Final 4(d) Rule for the Northern Long-Eared Bat

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Final 4(d) Rule Information Session Followed by Questions and Answers

• Purpose is to provide information
• Opportunity to ask questions after the presentation
• This is a final rule so we will not have a public comment period
Road to Listing and 4(d) Rule

January 2010: FWS petitioned to list northern long-eared bats

October 2013: proposed rule to list northern long-eared bat as endangered

January 2015: proposed rule to establish a 4(d) rule

April 2, 2015: final rule listing northern long-eared bat as threatened with an interim 4(d) rule

January 2016: final 4(d) rule
What is a 4(d) Rule?

• Section 4(d) of Endangered Species Act
  o Allows FWS to define protections for species listed as “threatened”
  o Allows FWS to focus on those protections necessary or advisable to conserve the species
  o Cannot be applied to species listed as endangered as specific protections for endangered species are defined in the ESA
Northern Long-Eared Bat

• One of the bat species most affected by white-nose syndrome (WNS)
• Hibernates during winter in caves and mines
• Forest-dwelling during spring staging, summer breeding and fall swarming

Photo courtesy of Shelly Colatskie; Missouri Department of Conservation
Northern Long-Eared Bat Range

Map Created March 31, 2015

Northern Long-Eared Bat range subject to change as new data are collected.

Basemap Data: USGS
Northern Long-Eared Bat
Final 4(d) Rule

• WNS the major threat
• Focused protections instead of broad protections
• Vulnerable periods in the bat’s life history within the WNS-affected area:
  – Females with young, where known
  – Spring staging and fall swarming
  – Hibernation

Photo courtesy of Steve Taylor; University of Illinois
Definitions

• “Take” - defined by the ESA as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.”

• “Purposeful take” - when the reason for the activity or action is to conduct some form of take.

• “Incidental take” - take that is "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity."
Summary of Final 4(d) Rule

Entire Range of Bat
All “purposeful take” is prohibited, unless authorized by a permit, except under these circumstances:

• Defense of human life (e.g., public health monitoring)
• Removing hazardous trees
• Removing bats from human structures
• Limited research permit exemption through May 3, 2016
Summary of Final 4(d) Rule

Outside WNS Zone:

Incidental Take Is Not Prohibited
Summary of Final 4(d) Rule

Inside WNS Zone:

• All take within known hibernacula is prohibited

• Incidental take caused by tree removal is prohibited (without a permit) if:
  – Tree removal occurs within 1/4 mile of a known hibernaculum, at any time of year
  – Tree removal cuts or destroys a known occupied maternity roost tree or any other trees within a 150-foot radius of the maternity roost tree during the pup season (June 1 through July 31)
Locations of Hibernacula and Maternity Roost Trees

- State Natural Heritage Inventory Databases
- Some states have other information sources
- Compilation of links to information sources:
  midwest.fws.gov/nleb/
Framework Provides Streamlined S7 Consultation

• Programmatic intra-Service consultation for final 4(d) rule
• Federal agencies may rely on this Biological Opinion and framework to fulfill their project-specific section 7(a)(2) responsibilities
• Federal agency makes a determination that action “may affect” but will not cause prohibited take
• Framework is efficient means for FWS to verify federal agency determinations
Actions that “May Affect”

• Project-level documentation that any potential incidental take is not prohibited under final 4(d) rule
• Federal agency must provide written notification to appropriate ES Field Office
• Service concurrence not required
• If Service does not respond within 30 days; presume determination is correct and proceed
Analysis Supporting 4(d) Rule

- WNS is only range-wide threat
- Populations are healthy pre-WNS and outside WNS zone
- Extensive range
- Uses variety of habitat types
- Small percent of habitat impacted each year
- Tolerant of human activities

Photo courtesy of Steve Taylor; University of Illinois
Analysis Supporting 4(d) Rule (cont’d.)

• Broad habitat protections are impractical
  • Uses a variety of habitat types
  • species distribution is patchy
  • low relative exposure to non-WNS threats

• Post-WNS fewer bats exposed to human activities

• Until we can address WNS, regulatory prohibitions are not practical tools for conserving bats. Minimizing prohibitions will help foster partnerships for recovery
Highest Priority is to Find a Solution to White-Nose Syndrome

- Causative fungus has spread to 30 states and 5 provinces since 2007
- FWS leads international response; over 100 partners
- International coalition has prepared and implemented a response plan, identified the cause, and funded research
- 2016 pivotal year: field trials of promising experimental treatments are underway
Conservation Priorities for Northern Long-Eared Bats

• Develop methods to abate WNS as quickly as possible
• Monitor populations in summer habitat
• Improve monitoring techniques
• Expand research
• Protect known hibernacula
• Protect known occupied maternity roost trees

Photo courtesy of Al Hicks; New York DEC
Northern Long-eared Bat

4(d) Rule

Questions?

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