

2016

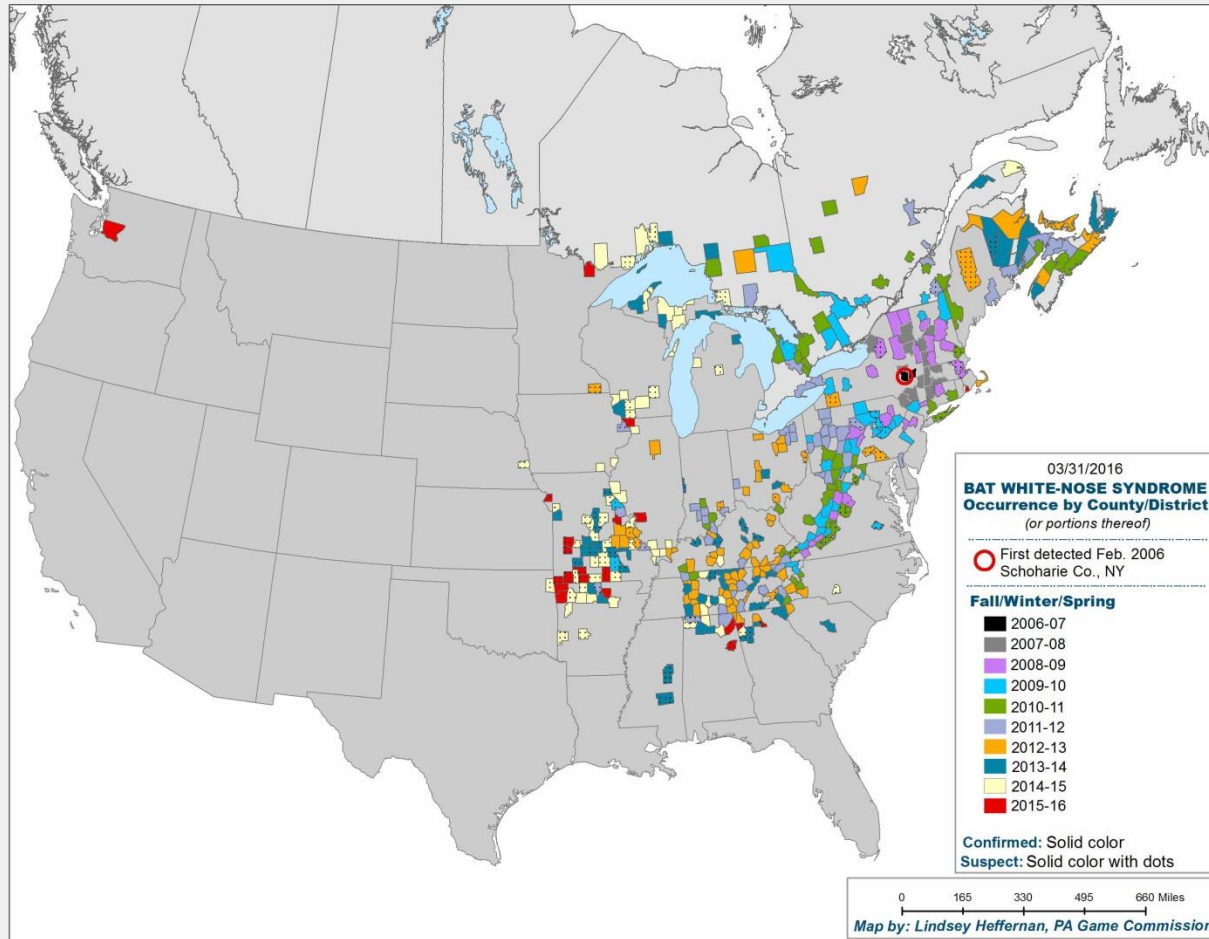
Indiana Bat and Northern Long-eared Bat Updates

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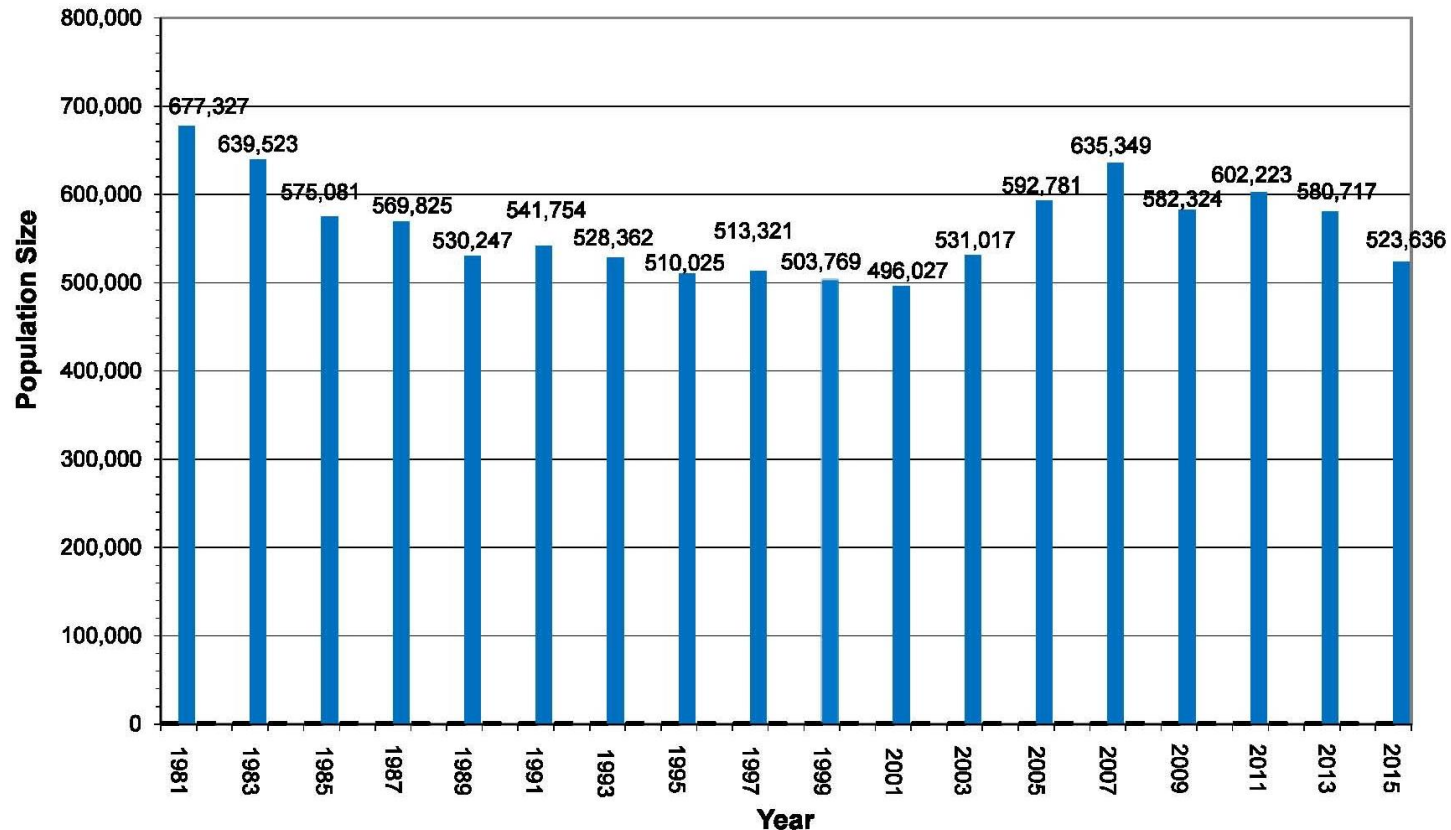


White-nose Syndrome

28 states (WNS), 3 states (fungus), and 5 Canadian Provinces



2014-15 “On Year” for Indiana Bat Winter Surveys



2014-15 “On Year” for Indiana Bat Winter Surveys

- Northeast region declined overall again
- ~19K remaining Indiana bats
- ~70% decline since 2007
- One site contains 70-80% of all Indiana bats in the Northeast - Barton Hill



Indiana Bats

- 2016 Summer Survey Guidance – no significant changes anticipated – working on clarifications
- 5-year review – R3 will be updating information on status, threats, conservation actions
- Range-wide consultation with FHWA
 - Informal completed in 2015
 - Formal will be completed in 2016

Northern Long-eared Bat

- Rule published - April 2, 2015
 - Final rule listing NLEB as threatened species
 - Interim 4(d) rule
- Both effective May 4, 2015



Northern Long-eared Bat

- Final 4(d) rule
 - published in Federal Register January 14, 2016
 - effective February 16, 2016
 - no additional public comment periods



What is a 4(d) Rule?

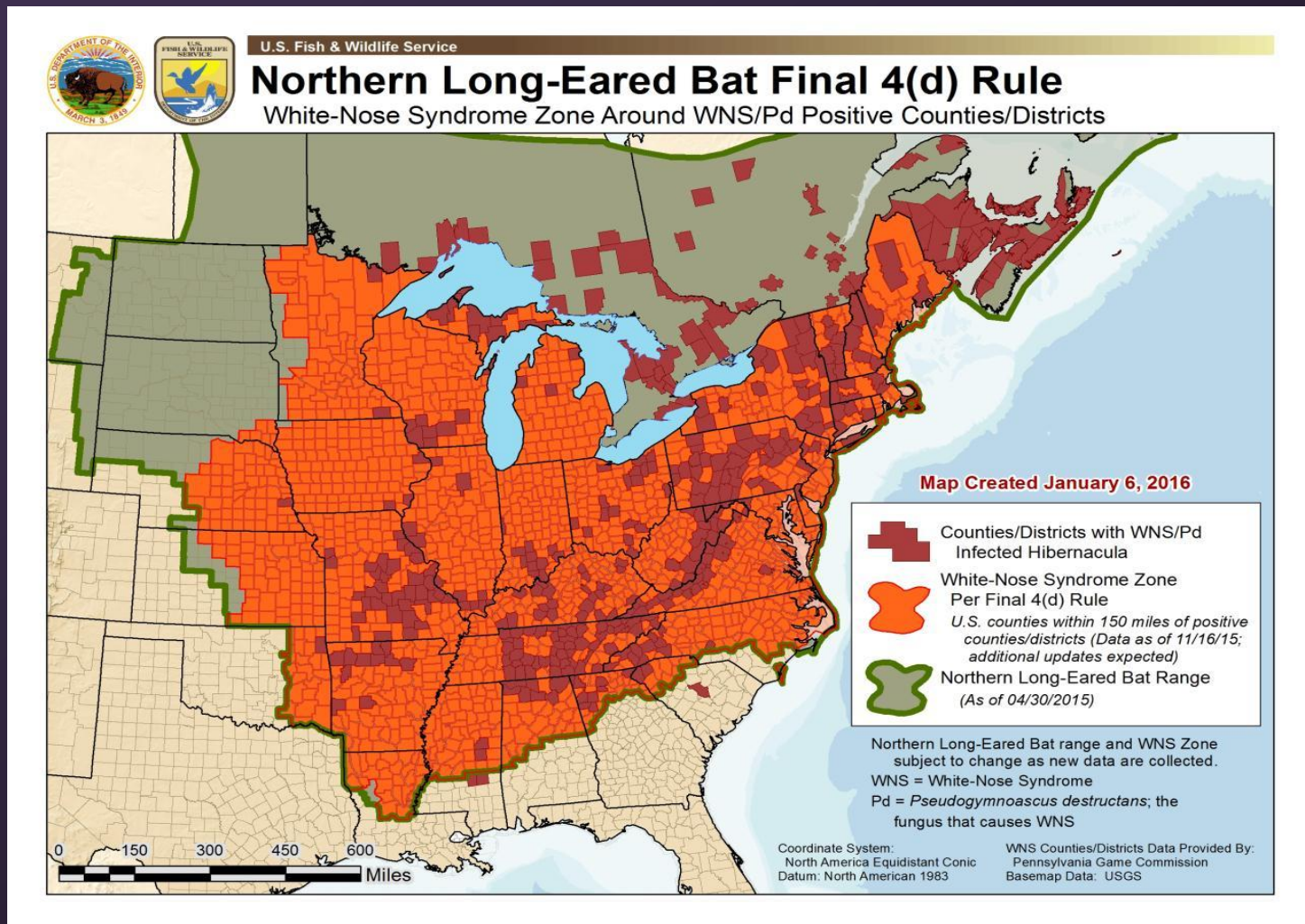
- Tailors “take” prohibitions under ESA
- Option for threatened species only
- USFWS can issue regulations deemed “necessary and advisable to provide for the conservation of threatened species”

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."

What is in Final NLEB 4(d) Rule?

- Different treatment in WNS vs. non-WNS zones



What is in Final NLEB 4(d) Rule?

- Entire Range
 - All “purposeful take” is prohibited, unless authorized by a permit, except under these circumstances:
 - Defense of human life, including for public health monitoring purposes
 - Removal of hazardous trees for the protection of human life and property
 - Removal of NLEB from human structures (only if in compliance with any State regulations)
 - Limited research permit exemption through May 3, 2016

What is in Final NLEB 4(d) Rule?

- Inside WNS Zone (most of the range)
 - All take within known hibernacula is prohibited (no impacts to bats or the hibernacula) (without permit/BO)
 - Incidental take caused by tree removal is prohibited (without a permit/BO) 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)

Some Additional Thoughts

- Measures in 4(d) rule do not = NLTA
- Does not say that “take” is always likely with tree removal
- “Take” not addressed in 4(d) would need to be authorized through S7/S10 processes
- Does not remove the need for federal agencies to consult on activities that “may affect” NLEB
- Programmatic USFWS Opinion available for use by USFWS and other federal agencies
- Can proactively do more than what is in 4(d)
 - Consider conservation measures that result in no adverse effects or “no take”

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

- Federal agencies must consult with the USFWS at the project level (or batched) to ensure no jeopardy
- USFWS leadership sought to streamline consultation by allowing agencies to rely on the intra-Service Opinion for the final rule
- Streamlined Section 7 Framework
 - Ensures compliance with the 4(d)
 - Meets 7(a)(2) requirements

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., proposed project includes an activity not covered by the 4(d))
- If the USFWS does not respond within 30 days, the action agency may consider its S7 responsibilities fulfilled through the Opinion
- Reporting:
 - if actions deviate from the original description
 - if any dead, injured, or sick NLEB are located
 - results of any surveys

Optional Streamlined Form:

Northern Long-Eared Bat 4(d) Rule Streamlined Consultation Form

Federal agencies should use this form for the optional streamlined consultation framework for the northern long-eared bat (NLEB). This framework allows federal agencies to rely upon the U.S. Fish and Wildlife Service's (USFWS) January 5, 2016, intra-Service Programmatic Biological Opinion (BO) on the final 4(d) rule for the NLEB for section 7(a)(2) compliance by: (1) notifying the USFWS that an action agency will use the streamlined framework; (2) describing the project with sufficient detail to support the required determination; and (3) enabling the USFWS to track effects and determine if reinstitution of consultation is required per 50 CFR 402.16.

This form is not necessary if an agency determines that a proposed action will have no effect to the NLEB or if the USFWS has concurred in writing with an agency's determination that a proposed action may affect, but is not likely to adversely affect the NLEB (i.e., the standard informal consultation process). Actions that may cause prohibited incidental take require separate formal consultation. Providing this information does not address section 7(a)(2) compliance for any other listed species.

Information to Determine 4(d) Rule Compliance:

	YES	NO
1. Does the project occur wholly outside of the WNS Zone ¹ ?	<input type="checkbox"/>	<input type="checkbox"/>
2. Have you contacted the appropriate agency ² to determine if your project is near known hibernacula or maternity roost trees?	<input type="checkbox"/>	<input type="checkbox"/>
3. Could the project disturb hibernating NLEBs in a known hibernaculum?	<input type="checkbox"/>	<input type="checkbox"/>
4. Could the project alter the entrance or interior environment of a known hibernaculum?	<input type="checkbox"/>	<input type="checkbox"/>
5. Does the project remove any trees within 0.25 miles of a known hibernaculum at any time of year?	<input type="checkbox"/>	<input type="checkbox"/>
6. Would the project cut or destroy known occupied maternity roost trees, or any other trees within a 150-foot radius from the maternity roost tree from June 1 through July 31.	<input type="checkbox"/>	<input type="checkbox"/>

Optional Streamlined Form:

General Project Information	YES	NO
Does the project occur within 0.25 miles of a known hibernaculum?	<input type="checkbox"/>	<input type="checkbox"/>
Does the project occur within 150 feet of a known maternity roost tree?	<input type="checkbox"/>	<input type="checkbox"/>
Does the project include forest conversion ⁴ ? (if yes, report acreage below)	<input type="checkbox"/>	<input type="checkbox"/>
Estimated total acres of forest conversion		
If known, estimated acres ⁵ of forest conversion from April 1 to October 31		
If known, estimated acres of forest conversion from June 1 to July 31 ⁶		
Does the project include timber harvest? (if yes, report acreage below)	<input type="checkbox"/>	<input type="checkbox"/>
Estimated total acres of timber harvest		
If known, estimated acres of timber harvest from April 1 to October 31		
If known, estimated acres of timber harvest from June 1 to July 31		
Does the project include prescribed fire? (if yes, report acreage below)	<input type="checkbox"/>	<input type="checkbox"/>
Estimated total acres of prescribed fire		
If known, estimated acres of prescribed fire from April 1 to October 31		
If known, estimated acres of prescribed fire from June 1 to July 31		
Does the project install new wind turbines? (if yes, report capacity in MW below)	<input type="checkbox"/>	<input type="checkbox"/>
Estimated wind capacity (MW)		

Form can be signed by federal agency or designated NFR – that's it!

Federal Activities

- For all federal activities that may affect the NLEB, provide project-level documentation to USFWS
 - NOT JUST THOSE THAT MEET 4(d)

Project Reviews – May Affect vs. No Effect?

Remember to consider overlap with range of Indiana bat or other listed/proposed species

Do you have suitable NLEB habitat?

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

Do you have existing summer P/A survey information?

Project Reviews

Remember to consider overlap with range of Indiana bat or other listed/proposed species

Is the project likely to impact NLEB and/or their habitat?

Tree removal, noise, lighting, smoke, bridge work

What conservation measures can be included?

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

Project Reviews

Remember to consider overlap with range of Indiana bat or other listed/proposed species

LAST QUESTION TO ASK YOURSELF.....

If take is likely (or possible – you just aren't sure), does project meet 4(d)?

- Tree removal within 0.25 miles of hibernacula?
- Tree removal during June/July within 150 feet of documented roosts?
- Activities that could impact hibernating bats/hibernacula?

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

- USFWS has website to point project sponsors to appropriate agencies – in most cases, this will be the State natural resource agency or natural heritage program
- For NY - <http://www.fws.gov/northeast/nyfo/es/NYSpecies.htm>

Federal Activities

- For all federal activities that may affect the NLEB, provide project-level documentation to USFWS
 - NOT JUST THOSE THAT MEET 4(d)
- Must be provided 30 days in advance of funding, authorizing or carrying out the action
- If no response within 30 days, then presume obligations under S7 are fulfilled
- If activity is not covered by the 4(d) rule/Opinion, USFWS may advise that further consultation is required
- The 4(d) rule doesn't apply to Indiana bats

Non-federal Activities

- If NLEB is the only species in IPaC
 - avoid impacts if possible
 - if not, follow 4(d) rule
 - no coordination with USFWS is required
 - developing an optional form for non-fed projects
- The 4(d) rule doesn't apply to Indiana bats

What if you are just not sure what applies?

- Contact NYFO staff 😊

Thank you!



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