnel must be allocated to research of the threat. Such research must address the causes of WNS, containment methods, and solutions.

3. Incidental Take Statements:

Until the extent of the deaths is known, all known agency actions that are “likely to adversely affect” the Indiana bat must cease and desist. All incidental take statements issued to any government agency (excluding actions for the national defense) should be suspended until such time as formal consultation is reinitiated and completed in light of the WNS.

Section 2(c) of the ESA establishes that it is “...the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.” 16 U.S.C. § 1531(c)(1). The ESA defines “conservation” to mean “...the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.” 16 U.S.C. § 1532(3). Similarly, Section 7(a)(1) of the ESA directs that the Secretary of Commerce review “...other programs administered by him and utilize such programs in furtherance of the purposes of the Act.” 16 U.S.C. § 1536(a)(1). Additionally, Section 4(f) specifically requires that the FWS both “...develop and implement plans (hereinafter...referred to as ‘recovery plans’) for the conservation and survival of endangered species and threatened species...” 16 U.S.C. § 1533(f)

(emphasis added). Drafting a recovery plan is not sufficient to comply with this statutory mandate. Consistent with the intent that recovery plans actually be implemented, Congress required that recovery plans "...incorporate... (i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species." 16 U.S.C. § 1533(f)(1)(B)(I).

The Indiana bat is one of the most endangered terrestrial mammals in the world. It was first listed under the Endangered Species Preservation Act of October 15, 1966. 80 Stat. 926; 16 U.S.C. 668aa(c). At least 700 of these endangered and legally protected species have died in New York in the past 18 months. It is unknown if the WNS is the cause of the death or a symptom of what causes the death. Regardless of why these bats are dying, the agency must prepare for the worst. The Missouri and Kentucky populations of bats have been decimated; Vermont and New York hibernacula counts were two of the reasons why the so-called "northern population" of the species was considered on the increase. These are dire circumstances. The agency must act with all due haste.

Respectfully submitted,

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on behalf of the following

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