

# Endangered Species Act/Tricolored Bat: U.S. Fish & Wildlife Services Proposes Endangered Listing



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On Wednesday, September 14, 2022, the U.S. Fish & Wildlife Service (the Service) published a rule proposing to list the tricolored bat (*Perimyotis subflavus*) as an endangered species under the Endangered Species Act (ESA, or the Act).

The tricolored bat occurs in all or portions of Arkansas and 38 other States. *See* 87 Fed. Reg. 56,381 (Sept. 14, 2022). The Service determined that “designating critical habitat” for the bat “is not prudent.” *Id.*

The Service is accepting public comments on the proposal on or before November 14, 2022. The Service will also hold both a public informational meeting and public hearing on October 12, 2022.

## Background

Under the ESA, the Service may determine that a species is endangered or threatened species because of any of five factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. 16 U.S.C. § 1533(a). The ESA defines an “endangered species” as a species that is in danger of extinction throughout all or a significant portion of its range. In turn a species is “threatened” if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. 16 U.S.C. § 1532(6) and (20). A final determination to list the species as endangered extends all of the Act’s protections to the species.

## Previous Action

In June 2016, the Centers for Biological Diversity and others petitioned the Service “requesting that the tricolored bat be listed as endangered or threatened and that critical habitat be designated for the species under the Act.” 87 Fed. Reg. at 56,382. Nearly 18 months later, the Service published a finding that the petition “presented substantial scientific or commercial information indicating the petitioned action may be warranted.” *Id.*; *see also*, 82 Fed. Reg. 60,362 (Dec. 20, 2017).

## Proposed Listing Decision

The Service’s Wednesday proposal concludes that the tricolored bat is in danger of extinction throughout all of its range. 87 Fed. Reg. 56,388. This range includes all of Arkansas. The Service outlined a number of stressors affecting the tricolored bat, including wind-energy-related mortality, habitat loss and disturbance, and climate change. *Id.* at 56,385–86. But the primary factor influencing the species viability

is white-nosed syndrome (WNS), “a disease of bats caused by a fungal pathogen.” *Id.* As detailed in the Service’s scientific references and analysis, the fungal pathogen:

invades the skin of bats, initiating a cascade of physiological and behavioral processes that often lead to mortality. Infection leads to increases in the frequency and duration of arousals during hibernation and raises energetic costs during torpor bouts, both of which cause premature depletion of critical fat reserves needed to survive winter.

*Id.* (internal citations omitted). WNS has been “the foremost stressor on tricolored bats” for over a decade. *Id.*

Section 4(a)(3) of the ESA typically requires the Secretary to designate critical habitat concurrent with the listing, to the maximum extent prudent and determinable. 16 U.S.C. § 1533(a)(3). Here, the Service proposal concludes that designation of critical habitat is not prudent. 87 Fed. Reg. at 56,391. The Service relied, in part, on a prior determination that designating critical habitat for the northern long-eared bat was not prudent. The northern long-eared bat faces similar WNS stressors and threats, and similar overlapping range. *Id.*

#### **Public Comments**

Final action under the ESA must be based on the “best scientific and commercial data available.” The Service is therefore requesting comments and information from other governmental agencies, North American Tribes, the scientific community, industry, and interested parties concerning species’ biology, range and population trend, and other related items. *Id.* at 56,382.

A copy of the Service’s proposed rule can be found [HERE](#).