



Northern Long-eared Bats

A Federally Threatened Species

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Northern Long-eared Bat

- Proposed Rule – October 2, 2013
- Proposed as an endangered species
- Critical habitat – not determinable
- Threats:
 - White-nose syndrome (WNS) is primary threat
 - Compounding threats may include:
 - Impacts to hibernacula
 - Disturbance to hibernating bats
 - Mortality from wind projects
 - Forest conversion/loss



Northern Long-eared Bat

- Rule published - April 2, 2015
 - Final rule listing NLEB as **threatened** species
 - **Interim** 4(d) rule
 - Critical Habitat still “prudent” but not “determinable”
- Both effective May 4, 2015
- Public comment period open on interim 4(d) rule until July 1, 2015

Northern Long-eared Bat

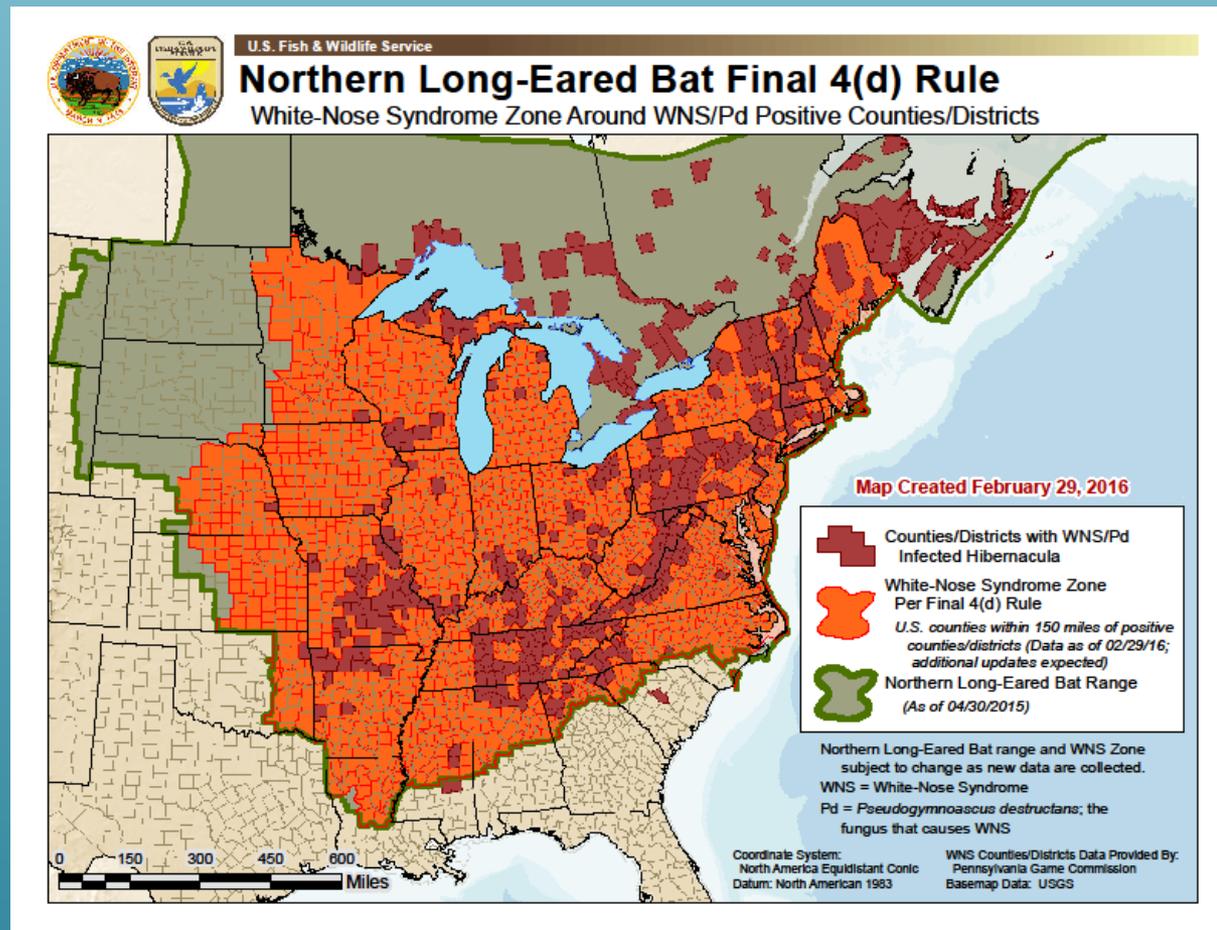
- After consideration of many public comments, USFWS issued a **Final 4(d) rule**
 - published in Federal Register January 14, 2016
 - became effective February 16, 2016
 - no additional public comment periods

What is a 4(d) Rule?

- Tailors “take” prohibitions under ESA
- Option only for **threatened** species
- USFWS can issue regulations deemed “necessary and advisable to provide for the conservation of threatened species.”
- **Does not remove the need for federal agencies to consult under section 7 of the ESA for activities that “may affect” NLEB**

What is in Final NLEB 4(d) Rule?

- Different treatment in WNS vs. non-WNS zones



What is in Final NLEB 4(d) Rule?

- Outside WNS Zone
 - Prohibitions
 - no **purposeful take** (without normal permitting/section 7 processes) **EXCEPT**:
 - Removal from human structures (must comply with an applicable state regulations)
 - Defense of human life (e.g., testing for rabies)
 - Removal of hazardous trees for protection of human life and property
 - NOTE: there are no “**incidental take**” prohibitions
 - Similar to Interim Rule

What is in Final NLEB 4(d) Rule?

- Inside WNS Zone (most of the species range)
 - Prohibitions
 - no purposeful take (without normal permitting/section 7 processes) - see **EXCEPTIONS, same as previous slide outside WNS Zone**
 - **NOTE: there are no “incidental take” prohibitions except those specifically addressed in the rule**
 - These exceptions where incidental take is still prohibited are:
 - if take occurs within a known hibernacula
 - If take results from tree removal activities **and**
 - » The activity occurs within 0.25 mile of a known, occupied hibernacula
 - » The activity cuts or destroys a known, occupied maternity roost tree or other trees within a 150 foot radius from the maternity roost tree during the pup season from June 1 through July 31.
 - **Different and “simplified” from the Interim Rule**

Some Additional Thoughts

- Does not say that “take” is always likely with tree removal
- “Take” not addressed in Final 4(d) would need to be authorized through normal section 7/section 10 processes
- **Does not remove the need for federal agencies to consult on ALL activities that “may affect” NLEB**
- Programmatic Intra-Service BO available for use
- Existing consultations are in effect unless federal agencies submit correspondence that they are changing proposed action and will now be following programmatic BO
- Can proactively do more than what is in 4(d) rule
 - Consider conservation measures that result in no adverse effects or “no take” (i.e., non-active season tree clearing)

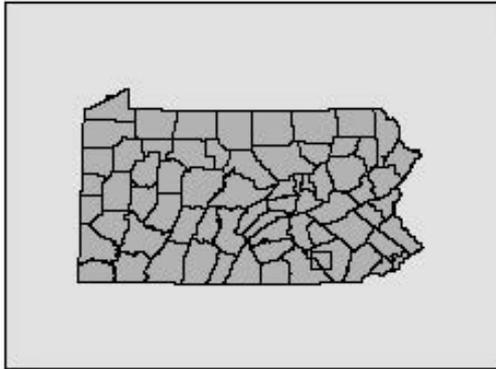
Project Reviews/Section 7 Consultation

- Remember to consider overlap with other listed, proposed, and candidate species
- Currently, the entire State of Maine is considered within the range of the NLEB
- Do you have suitable NLEB habitat?

<http://www.fws.gov/midwest/Endangered/mammals/inba/inbasummersurveyguidance.html>

- Consider bridges and structures (e.g., houses, sheds) as potential roost sites – FHWA/NYSDOT survey guidance is available
- Presence/probable absence surveys following USFWS protocol are voluntary but encouraged

May 18 & 19, 2015, NLEB capture site; Lancaster County, PA



Project Reviews

- **Is the project likely to impact NLEB or their habitat?**

Tree removal, noise, lighting, smoke, bridge work

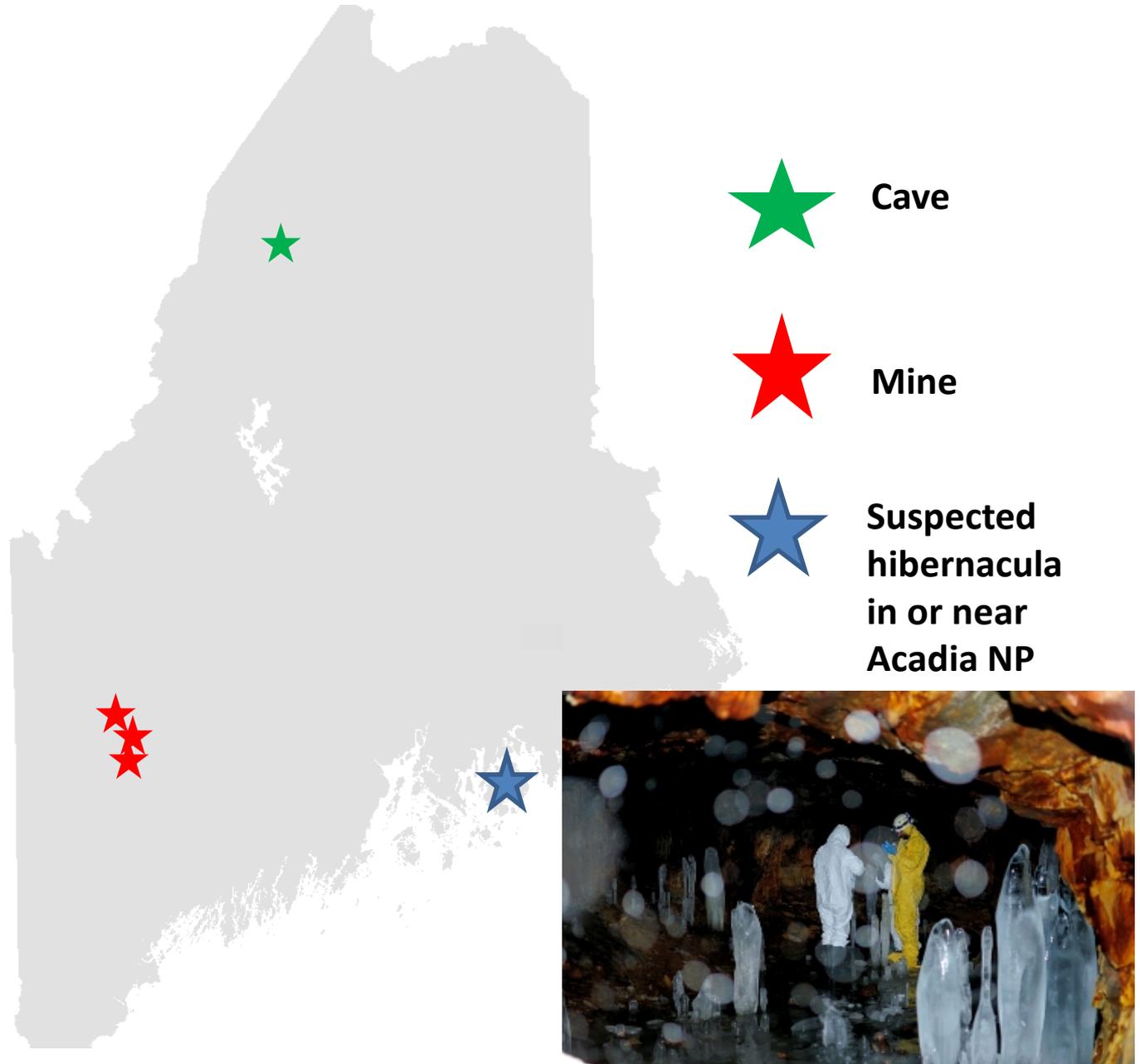
- **Federal nexus and “may affect” = Section 7 consultation EVEN IF TAKE EXEMPTED BY THE FINAL 4(d) RULE**
- **What conservation measures can be included to avoid or minimize effects to bats and their habitat?**

Winter work, avoid/minimize tree removal, avoid impacting known roosts or foraging areas, focus lighting away from suitable habitat, etc.....

How do you know if you might have NLEB hibernacula or roost trees near a project site?

- The USFWS NLEB Web site points people to the appropriate agency to find this information. In many cases this is a state natural resource agency or natural heritage program.
- In Maine, at least for the time being, contact the USFWS Maine Field Office.
 - Information is NOT currently available on our Web site but that could change in the future
 - Currently, we have no known roost trees in Maine (but keep checking with USFWS)
 - Currently, we know of three NLEB hibernacula (but keep checking with USFWS)

Known Bat Hibernacula in Maine



Section 7 and the Final 4(d) Rule – What and Why?

- Intra-service consultation was necessary because the final 4(d) rule was a discretionary federal action not tied to the listing
- USFWS “action” is the finalization of the interim 4(d) rule
- The final 4(d) rule determined that regulating incidental take associated with most activities is “not necessary or advisable for the conservation of the species”
- So we completed an intra-service Programmatic Biological Opinion to assess the general effects of categories of activities for which take is **NOT** prohibited under the final 4(d) rule (e.g., most forest conversion)

Summary of the Programmatic Opinion

- Because we anticipate continued NLEB declines as WNS spreads, the Opinion will cover the next 7 years that the disease is minimally expected to spread and impact the NLEB throughout its entire range
- Action Area covers the entire range of the species so the Status of the Species serves as the Environmental Baseline
- We calculated a rough population estimate of 6.5 million bats
- We did not include specific action agencies or their specific actions in this Opinion; rather, we focused on the general **types of activities** that may affect the NLEB and conducted our jeopardy analysis on those activities (e.g., forest conversion, wind turbine operation)

Summary of the Programmatic Opinion

- Reached a Non-Jeopardy Conclusion:
 - Based on the relatively small numbers affected annually compared to the state population sizes, adverse effects from timber harvest, prescribed fire, forest conversion, wind energy, and other activities will not lead to population-level declines in this species.
 - The vast majority of individuals and populations that survive WNS will be unaffected by these activities. Additional loss of individual NLEB resulting from these activities would not exacerbate the effects of WNS at the scale of states within its range.

Section 7 and the Final 4(d) Rule – Why?

- Federal agencies (including ourselves) must still consult with the USFWS at the project level to ensure no jeopardy **for all projects that “may affect” the NLEB** (same as interim 4(d) rule, standard section 7 consultation)
- USFWS leadership sought to streamline Section 7 consultation by allowing agencies to rely on the intra-Service Opinion for the final 4(d) rule
- USFWS developed a streamlined section 7 framework to:
 - Ensure compliance with the 4(d) rule (or else ensure federal agencies follow normal section 7 consultation procedures for projects that don’t comply)
 - Allow federal action agencies to meet their section 7(a)(2) requirements for many projects in an expedited manner

Streamlined Section 7 Framework

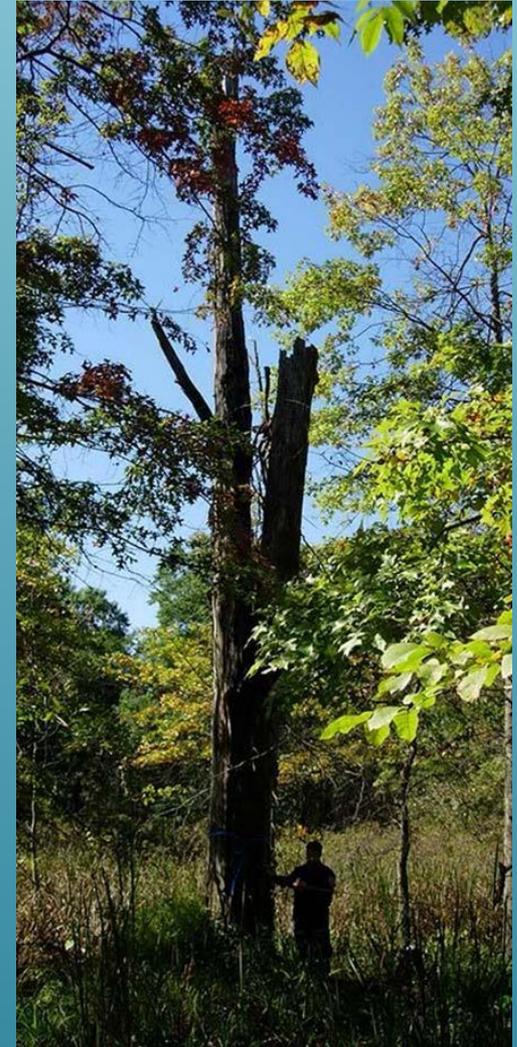
- The process is optional for Federal agencies
- The process requires **prior** notification of activities that “may affect” and a determination that the action would not cause prohibited incidental take
 - The Opinion says “field office” and “at least 30 days in advance” of the action
 - Send written notification to the USFWS Maine Field Office by mail, FAX, or email

Streamlined Section 7 Framework

- USFWS concurrence is not required but we can advise the action agency whether additional project-level consultation is required (i.e., the proposed activity is not covered by the 4(d) rule)
- If the USFWS does not respond within 30 days of receipt, the action agency may consider its section 7 responsibilities fulfilled through the Opinion
- Action Agency Reporting Responsibilities:
 - If actions deviate from the original project description
 - If any dead, injured, or sick NLEB are located
 - Results of any surveys conducted (all P/A surveys should be coordinated with USFWS Field Offices)

Streamlined Section 7 Framework

- USFWS also developed **voluntary** conservation recommendations that we are asking federal agencies to incorporate into their actions when possible
- USFWS is encouraging federal agencies to continue doing surveys and to continue taking actions to further reduce the impacts of projects on individual NLEBs even for projects that are consistent with the final 4(d) rule



Streamlined Section 7 Framework

- USFWS has developed a streamlined section 7 consultation form that federal agencies **may** use for projects they believe are in compliance with the final 4(d) rule and Opinion
- The language in the form can be inserted by the federal agencies into various formats that meet their needs
- Federal agencies are not required to use the form or similar language if they are following standard section 7 consultation procedures
 - Example: If a project in Maine requires consultation for Atlantic salmon or Canada lynx **and** NLEB, the federal agency may just incorporate NLEB into their regular consultation request to the USFWS for the other species

Federal Agencies and ESA Section 7(a)(1)

- Federal agencies have an obligation to use their existing programs to contribute to the recovery of federally listed species
- Continue to assist with WNS-related research
- Implement voluntary conservation recommendations to protect remaining winter and summer colonies (see list in Key to Federal Actions posted on NLEB Web site)
- USFWS encourages all federal agencies to contribute to our knowledge of remaining NLEB populations in the Northeast
 - Spring emergence radio tracking from hibernacula to summer habitat
 - Fall radio tracking
 - Targeted mist netting projects
 - Participate in acoustic surveys and NABat

Thank you!



More information can be found at:
<http://midwest.fws.gov/nleb>