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 with take prohibitions
  – 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, the USFWS issued a Final 4(d) rule
  – became effective February 16, 2016
  – no additional public comment periods
What is a 4(d) Rule?

• Tailors otherwise blanket “take” prohibitions under the ESA
• Option only for threatened species
• Allows USFWS to issue regulations deemed “necessary and advisable to provide for the conservation of threatened species”
• Allows flexibility to focus take prohibitions on activities that are the greatest threat(s) to a threatened species
What is in Final NLEB 4(d) Rule?

• Different prohibitions in WNS vs. non-WNS
What is in Final NLEB 4(d) Rule?

• **Outside WNS Zone**
  – Prohibitions
    • no **purposeful take allowed** (without normal permitting processes) **EXCEPT:**
      – Removal from human structures (must comply with an applicable state regulations)
      – Defense of human life (e.g., testing for rabies)
    • **purposeful take of NLEB related to research** (e.g., capturing bats) **requires appropriate permits**
  – 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) - see EXCEPTIONS, same as previous slide outside WNS Zone

  • **NOTE:** there are no “incidental take” prohibitions except those specifically addressed in the final 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

• Can proactively do more than what is in 4(d) rule
  – Consider conservation measures that avoid or minimize take of bats (i.e., non-active season tree clearing)
Activities that Involve Federal Agencies

• Federal agencies are required to “consult” with the USFWS to ensure that any action they authorize, fund, or carry out does not jeopardize the existence of a listed species

• This “consultation” requirement under section 7 of the ESA does not change when a 4(d) rule is implemented

• However, the final 4(d) rule for the NLEB includes an optional streamlined section 7 consultation process that federal agencies may use
Activities that Involve Federal Agencies

• The optional streamlined section 7 consultation process:
  – Relies on an “intra-service” consultation that USFWS completed on our action of finalizing the 4(d) rule
  – USFWS produced a non-jeopardy Biological Opinion covering all activities that “may affect” NLEB but **will not cause prohibited take**
  – The findings of the Biological Opinion can be relied on by all federal agencies to meet their project-specific section 7 consultation obligations, provided the project does not result in prohibited take
  – USFWS has provided a streamlined consultation form that agencies can use to initiate consultation with the USFWS
  – Consultation is complete 30 days after submission of the form to the USFWS; no response is required from the USFWS
  – **Regular section 7 consultation may still be required for other listed species**
Non-Federal Activities

- Non-federal activities only need to be concerned about the potential to cause prohibited take of NLEB according to the final 4(d) rule

  - Is your activity inside or outside the WNS zone?

  - Would your activity cause prohibited **purposeful take** of NLEB under the final 4(d) rule? If so, contact the appropriate USFWS Field Office to discuss ESA permitting needs.

  - Would your activity cause prohibited **incidental take** of NLEB under the final 4(d) rule? If so, contact the appropriate USFWS Field Office to discuss ESA permitting needs.
How do you know if you might have NLEB hibernacula or roost trees on your property or 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 contact the USFWS Maine Field Office.
  – Information is NOT currently available on our Web site
  – Currently, we have no known roost trees in Maine (but periodically check with USFWS)
  – Currently, we know of three NLEB hibernacula (but periodically check with USFWS)

• **Surveys are never required (but are still encouraged)**
Known Bat Hibernacula in Maine

- Cave
- Mine
- Suspected hibernacula in or near Acadia NP
Northern Long-Eared Bat Conservation

• Contribute to the ongoing effort to address white nose syndrome www.whitenosesyndrome.org
• Conduct surveys, particularly in areas where tree removal projects are planned
• Support or conduct research on aspects of the NLEB’s life history that are not well understood in Maine and elsewhere in New England
  – Spring emergence radio tracking from hibernacula to summer habitat
  – Fall radio tracking
Northern Long-Eared Bat Conservation

• Participate in ongoing or new bat monitoring efforts, like NABat

• Help protect known bat hibernacula from disturbance

• Join the Maine Bat Working Group (affiliated with the Maine Chapter of The Wildlife Society)
  – Help us identify and prioritize bat research and conservation needs in Maine
Thank you!

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