Key to the Northern Long-Eared Bat 4(d) Rule for Federal Actions that May Affect Northern Long-Eared Bats

A separate key is available for non-federal activities

Federal agency actions that involve incidental take not prohibited under the final 4(d) rule may result in effects to individual northern long-eared bats. Per section 7 of the Act, if a federal agency's action may affect a listed species, consultation with the Service is required. This requirement does not change when a 4(d) rule is implemented. However, for this 4(d) rule, the Service proposed a framework to streamline section 7 consultations when federal actions may affect the northern long-eared bat but will not cause prohibited take. Federal agencies have the option to rely upon the finding of the programmatic biological opinion for the final 4(d) rule to fulfill their project-specific section 7 responsibilities by using the framework. This key will help federal agencies determine if their actions may cause prohibited incidental take of northern long-eared bats as defined in the 4(d) rule under the Endangered Species Act and if separate section 7 consultation may be necessary. Also, the framework for streamlining northern long-eared bat section 7 consultation is provided.

1. **Have you determined that the proposed action will have "no effect" on the northern long-eared bat?**

   Yes, the proposed action will have "no effect" on the northern long-eared bat. When the action agency determines its proposed action will not affect a listed species, there is no need to coordinate further with the Service. If the northern long-eared bat will not be exposed directly or indirectly to the proposed action or any resulting environmental changes, an agency should conclude "no effect" and document the finding and this completes the section 7 process. For example, if suitable habitat is not present in the action area and the project does not otherwise present a risk to the species, conclude "species not present" and document your finding.

   No, the proposed action "may affect" the northern long-eared bat or individual northern long-eared bats.
   Continue to #2

2. **Will your activity purposefully take (see Definitions below) northern long-eared bats? For example, are you removing bats from a human structure or capturing bats for research?**

   Yes, my activity includes purposefully taking northern long-eared bats.

   - Removing bats from human structures is not prohibited and take of northern long-eared bats as required for public health monitoring (disease testing) is not prohibited. The federal agency can rely upon the finding of the programmatic biological opinion for the final 4(d) rule to fulfill their project-specific section 7 responsibilities if they use the framework described below. This framework is

optional, if the federal agency chooses not to follow the framework, standard section 7 consultation procedures apply.

- Research that involves handling bats does require a permit after May 4, 2016; if you are conducting research that includes capturing and handling northern long-eared bats, you should contact the U.S. Fish and Wildlife Service to apply for a permit. www.fws.gov/endangered/regions

- Other purposeful take (see Definitions below) of northern long-eared bats is prohibited. You should contact the U.S. Fish and Wildlife Service as the standard section 7 consultation procedures apply.

No, my activity does not include purposefully taking northern long-eared bats.
Continue to #3.

3. Is the action area (i.e., the area affected by all direct and indirect project effects) located wholly outside the White-nose Syndrome Zone? For the most current version of the White-nose Syndrome Zone map, please see www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf

Yes, the action area is located wholly outside the white-nose syndrome zone.
Incidental take (see Definitions below) of northern long-eared bats is not prohibited in areas outside the White-nose Syndrome Zone. The federal agency can rely upon the finding of the programmatic biological opinion for the final 4(d) rule to fulfill their project-specific section 7 responsibilities if they use the framework described below. This framework is optional, if the federal agency chooses not to follow the framework, standard section 7 consultation procedures apply.

No, the action area is located partially or wholly inside the white-nose syndrome zone.
Continue to #2

4. Will the action take affect caves or mines where northern long-eared bats are known to hibernate (i.e., hibernaculum) or could it alter the entrance or the environment (physical or other alteration) of a hibernaculum?

Yes, the action will affect a northern long-eared bat hibernaculum or it could alter the entrance or the environment (physical or other alteration) of a hibernaculum.
Take (see Definitions below) of northern long-eared bats within hibernacula is prohibited, including actions that may change the nature of the hibernaculum's environment or entrance to it, even when the bats are not present. If your activity includes work in a hibernaculum or it could alter its entrance or environment, please contact the Service's Ecological Services Field Office located nearest to the project area. To find contact information for the Ecological Services Field Offices, please see www.fws.gov/offices.

No, the action will not take place within a northern long-eared bat hibernaculum or alter its entrance or environment.
Continue to #3

5. Will the action involve tree removal (see definition below)?

No, the action does not include tree removal.
Incidental take (see Definitions below) from activities that do not involve tree removal and do not take place within hibernacula or would not alter the hibernaculum's entrance or environment (see Question #3), is not prohibited. The federal agency can rely upon the finding of the programmatic biological opinion for the final 4(d) rule to fulfill their project-specific section 7 responsibilities if they use the framework described below. This framework is optional, if the federal agency chooses not to follow the framework, standard section 7 consultation procedures apply.

Yes, the action involves tree removal.
Continue to #4

6. Is the action the removal of hazardous trees for protection of human life or property?

Yes, the action is removing hazardous trees.
Incidental take (see Definitions below) of northern long-eared bats as a result of hazardous tree removal is not prohibited. The federal agency can rely upon the finding of the programmatic biological opinion for the final 4(d) rule to fulfill their project-specific section 7 responsibilities if they use the framework described below. This framework is optional, if the federal agency chooses not to follow the framework, standard section 7 consultation procedures apply.

No, the action is not removing hazardous trees.
Continue to #5

7. Will the action include one or both of the following: 1) removing a northern long-eared bat known occupied maternity roost tree or any trees within 150 feet of a known occupied maternity roost tree from June 1 through July 31; or 2) removing any trees within 0.25 miles of a northern long-eared bat hibernaculum at any time of year?

No
Incidental take (see Definitions below) from tree removal activities is not prohibited unless it results from removing a known occupied maternity roost tree or from tree removal activities within 150 feet of a known occupied maternity roost tree from June 1 through July 31 or results from tree removal activities within 0.25 mile of a hibernaculum at any time. The federal agency can rely upon the finding of the programmatic biological opinion for the final 4(d) rule to fulfill their project-specific section 7 responsibilities if they use the framework described below. This framework is optional, if the federal agency chooses not to follow the framework, standard section 7 consultation procedures apply.

Yes
Incidental take (see Definitions below) of northern long-eared bats is prohibited if it occurs as a result of removing a known occupied maternity roost tree or removing trees within 150 feet of a known occupied maternity roost tree during the pup season from June 1 through July 31 or as a result of removing trees from within 0.25 mile of a hibernaculum at any time of year. This does not mean that you cannot conduct your action; however, standard section 7 consultation procedures apply. Please contact your nearest Ecological Services Field Office. To find contact information for the Ecological Services Field Offices, please see www.fws.gov/offices

How do I know if there is a maternity roost tree or hibernacula in the action area?
We acknowledge that it can be difficult to determine if a maternity roost tree or a hibernaculum is in your project area. Location information for both resources is generally kept in state Natural Heritage Inventory databases – the availability of this data varies state-by-state. Many states provide online access to their data, either directly by providing maps or by providing the opportunity to make a data request. In some cases, to protect those resources, access to the information may be limited. A web page with links to state Natural Heritage Inventory databases is available at www.fws.gov/midwest/endangered/mammals/nleb/nhisites.html.

When looking for information on the presence of maternity roost trees or hibernacula within your project area, our expectation is that the federal action agency will complete due diligence to determine if date is available. If information is not available, document your attempt to find the information and send it with your determination under step 1 of the framework (see below).

We do not require federal agencies to conduct surveys; however, we recommend that surveys be conducted whenever possible. Surveys will help federal agencies meet their responsibilities under section 7(a)(1) of the Act. Active participation of federal agencies in survey efforts will lead to a more effective conservation strategy for the northern long-eared bat. In addition, should the Service reclassify the species as endangered in the future, an agency with a good understanding of how the species uses habitat based on surveys within its action areas could have greater flexibility under section 7(a)(2) of the Act. Recommended survey methods are available at www.fws.gov/midwest/endangered/mammals/nleb.

Definitions

"Incidental take" is defined by the Endangered Species Act as take that is "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." For example, harvesting trees can kill bats that are roosting in the trees, but the purpose of the activity is not to kill bats.

"Known hibernacula" are defined as locations where one or more northern long-eared bats have been detected during hibernation or at the entrance during fall swarming or spring emergence. Given the challenges of surveying for northern long-eared bats in the winter, any hibernacula with northern long-eared bats observed at least once, will continue to be considered "known hibernacula" as long as the hibernacula remains suitable for northern long-eared bat.

"Known occupied maternity roost trees" is defined in the 4(d) rule as trees that have had female northern long-eared bats or juvenile bats tracked to them or the presence of female or juvenile bats is known as a result of other methods. Once documented, northern-long eared bats are known to continue to use the same roosting areas. Therefore, a tree will be considered to be a "known occupied maternity roost" as long as the tree and surrounding habitat remain suitable for northern long-eared bat. The incidental take prohibition for known occupied maternity roosts trees applies only during the during the pup season (June 1 through July 31).

"Purposeful take" is when the reason for the activity or action is to conduct some form of take. For instance, conducting a research project that includes collecting and putting bands on bats is a form of purposeful take. Intentionally killing or harming bats is also purposeful take and is prohibited.

"Take" is defined by the ESA as 'to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any endangered species. Purposeful take is when the reason for the activity or action is to conduct some form of take. For instance, conducting a research project that includes collecting and putting bands on bats is a form of purposeful take.

"Tree removal" is defined in the 4(d) rule 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.

Optional Framework to Streamline Section 7 Consultation for the Northern Long-Eared Bat

The primary objective of the framework is to provide an efficient means for U.S. Fish and Wildlife Service verification of federal agency determinations that their proposed actions are consistent with those evaluated in the programmatic intra-Service consultation for the final 4(d) rule and do not require separate consultation. Such verification is necessary because incidental take is prohibited in the vicinity of known hibernacula and known roosts, and these locations are continuously updated. Federal agencies may rely on this Biological Opinion to fulfill their project-specific section 7(a)(2) responsibilities under the following framework:

1. For all federal activities that may affect the northern long-eared bat, the action agency will provide project-level documentation describing the activities that are excepted from incidental take prohibitions and addressed in this consultation. The federal agency must provide written documentation to the appropriate Service Field Office when it is determined their action may affect (i.e., not likely to adversely affect or likely to adversely affect) the northern long-eared bat, but would not cause prohibited incidental take. This documentation must follow these procedures:

    a. In coordination with the appropriate Service Field Office, each action agency must make a determination as to whether their activity is excepted from incidental taking prohibitions in the final 4(d) rule. Activities that will occur within 0.25 mile of a known hibernacula or within 150 feet of known, occupied maternity roost trees during the pup season (June 1 to July 31) are not excepted pursuant to the final 4(d) rule. This determination must be updated annually for multi-year activities.
    b. At least 30 days in advance of funding, authorizing, or carrying out an action, the federal agency must provide written notification of their determination to the appropriate Service Field Office.
    c. For this determination, the action agency will rely on the definitions of prohibited activities provided in the final 4(d) rule and the activities considered in this consultation.
    d. The determination must include a description of the proposed project and the action area (the area affected by all direct and indirect project effects) with sufficient detail to support the determination.
    e. The action agency must provide its determination as part of a request for coordination or consultation for other listed species or separately if no other species may be affected.
    f. Service concurrence with the action agency determination is not required, but the Service may advise the action agency whether additional information indicates consultation for the northern long-eared bat is required; i.e., where the proposed project includes an activity not covered by the 4(d) rule and thus not addressed in the Biological Opinion and is subject to additional consultation.

g. If the Service does not respond within 30 days under (f) above, the action agency may presume its determination is informed by best available information and consider its project responsibilities under section 7(a)(2) with respect to the northern long-eared bat fulfilled through this programmatic Biological Opinion.

2. Reporting

    a. For monitoring purposes, the Service will assume all activities are conducted as described. If an agency does not conduct an activity as described, it must promptly report and describe such departures to the appropriate Service Field Office.
    b. The action agency must provide the results of any surveys for the northern long-eared bat to the appropriate Service Field Office within their jurisdiction.
    c. Parties finding a dead, injured, or sick northern long-eared bat must promptly notify the appropriate Service Field Office.

If a Federal action agency chooses not to follow this framework, standard section 7 consultation procedures will apply.

Section 7(a)(1) of the Act directs Federal agencies, in consultation with and with the assistance of the Secretary (a function delegated to the Service), to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Service Headquarters provides to federal action agencies who choose to implement the framework described above several conservation recommendations for exercising their 7(a)(1) responsibility in this context. Conservation recommendations are discretionary federal agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. Service Headquarters recommends that the following conservation measures to all Federal agencies whose actions may affect the northern long-eared bat:

1. Perform northern long-eared bat surveys according to the most recent Range-wide Indiana Bat/ northern long-eared bat Summer Survey Guidelines. Benefits from agencies voluntarily performing northern long-eared bat surveys include:

    a. Surveys will help federal agencies meet their responsibilities under section 7(a)(1) of the Act. The Service and partners will use the survey data to better understand habitat use and distribution of northern long-eared bats, track the status of the species, evaluate threats and impacts, and develop effective conservation and recovery actions. Active participation of federal agencies in survey efforts will lead to a more effective conservation strategy for the northern long-eared bat.
    b. Should the Service reclassify the species as endangered in the future, an agency with a good understanding of how the species uses habitat based on surveys within its action areas could inform greater flexibility under section 7(a)(2) of the Act. Such information could facilitate an expedited consultation and incidental take statement that may, for example, exempt taking associated with tree removal during the active season, but outside of the pup season, in known occupied habitat.

2. Apply additional voluntary conservation measures, where appropriate, to reduce the impacts of activities on northern long-eared bats. Conservation measures include:

    a. Conduct tree removal activities outside of the northern long-eared bat pup season (June 1 to July 31) and/or the active season (April 1 to October 31). This will minimize impacts to pups at roosts not yet identified.
    b. Avoid clearing suitable spring staging and fall swarming habitat within a 5-mile radius of known or assumed northern long-eared bat hibernacula during the staging and swarming seasons (April 1 to May 15 and August 15 to November 14, respectively).
    c. Manage forests to ensure a continual supply of snags and other suitable maternity roost trees.
    d. Conduct prescribed burns outside of the pup season (June 1 to July 31) and/or the active season (April 1 to October 31). Avoid high-intensity burns (causing tree scorch higher than northern long-eared bat roosting heights) during the summer maternity season to minimize direct impacts to northern long-eared bat.
    e. Perform any bridge repair, retrofit, maintenance, and/or rehabilitation work outside of the northern long-eared bat active season (April 1 to October 31) in areas where northern long-eared bats are known to roost on bridges or where such use is likely.
    f. Do not use military smoke and obscurants within forested suitable northern long-eared bat habitat during the pup season (June 1 to July 31) and/or the active season (April 1 to October 31).
    g. Minimize use of herbicides and pesticides. If necessary, spot treatment is preferred over aerial application.
    h. Evaluate the use of outdoor lighting during the active season and seek to minimize light pollution by angling lights downward or via other light minimization measures.
    i. Participate in actions to manage and reduce the impacts of white-nose syndrome on northern long-eared bat. Actions needed to investigate and manage white-nose syndrome are described in a national plan the Service developed in coordination with other state and federal agencies.