

U.S. Fish & Wildlife Final Ruling on the Northern Long-Eared Bat

Overview:

Effective on February 16, 2016, the U.S. Fish and Wildlife Service (FWS) finalized a ruling under the authority of section 4(d) of the Endangered Species Act of 1973 as it relates to the northern long-eared bat (*Myotis septentrionalis*; listing status: threatened). The northern long-eared bat population has been severely impacted by the White-Nose Syndrome (WNS) in areas known as the White-Nose Syndrome Zone (WNS Zone; see Area of Impact section). In order to combat the threat to the species in the WNS Zone, FWS has issued the following ruling:

Ruling

In an effort to protect this species during their most sensitive life cycles (while in hibernation and during pup season), the FWS final 4(d) ruling prohibits:

Purposeful Take - For all areas within the range of the northern long-eared bat, all purposeful take is prohibited except:

- Removal of northern long-eared bats from **human structures**.
- Defense of human life (e.g., public health monitoring for rabies).
- Removal of hazardous trees for the protection of human life and property.

Incidental Take

For areas of the country not affected by white-nose syndrome (WNS) (i.e., areas outside the WNS zone), there are no prohibitions on incidental take.

For areas of the country impacted by WNS (i.e., areas inside the WNS zone), incidental take is prohibited under the following circumstances:

- If it occurs within a **hibernaculum** (or hibernation site).
- If it results from **tree removal** activities and
 - the activity occurs within 0.25 mile (0.4 km) of a known hibernaculum; or,
 - 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.
- Incidental take of northern long-eared bats as a result of the removal of hazardous trees for the protection of human life and property is also not prohibited.

Guidance from the Fish & Wildlife Service

The FWS has developed a helpful guide when assessing your property - the Key to the Northern Long-Eared Bat 4(d) Rule for Non-Federal Activities.

(<http://www.fws.gov/Midwest/endangered/mammals/nleb/KeyFinal4dNLEB.html>).

Area of Impact – The White-Nose Syndrome Zone

The range of the northern long-eared bat extends to 37 States, the District of Columbia, and 13 Canadian Provinces. Tree farmers who may be potentially impacted by this ruling are those located within the white-nose syndrome zone (WNS Zone).

The [Northern Long-Eared Bat Final 4\(d\) Rule Map](#) (aka WNS Zone Map) provides the implementation boundaries of this rule. FWS used data on the presence of the fungus causing the disease, or evidence of the presence of the disease (WNS) in the bats within a hibernaculum to estimate the area of impact. Confirmed evidence of infection at a location within a county is mapped as a positive detection for the entire county. In addition, FWS added a 150-mile buffer to the county line to account for the spread of the fungus from one year to the next. Given the rapid rate of spread of WNS, the WNS map is subject to change and will be updated the first of every month if there are new counties with verified occurrences of WNS.

All information is cited from the FWS final ruling documentation. Please visit <http://www.fws.gov/Midwest/endangered/mammals/nleb/index.html> for more details.

State specific information and resources are listed here:

<http://www.fws.gov/Midwest/endangered/mammals/nleb/nhisites.html>

AFF Recommendations for Management:

1. *Comply with the [ATFS Standards of Sustainability](#)*

Continue to follow all federal and state regulations as they pertain to threatened and endangered species and the protection of their habitat, pursuant to

Standard 5 - Fish, Wildlife, Biodiversity and Forest Health:

Performance Measure 5.1 *Forest-management activities shall protect habitats and communities occupied by threatened or endangered species as required by law.*

- o INDICATOR 5.1.1 *Landowner shall confer with natural-resource agencies, state natural-resource heritage programs, qualified natural-resource professionals or review other sources of information to determine occurrences of threatened or endangered species on the property and their habitat requirements.*
- o INDICATOR 5.1.2 *Forest-management activities shall incorporate measures to protect identified threatened or endangered species on the property.)*

2. *Understand your exposure.*

We recommend landowners follow the FWS guidance by contacting your local wildlife agency to determine if there is a known hibernacula and/or known maternity roosting trees on or near your property. However, surveys are not required prior to performing forest management activities if they are not required by state regulation.

3. *Protect any impacted areas and update your management plan accordingly.*

Establish ¼ mile buffer around known hibernacula and seasonal restrictions on timber harvest within 150 feet of a known, occupied maternity roost tree during the pup season (June 1 through July 31) as noted in the ruling and the FWS guidance.

4. *Prepare for and adapt to the spread of WNS.*

Given the rapid rate of spread of WNS, the WNS zone map is subject to change and will be updated the first of every month if there are new counties with verified occurrences of WNS. We recommend landowners and their foresters review the latest [Northern Long-Eared Bat Final 4\(d\) Rule Map](#) and consult their local wildlife agency prior to performing any tree removal projects that could adversely impact the northern long-eared bat.

5. *Maintain vigilance of how non-timber removal forest management activities may impact the northern long-eared bat.*

Be cognizant of forest management activities that do not involve tree removal but may result in incidental takes of northern long-eared bats. FWS differentiates between forest management activities that involve tree removal and those that do not. While the FWS acknowledges the many positive impacts of active forest management and does not prohibit activities such as pesticide application or prescribed burning, please be aware of how non-timber removal forestry activities may impact local bat populations.

Definitions:

- “Purposeful take” includes the capture and handling of individual bats. Take in this manner includes both capture and handling to remove bats from human structures and take that is for research purposes (e.g., attaching a radiotracking device). Other purposeful take would include intentional removal of bats from hibernacula or the intentional killing or harassing of bats under any circumstance.
 - o The term “harass” (50 CFR 17.3) means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.
 - o The term “harm” (50 CFR 17.3) means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
- “Incidental take” is defined at 50 CFR 17.3 as any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, an otherwise lawful activity.
 - o Examples of incidental take (or non-purposeful take as it is sometimes referred to in this rule) include land management actions, such as implementation of forestry practices, where bats may be harmed, harassed, or killed as a result of those otherwise lawful actions. The actions contemplated in this rule include a wide range of actions for purposes such as right-of-way development and maintenance, forestry, land use for development unrelated to wildlife management, management of lands as habitats other than bat habitat (e.g., prairie), energy production and transmission, and other activities.
 - o Incidental take within the context of this rule is regulated in distinct and separate manners relative to the geographic location of the activity in question.
- “Known hibernacula” are defined as locations where northern long-eared bats have been detected during hibernation or at the entrance during fall swarming or spring emergence.

- “Known, occupied maternity roost trees” are defined as trees that have had female northern long-eared bats or juvenile bats tracked to them or the presence of females or juveniles is known as a result of other methods.
- “Tree removal” is defined as cutting down, harvesting, destroying, trimming, or manipulating in any other way the trees, saplings, snags, or any other form of woody vegetation likely to be used by northern long-eared bats.
- “Human structures” are defined as houses, garages, barns, sheds, and other buildings designed for human entry.