

New Rule Published by USEPA and USACE on May 27 Regarding Revised Definition of “Waters of the United States”

Bob Kerr, President of Kerr Environmental Services Corp., testified before a U.S. Congressional Committee on behalf of the National Association of Home Builders on June 4, 2015, regarding the final rule redefining the scope of waters protected under the Clean Water Act by the Environmental Protection Agency and U.S. Army Corps of Engineers. Mr. Kerr testified before the House Science, Space and Technology Committee stating that the rule goes beyond the need to clarify Supreme Court precedent, appears to now regulate many ditches previously not regulated, and it does not acknowledge the states’ role in regulating their own waters. The new rule is scheduled to go in effect around July 27. For more information on the NAHB’s comments and Mr. Kerr’s testimony, please see the link below and/or call (757) 963-2008.

<http://nahbnow.com/2015/06/epa-water-rule-fails-to-follow-intent-of-congress-and-supreme-court-precedent/>

Northern Long-Eared Bat becomes a Federally Listed Threatened Species

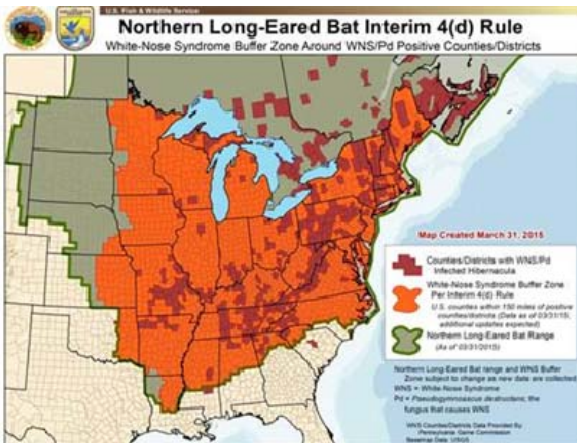
The Northern Long-Eared Bat became an official Federally Listed Threatened Species on May 4, 2015. In the same Final Rule listing the species, the US Fish and Wildlife Service published an Interim 4(d) Rule providing guidance on limited types of allowances for certain land-use and forestry activities.

Kerr Environmental Services was one of the first to secure a “No Adverse Effect” decision from the USFWS and secure the related USACE wetland permit for land development dealing with the species since it was listed as Federally Threatened. The process for review was very arduous, complex, and costly so clients should be aware of this issue and build additional contingencies into contracts and schedules.



The USFWS is soliciting comments on the 4(d) Rule until July 1. Currently there are no allowances for “incidental takes” of the species for any form of land development whether public, private or non-profit. Current Incidental Take allowances are limited to the following types of circumstances: 1) removal of hazardous trees (life and property risk), 2) minimal tree removal which is defined as less than or equal to 1.0 acre of forested habitat, 3) maintenance or expansion of “corridor or right-of-way up to 100’ from the edge of an existing cleared corridor or right-of-way” carried out with the following restrictions (noted below), and 4) forest management with the following restrictions (noted below). The restrictions for certain activities require no work within 0.25 miles of a hibernacula, avoidance of removing roost trees from June 1 – July 31, and avoiding clearcuts within 0.25

miles of a known occupied roost tree between June 1 – July 31.



While there is an exemption for certain activities in corridors and ROWs, Kerr Environmental Services was recently advised by the USFWS that widening a roadway ROW was not consistent with the 4(d) allowance for widening ROWs, so there appears to be limitations on which ROWs can utilize the 4(d) allowance.

The following is a link to the Federal Register listing of the species <http://www.fws.gov/midwest/angered/mammals/nlba/>. Please contact us at (757) 963-2008 for more information before relying on this information as the Rule has many nuances that are still being clarified.

Kerr Environmental Services Corp. provides natural resources consulting, water resources engineering, stream and wetland restoration, shoreline stabilization, and environmental due diligence services.

Questions or comments? Email us at bkerr@kerrenv.com or call (757) 963-2008.

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