



KENTUCKY RESOURCES COUNCIL

Post Office Box 1070
Frankfort, Kentucky 40602
502-875-2428
ashley@kyrc.org
www.kyrc.org

Ashley Wilmes
Director

Board of Directors
Joe Childers
Chair

Betsy Rudd Bennett
Vice-Chair

Tim Heine
Treasurer

Alison Brotzge-Elder

Roy Crawford

Sarah Lynn
Cunningham

Abigail Fletcher

Arnita Gadson

Jim Hays

Lauren Heberle

Jeanne Marie
Hibberd

Adam Johnson

Jane Richards

Hannah Weinstein

Board Emeritus
Roger Shott

Of Counsel
Tom FitzGerald

May 4, 2023

Rhea Whalen
Area Supervisor
Land Between the Lakes National Recreation Area
100 Van Morgan Dr
Golden Pond, KY 42211

Re: North Tornado Cleanup and South Tornado Cleanup

Dear Supervisor Whalen,

The Center for Biological Diversity, Tennessee Heartwood, and the Kentucky Resources Council are writing to express the serious concerns we have about the United States Forest Service's salvage logging operations as part of the North Tornado Cleanup and South Tornado Cleanup projects in the Land Between the Lakes National Recreation Area. The Forest Service has created a project area that is almost triple that of the acreage identified as having enough significant damage to justify tree removal. The agency is also effectively high-grading large standing trees beyond the immediate tornado path.

As explained below, the Forest Service has misused emergency provisions to justify a lack of rigorous analysis, planning, and implementation standards, as well as transparency and public input that are the heart of the National Environmental Policy Act (NEPA).

The agency has also suspended provisions of its Land Resource Management Plan (LRMP) for the protection and intended management of the Core Areas, which were intended to serve as an ecological baseline for the study of natural processes. This is a violation of NEPA standards for Categorical Exclusions.

It has also suspended provisions of the LRMP that call for the retention of snag and denning trees, which are long recognized by the agency and the scientific community as key habitat for many species, including several federally listed species under spurious grounds.

Further, the agency's Biological Assessment is insufficient for a project of this size and trivializes its mission to protect federally listed and other species of

conservation concern. The agency even acknowledges that its actions will probably adversely affect some of these species.

Logging in the tornado zones appears to be part of a larger plan to convert 8600 acres of healthy, mature forest in the Recreation Area to grasslands, which has been widely opposed by the public, scientists, foresters, communities, and national political leaders.

For the reasons set forth below, the Forest Service’s approval of the North Tornado Cleanup and South Tornado Cleanup projects violates the Healthy Forests Restoration Act, the National Environmental Policy Act, and Endangered Species Act. We urge the Forest Service to suspend this project, reinitiate consultation under the Endangered Species Act, and withdraw the categorical exclusions that were improperly used for these projects. The Forest Service needs to restart the NEPA process and produce an adequate mitigation plan for these projects. We would also like an opportunity to discuss these projects with you and your staff, in hopes that we can come to an expeditious resolution of these concerns.

I. Background

In December 2021, two tornadoes affected the Land Between the Lakes National Recreation Area. One occurred in Lyon County, Kentucky to the north and the other occurred in Stewart County, Tennessee to the south. According to the Forest Service, each tornado affected approximately 3,000 acres of the National Forest System.¹ In April 2022, the Forest Service issued two decision memos identifying two tornado cleanup projects. These timber salvage projects are referred to as the North Tornado Cleanup and South Tornado Cleanup projects. In both decision memos, the Forest Service states:

The timber salvage project is needed to remove damaged trees within the affected stands. This will include fallen trees and standing damaged trees. The primary purpose for removing damaged trees is for public safety. Secondary benefits include stand resilience against insects and disease and opening the forest canopy to let in sunlight, thus encouraging natural regeneration of the stands. A tertiary benefit of the project will also provide marketable timber for the local economy.

Both decision memos state that the activities would include commercial timber salvage of up to 3,000 acres within the project area and that the Forest Service “anticipates” only harvesting damaged stands which have been identified within the affected area.

The Forest Service then determined that both projects are excluded from documentation in an EA or EIS based on “Insect and Disease Infestation” under Section 603 of the Healthy Forest Restoration Act (HFRA) (16 U.S.C. § 6591b).

¹ Coincidentally, 3,000 acres is the size limit for certain qualifying salvage projects to be exempt from the EA and EIS documentation requirements under the National Environmental Policy Act. *See* Section 603(1), HFRA. For the reasons discussed below, we do not believe these projects were properly categorically excluded under NEPA.

II. The Forest Service Improperly Relied on the Healthy Forests Restoration Act When It Categorically Excluded These Projects from Environmental Review Under NEPA.

A. It Was Arbitrary and Capricious to Designate the Project Area Under Section 602 of HFRA.

Section 603 of the HFRA authorizes the Forest Service to categorically exclude certain collaborative restoration projects from EA or EIS documentation under NEPA.² However, for a categorical exclusion to be lawfully applied, the HFRA requires the project to be conducted “in accordance with section 602(d).”³ Section 602(d) states that the “Secretary may carry our priority projects on Federal land *in the areas designated under subsection b* – (A) to reduce the risk or extent of, or increase the resilience to, insect or disease infestation; or (B) to reduce hazardous fuels.”⁴

Section 602(b) sets forth the process of designating treatment areas. Under 602(b)(1), “Not later than 60 days after the date of enactment of the Agricultural Act of 2014, the Secretary shall, if requested by the Governor of the State, designate as part of an insect and disease treatment program 1 or more landscape-scale areas, such as sub-watersheds (sixth-level hydrologic units according to the System of Hydrologic Unit Codes of the United States Geological Survey), in at least 1 national forest in each State that is experiencing an insect or disease epidemic.” Additionally, under 602(b)(2), “After the end of the 60-day period described in paragraph (1), the Secretary may designate additional landscape-scale areas under this section as needed to address insect or disease threats.”

It does not appear that the Governors of Kentucky or Tennessee requested any part of the LBL Recreation Area to be designated within 60 days of the enactment of HFRA,⁵ and the most recent map we could find online does not reflect any subsequent designations by the Forest Service.⁶ Nevertheless, on March 16, 2022, the Chief of the Forest Service designated an additional 86,167 acres on the LBL National Recreation Area as a treatment area based on the risk of insect or disease infestation.⁷ The letter states that this designation is in response to a February 9, 2022 request from Region 8, although we could not find any record of this correspondence on the Forest Service’s website for this project.⁸

² Section 603(a)(1), HFRA (16 U.S.C. § 6591b) (“Administrative Review”).

³ Section 603(a), HFRA.

⁴ Section 602(d), HFRA (16 U.S.C. § 6591a) (emphasis added).

⁵ See USDA, Forest Service, Insect and Disease Area Designations, at <https://www.fs.usda.gov/managing-land/farm-bill/area-designations>.

⁶ See National Forest System Lands Designated Under Section 602 of the Healthy Forest Restoration Act, at https://www.fs.usda.gov/farmbill/documents/additional/NFS_Designations_HFRA_Map_20181009.pdf.

⁷ See <https://landbetweenthe lakes.us/wp-content/uploads/2023/04/2022-Designation-Letter.pdf>

⁸ The letter further states that a map was created and will be uploaded on the Forest Service’s website, but the link identified in the letter is broken.

The Chief concluded in that letter that the areas meet one or more of the following criteria under Section 602(c):

- (1) The area is experiencing declining forest health, based on annual forest health surveys conducted by the Secretary;
- (2) The area is at risk of experiencing substantially increased tree mortality over the next 15 years due to insect or disease infestation, based on the most recent National Insect and Disease Risk Map; or
- (3) The area is one in which the risk of hazard trees poses an imminent risk to public infrastructure, health or safety.

These conclusions are not based in sufficient fact. First, there is no indication that the forest is experiencing declining health based on annual forest health surveys. There is no mention of these circumstances in the designation letter or either of the decision memos.

Second, not only could we not find any insect and disease reports on the website for this project but the Forest Service's National Insect and Disease Risk and Hazard Mapping shows "**little or no risk**" for the LBL in the 2013-2027 National Insect and Disease Composite Risk Map.⁹ Third, as we explain in greater detail below, the geographic scope of the operations far exceeds the area impacted by the tornadoes and the Forest Service has not explained why the removal of large, live, and mature trees is necessary to protect the public from imminent risk *outside the area of hazard trees*. The Forest Service has not provided any data on snag fall rates for the species of trees affected and there is no information indicating how likely it is that more damaged trees will continue to fall after the tornadoes came through the area in 2021.

Therefore, we do not believe the Forest Service has provided adequate support for its March 18, 2022 determination, and it was improper for the Forest Service to invoke Section 603 of HFRA to categorically exclude these two projects from the documentation requirements under NEPA. We therefore ask that the Forest Service suspend operations until it complies with NEPA.

B. The Salvage Projects are Inconsistent with the Land and Resource Management Plan.

Section 603(d) further restricts the types of activities that may be categorically excluded from NEPA. Section 603(d) provides that the administrative review provisions do not apply to:

- (1) a component of the National Wilderness Preservation System;
- (2) any Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;
- (3) a congressionally designated wilderness study; or
- (4) *an area in which activities under subsection (a) would be inconsistent with the applicable land and resource management plan.*

⁹ USDA, Forest Service, Mapping & Reporting, National Insect & Disease Risk and Hazard Mapping, at <https://www.fs.usda.gov/foresthealth/applied-sciences/mapping-reporting/national-risk-maps.shtml>.

It appears that the salvage projects include the harvesting of large, mature trees outside the affected path of the two tornadoes and inside the “Core Areas” of the Recreation Area. Oak, hickory, and poplar trees in these areas are 140 years old, and stumps have been measured at 30 inches in diameter.

The Mammoth Creek Core Area is part of the north path salvage project that is being affected by the harvesting of large, mature trees outside the tornado path. Crab Creek is also part of a Core Area that is being affected by the north path salvage project. In addition, the Moss Creek Wetlands is in a Core Area that is being affected by the harvest of timber outside the north tornado path.

The Land and Resource Management Plan (LRMP) for the LBL Recreation Area describes the emphasis and desired conditions for the “Core Areas.”¹⁰ The plan states that these core areas in most cases, “have little to no management disturbance.”¹¹ They provide “remote, semi-primitive recreational opportunities that have minimal impacts to ecological systems.”¹² “They serve as large, medium, and small patches of future old growth and they include two State Natural Areas (SNA) including a native shortleaf pine restoration area.”¹³ The plan goes on to say that these areas provide “good to optimal habitat for mid-to late-seral eastern deciduous hardwood forest associates.”¹⁴ Further, “management activities are limited to include only those needed to deal with forest health emergencies, wildfire, restoration and maintenance of native communities and recovery of threatened and endangered (T&E) species.”¹⁵

The desired condition provides:

Core areas appear as having a naturally evolving structural condition on the landscape due to low-intensity management within forested areas. Forests are primarily older with areas of continuous canopy and occasional gaps as a result of storms, insect or disease outbreak, fire, and reverting fields. A mix of species, including more shade-tolerant species than general forest, occurs in forest cover types across all site types. Forest cover types vary in canopy and understory and include many canopy gaps, snags, downed wood, and den trees.¹⁶

As you can see from the plain language of the Plan, these core areas contain future old growth, provide habitat for mid to late-stage flora and fauna, and display signs of natural disturbance. Vegetation management is restricted within the Core Areas of the LBL Recreation Area to allow for the effects of these natural processes to play out over time.

Despite these restrictions, it appears the Forest Service is authorizing the cutting of numerous

¹⁰ Plan at 30-31; <https://landbetweenthe lakes.us/wp-content/uploads/2014/05/LBLAreaPlan.pdf>

¹¹ *Id.* at 31.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

large, mature trees outside the paths and affected areas of these tornadoes. In fact, despite the Forest Service identifying 2,188 acres of total estimated acreage for all three damage categories within the sale boundaries, 6,000 acres have been proposed – nearly three times as many. *See* Biological Assessment (BA) at 3.

While the Plan states that “Vegetation management may be necessary to prevent a widespread outbreak of insects or disease,”¹⁷ the Forest Service has not demonstrated that these cuts are limited to down and damaged trees or that there is a threat of a widespread outbreak of insects or disease outside the path of these tornadoes. At most, the Biological Assessment for this project generally states that since the tornado events, “heavy ice and rain saturated soils continue to weaken damaged standing trees in the project area. As such more trees are on the ground than from the initial tornado events.” BA at 3. There is no indication just how many more acres of trees are actually down or damaged. The Forest Service’s decision to instead clearcut trees well beyond the path of the tornadoes is arbitrary and capricious and if anything, the desired condition of the core areas favors a hands-off approach to promote primarily older forests with areas of continuous canopy and occasional gaps as a result of storms, insect or disease outbreak.¹⁸

Further, to the extent the Forest Service is asserting that the project is needed to reduce the risk of wildfire,¹⁹ it appears the LBL falls in the bottom 75% in the fire shed exposure ranking.²⁰ We are also not aware of the LBL Recreation Area falling within any wildlife crisis landscapes identified by the Forest Service that the agency would point to in support of the expansive salvage operations being carried out here.²¹

It is also our understanding that the Forest Service is attempting to convert some of these areas to grasslands, despite the Plan identifying these areas as habitat for mid-to late-seral hardwood forests. In two recent meetings – the March 11, 2023, informal meeting and the advisory board meeting on April 10, 2023 – Ranger John Westbrook has stated the U.S. Forest Service’s intention to turn treated areas of the Tornado Salvage into grasslands, including portions of core areas near the tornado project sites. This is part of a controversial, unscientific, and widely opposed plan to convert 8600 acres of the Land Between the Lakes to grasslands. This is a major project that cannot retroactively fall under the CE of the tornado projects.

¹⁷ *Id.*

¹⁸ *See* Plan at 30-31.

¹⁹ *See* USDA, Forest Service, Land Between the Lakes National Recreation Area, Post-Tornado Recovery and Timber Salvage Frequently Asked Questions (FAQ) (June 2022) at https://landbetweenthe lakes.us/wp-content/uploads/2022/04/LBL_Tornado_Timber_Salvage_FAQ_June_2022.pdf.

²⁰ *See* USDA, Forest Service, Firesheds and Fireshed Registry, at <https://www.fs.usda.gov/research/rmrs/projects/firesheds>.

²¹ *See* USDA, Forest Service, Confronting the Wildfire Crisis, at https://www.fs.usda.gov/sites/default/files/fs_media/fs_document/Confronting-the-Wildfire-Crisis.pdf; https://www.fs.usda.gov/sites/default/files/fs_media/fs_document/WCS-Second-Landscapes.pdf

The cutting, burning, and conversion of older hardwood forests to grasslands is inconsistent with the desired condition set forth in the plan, which describes mid-to late age forests that have species that are more shade tolerant than general forests. These timber harvests should not be categorically excluded from review under NEPA, and we again ask that the Forest Service suspend operations until it complies with NEPA.

III. The Salvage Projects are Inappropriate for a Categorical Exclusion under the Forest Service's NEPA Regulations and Directives.

Notwithstanding the fact that HFRA does not permit the Forest Service to categorically exclude these projects under NEPA for the reasons explained above, the Forest Service's regulations and directives further preclude the use of a categorical exclusion here.

Under the Forest Service's NEPA regulations for categorical exclusions, a proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action and if the action falls within a specified category of actions.²² When determining whether extraordinary conditions exist, the Forest Service is to examine the "resource conditions" of the site.²³ These resource conditions include, among others, "federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species" and "national recreation areas."²⁴ Although the mere presence of one or more of these resource conditions does not preclude the use of a CE, the Forest Service is to examine the degree of the potential effect of the proposed action on these resource conditions.²⁵ If such effects are uncertain, the regulations and directives direct the Forest Service to prepare an EA.²⁶

The Forest Service erred when it determined that based on the resource conditions, a CE was appropriate. The decision memos reference a biological assessment (BA) to support a finding that the project would not have significant negative effects to the species found within the project area. But for the reasons explained below, not only is the analysis in the BA wholly inadequate to address the projects' impacts to the species, but the BA also fails to identify several aquatic species known to occur within the project area, much less discuss the projects' potential impacts to these species. Consequently, there was absolutely no consideration of the project's impacts to these species when deciding whether to categorically exclude these projects.

Moreover, the decision memo glosses over the fact that the project areas are wholly within a National Recreation Area and makes no mention of the LRMP that restricts vegetation management, particularly within the core areas that these projects now appear to be operating within. As the regulations and directives make clear, the Forest Service is to exercise caution and where the impacts may be uncertain, a CE is inappropriate. Accordingly, the Forest Service must suspend these projects until it complies with NEPA.

²² 36 C.F.R. § 220.6(a).

²³ 36 C.F.R. § 220.6(b).

²⁴ 36 C.F.R. § 220.6(b)(1)(i), (iv).

²⁵ 36 C.F.R. § 220.6(b)(2).

²⁶ 36 C.F.R. § 220.6(c); FSH 1909.15, 31.2, 31.3.

IV. The Forest Service Must Reinitiate Consultation with the U.S. Fish & Wildlife Service under the Endangered Species Act.

The BA for this project is wholly deficient because it fails to adequately examine the projects' impacts to federally protected bats, muskellunge, and turtles. The agencies must reinitiate consultation under the Endangered Species Act.

Northern Long-eared Bat

Under 50 C.F.R. § 402.16(a), re-initiation of consultation is required and must be requested by the Forest Service or by the U.S. Fish & Wildlife Service (FWS), where discretionary federal involvement or control over the action has been retained or is authorized by law, and:

- 1) If the amount or extent of taking specified in the incidental take statement is exceeded;
- 2) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
- 3) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or
- 4) If a new species is listed or critical habitat designated that may be affected by the identified action.

More than one of these factors is present here. First, the FWS has reclassified the Northern-long eared bat from threatened to endangered and has withdrawn the 4(d) rule that the Forest Service relied on in approving these projects.²⁷ The old 4(d) rule only prohibited take that resulted from tree removal activities, under specific circumstances, or resulted from activities that caused take within hibernacula.²⁸ This is no longer the case and activities that the FWS may have previously allowed under the old 4(d) rule for this project may no longer be permitted without site-specific incidental take authorization. Thus, the Fish and Wildlife Service's decision to withdraw this rule, constitutes new information and reveals effects that may affect the NLEB in a manner or to an extent not previously considered. *See* 50 CFR § 402.16(a)(2).

Second, it is our understanding that the timber harvests have extended well beyond down and damaged trees within the areas affected by the two tornadoes. These cuts and the potential impacts to roosting and foraging NLEB were not considered in the BA. It appears the identified action has been subsequently modified in a manner that will cause effects to the NLEB that was not considered in the previous consultation and therefore the agencies must reinitiate consultation under 50 C.F.R. § 402.16 (a)(3).

Reinitiation of consultation is critically important here because the Forest Service recognizes that

²⁷ *See* Department of the Interior, Fish and Wildlife Service, Endangered and Threatened Wildlife and Plants, Endangered Species Status for Northern Long-Eared Bat, 87 Fed. Reg. 73488-73504 (Nov. 30, 2022).

²⁸ U.S. Fish & Wildlife Service, Northern Long-Eared Bat-Final 4(d) Rule, Questions and Answers (Jan. 2016).

potential roosting habitat is present in both project areas and removal of standing suitable roosting trees is likely to adversely affect the NLEB. A “likely to adversely affect” determination is the trigger for formal consultation under the Endangered Species Act²⁹ and it appears that had there not been a 4(d) rule in place at the time for the NLEB, the agencies would have entered into formal consultation for these projects. The agencies must reinitiate consultation for the NLEB now and among other things, assess potential hibernaculum and swarming habitat throughout the 6,000-acre project area and any other areas that are being logged under this CE.

The Tri-Colored Bat and Little Brown Bat

The tri-colored bat has been proposed for listing under the ESA³⁰ and the little brown bat is under review by the FWS.³¹ Both species are known to occur on Land Between the Lakes and potential habitat occurs within the two project areas. BA at 8. The Forest Service must consult/conference with FWS regarding the impacts to these species.

Pink Mucket Mussel, Rabbitsfoot Mussel, and Alligator Snapping Turtle

Perhaps the most glaring omission is the BA’s failure to include several aquatic species. The federally endangered pink mucket mussel (*Lampsilis abrupta*), occurs and/or has known habitat in the north path, the federally threatened rabbitsfoot mussel (*Theiladerma cylindrica cylindrica*) occurs and/or has known habitat in the south path, and the alligator snapping turtle (*Macrochelys teminickii*) occurs in both the north and south paths.³² It was proposed as federally threatened on

²⁹ See 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14. In addition, the U.S. Fish & Wildlife Service remarked in its concurrence letter that based on a March 25, 2022, correspondence from the Forest Service, the proposed action will not exceed 2,200 acres of forest vegetation management associated with the incidental take of the Indiana bat per the Wildland Fire and Forest Vegetation Management Program Biological Opinion. However, the “overall the timber salvage operations are proposed on upwards of a combined 6,000 acres within the two project areas.” BA at 3. It is not clear from that concurrence letter whether the Forest Service is representing that no more than 2,200 acres will be harvested annually or that is the total acreage that will be harvested over the life of the projects. It is also not clear if the Fish & Wildlife Service is maintaining that no more than 2,200 acres can be logged per year or that no more than 2,200 acres can be harvested throughout the effective period of the Biological Opinion for the Forest Service to receive incidental take protections for the NLEB. If it is the former, and the Forest Service is actually logging more than 2,200 acres per year or it is the latter and the Forest Service is logging 6,000 acres, neither of these activities are authorized under the Biological Opinion and the agencies must reinitiate consultation immediately.

³⁰ Department of the Interior, Fish and Wildlife Service, Endangered and Threatened Wildlife and Plants, Endangered Species Status for Tricolored Bat, Proposed Rule, 87 Fed. Reg. 56381-56393 (Sep. 14, 2022).

³¹ Department of the Interior, Fish and Wildlife Service, Environmental Conservation Online System (April 14, 2023).

³² Department of the Interior, Fish and Wildlife Service, Information for Planning and Consultation, Land Between the Lakes North Tornado and South Tornado Project Areas, mapped March 23, 2023.

November 9, 2021.³³ Timber harvests can have significant impacts to aquatic resources as a result of erosion and sedimentation. In addition, the south tornado project area includes steeper terrain with soils that are listed in the 1953 USGS Soils Survey as fragile, further compounding the impact of the timber harvests and jeopardizing federally listed species.

The north path project area affects stream zones and wetlands and marsh areas that are also in Core Areas. Streams and waterways affected by the north project include Moss Creek, Willow Creek, Demumbers Creek, Crab Creek, and Mammoth Creek. The south path project area includes Panther Creek, Panther Wetlands, Stilley Hollow, Brandon Springs Branch, and Bards Creek. Creeks in both the north and south path project areas are known habitat for federally listed aquatic species. In addition, the state-listed fen orchid (*Liparis loeselii*) also occurs in the south tornado project area near Panther Creek.

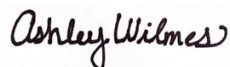
The BA fails to even mention the creeks, streams, tributaries, or other waters within the project areas, or the potential impacts these operations could have on federally listed species, particularly after heavy rainfall events or storms. The BA also allows pulling fallen trees out of streams, which will result in further impacts to endangered aquatic species. The use of heavy equipment in stream zones also violates buffer standards and best management practices.

The Forest Service must therefore reinitiate consultation with the Fish & Wildlife Service regarding the impacts to these species. *See* 50 C.F.R. § 402.16 (a)(2),(3).

V. Conclusion

We again urge the Forest Service to suspend this project, reinitiate consultation under the Endangered Species Act, and withdraw the categorical exclusion that was improperly used for this project. The Forest Service needs to restart the NEPA process and produce an adequate mitigation plan for these projects. We look forward to discussing these concerns with the Forest Service as soon as possible. Please contact me to schedule a meeting with my clients, and do not hesitate to call me if you have any questions or concerns.

Sincerely,



Ashley Wilmes, Esq.
Executive Director
Kentucky Resources Council
ashley@kyrc.org
(859)312-4162

³³ Department of the Interior, Fish and Wildlife Service, Endangered and Threatened Wildlife and Plants; Threatened Species Status with Section 4(d) Rule for Alligator Snapping Turtle, Proposed Rule, 86 Fed. Reg. 62434-62463 (Nov. 9, 2021).