



U.S. Fish and Wildlife Service

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# Final 4(d) Rule for the Northern Long-Eared Bat



[midwest.fws.gov/nleb](http://midwest.fws.gov/nleb)



# Final 4(d) Rule Information Session Followed by Questions and Answers

- Purpose is to provide information
- Opportunity to ask questions after the presentation
- This is a final rule so we will not have a public comment period



*Photo by USFWS*



# Road to Listing and 4(d) Rule

**January 2010:**  
FWS petitioned  
to list northern  
long-eared bats

**October 2013:**  
proposed rule  
to list northern  
long-eared bat  
as endangered

**January 2015:**  
proposed rule  
to establish a  
4(d) rule

**April 2, 2015:**  
final rule listing  
northern  
long-eared bat  
as threatened  
with an interim  
4(d) rule

**January 2016:**  
final 4(d) rule



# What is a 4(d) Rule?

- Section 4(d) of Endangered Species Act
  - Allows FWS to define protections for species listed as “threatened”
  - Allows FWS to focus on those protections necessary or advisable to conserve the species
  - Cannot be applied to species listed as endangered as specific protections for endangered species are defined in the ESA



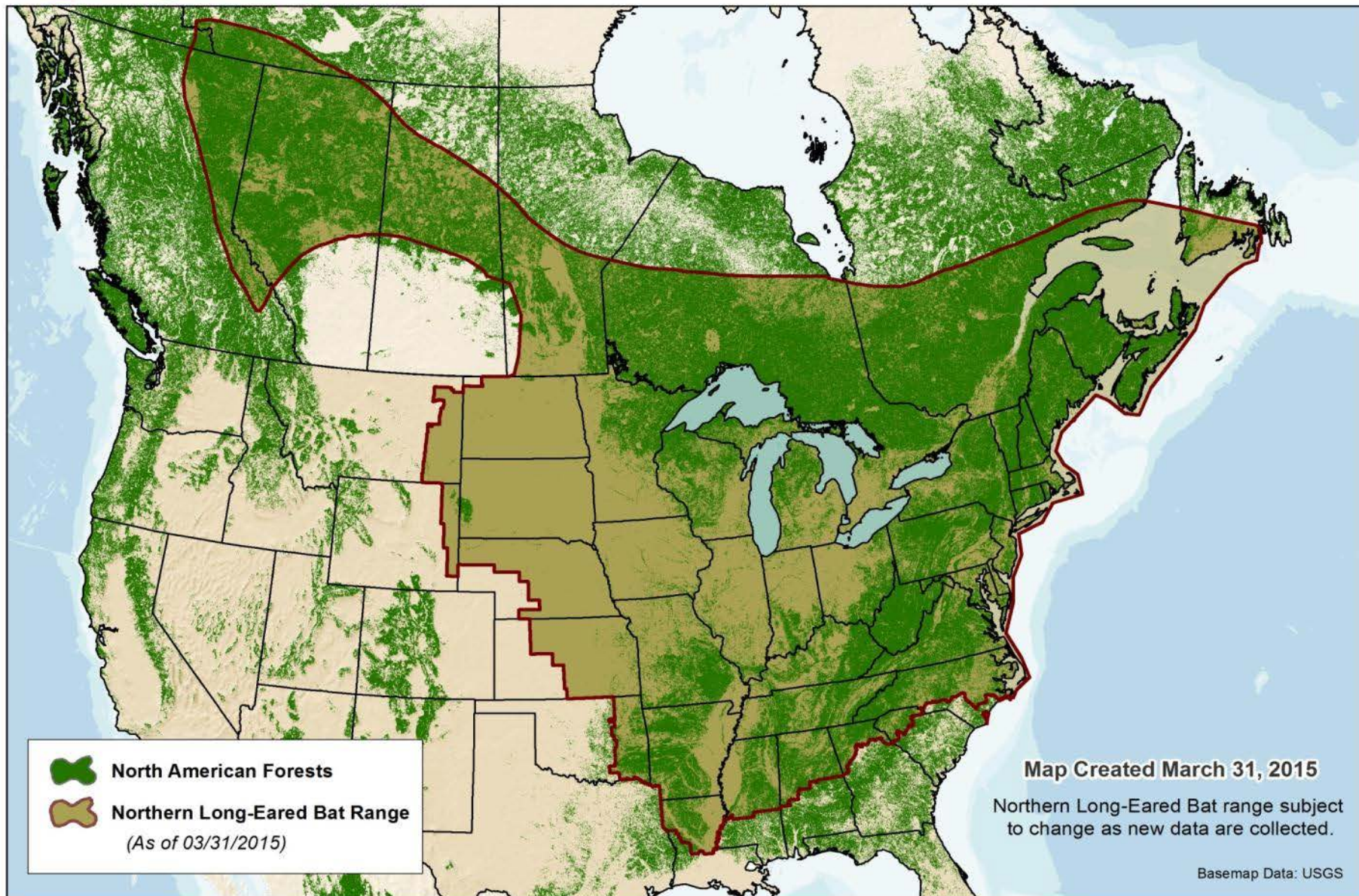
# Northern Long-Eared Bat

- One of the bat species most affected by white-nose syndrome (WNS)
- Hibernates during winter in caves and mines
- Forest-dwelling during spring staging, summer breeding and fall swarming





# Northern Long-Eared Bat Range

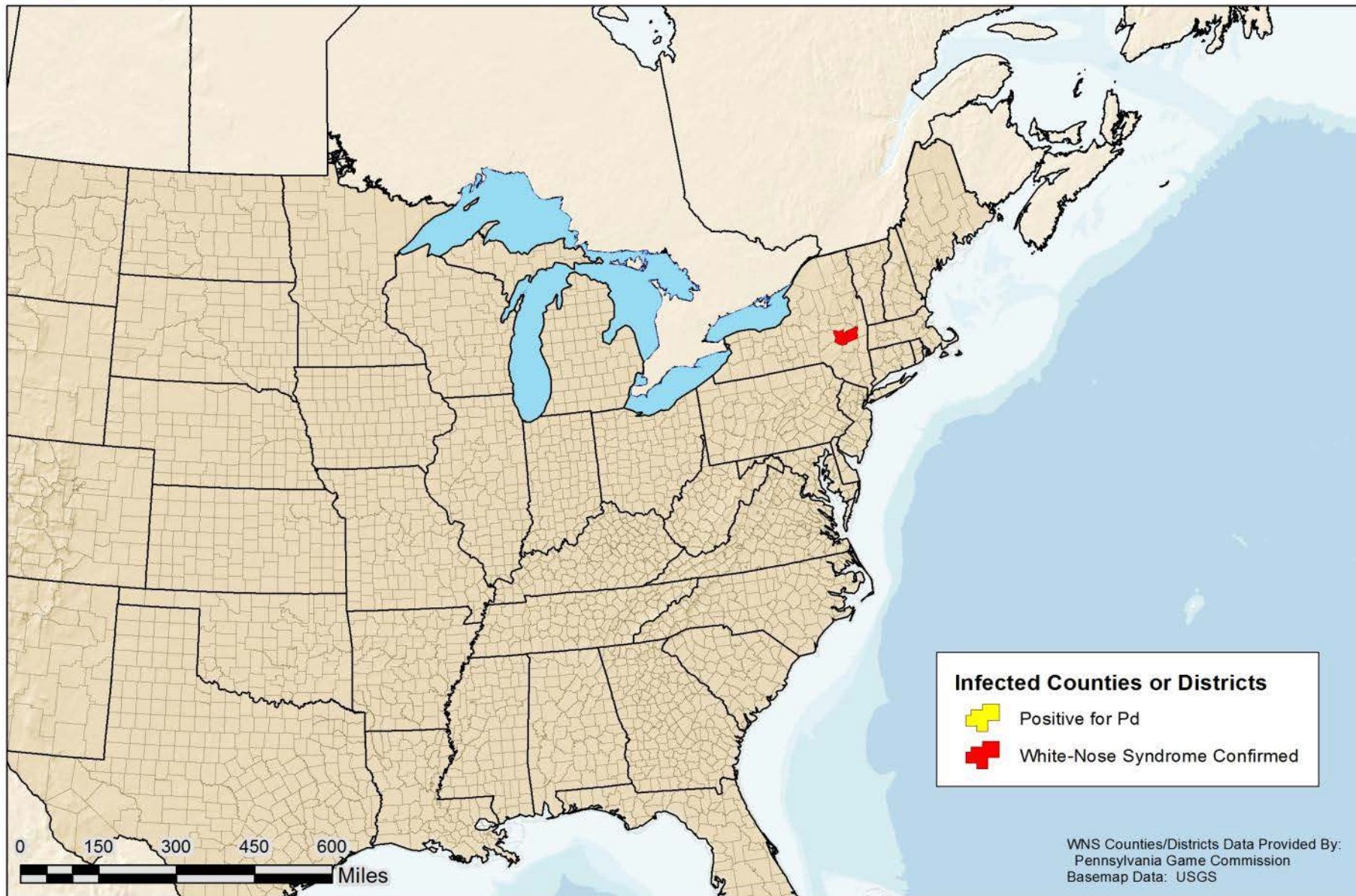




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# Spread of White-Nose Syndrome

# 2007

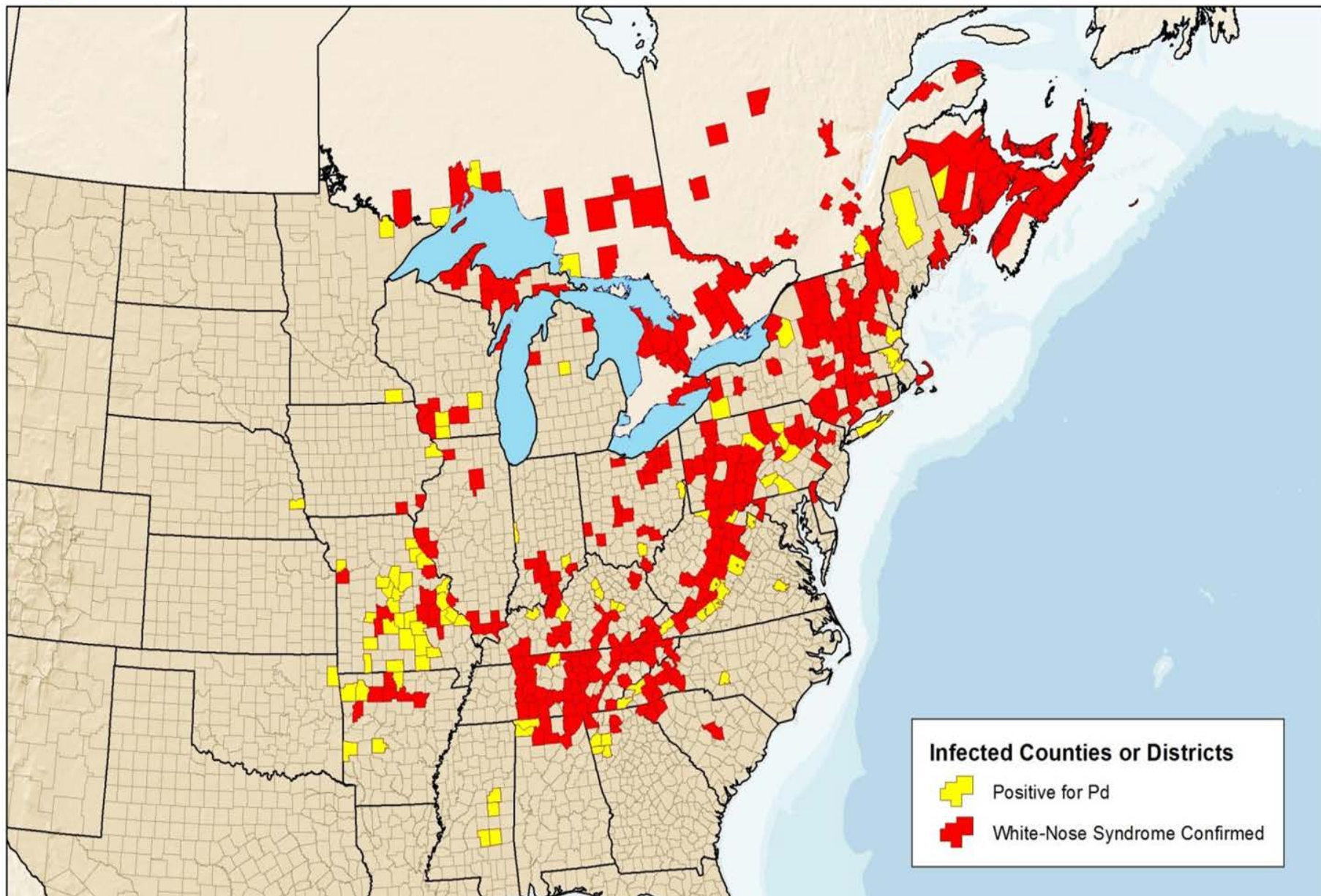




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# Spread of White-Nose Syndrome

# 2015







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# Northern Long-Eared Bat

## Final 4(d) Rule

- WNS the major threat
- Focused protections instead of broad protections
- Vulnerable periods in the bat's life history within the WNS-affected area:
  - Females with young, where known
  - Spring staging and fall swarming
  - Hibernation



*Photo courtesy of Steve Taylor; University of Illinois*



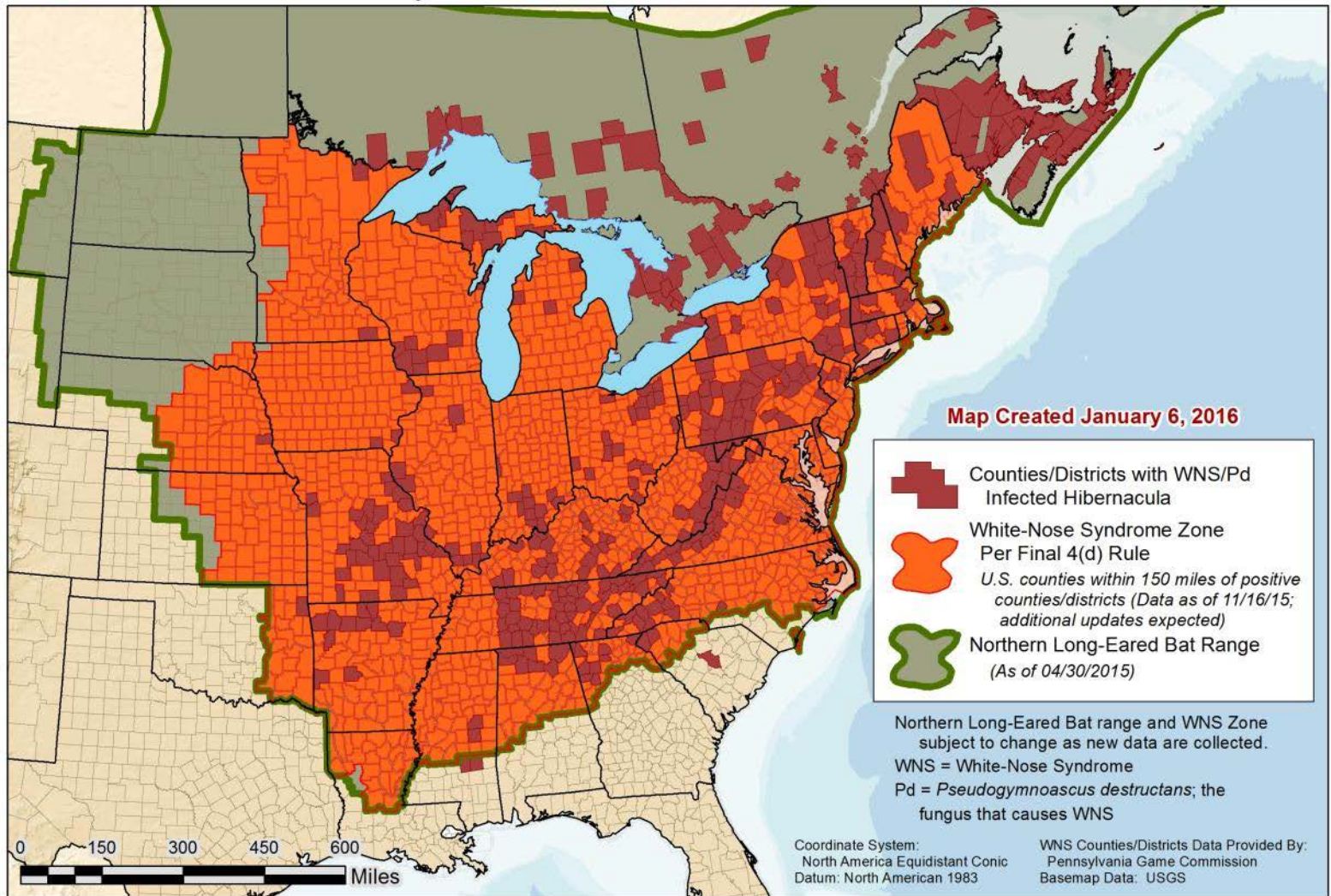
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## Northern Long-Eared Bat Final 4(d) Rule

White-Nose Syndrome Zone Around WNS/Pd Positive Counties/Districts





# 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."



# Summary of Final 4(d) Rule

## Entire Range of Bat

All “**purposeful take**” is prohibited, unless authorized by a permit, except under these circumstances:

- Defense of human life (e.g., public health monitoring)
- Removing hazardous trees
- Removing bats from human structures
- Limited research permit exemption through May 3, 2016

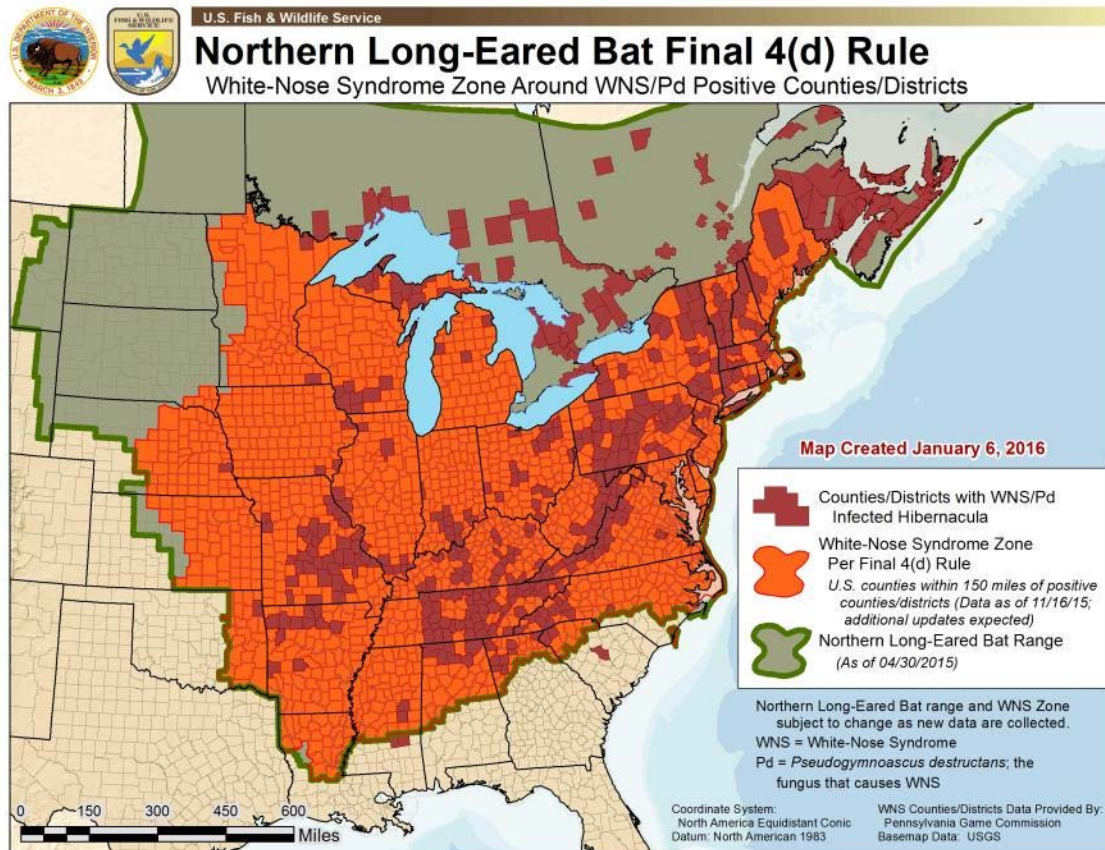


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# Summary of Final 4(d) Rule

## Outside WNS Zone:

### Incidental Take Is Not Prohibited

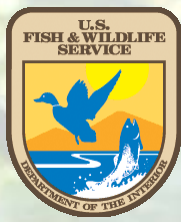




# Summary of Final 4(d) Rule

## Inside WNS Zone:

- All take within known hibernacula is prohibited
- Incidental take caused by tree removal is prohibited (without a permit) 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)



# Locations of Hibernacula and Maternity Roost Trees

- State Natural Heritage Inventory Databases
- Some states have other information sources
- Compilation of links to information sources:

[midwest.fws.gov/nleb/](http://midwest.fws.gov/nleb/)





# Framework Provides Streamlined S7 Consultation

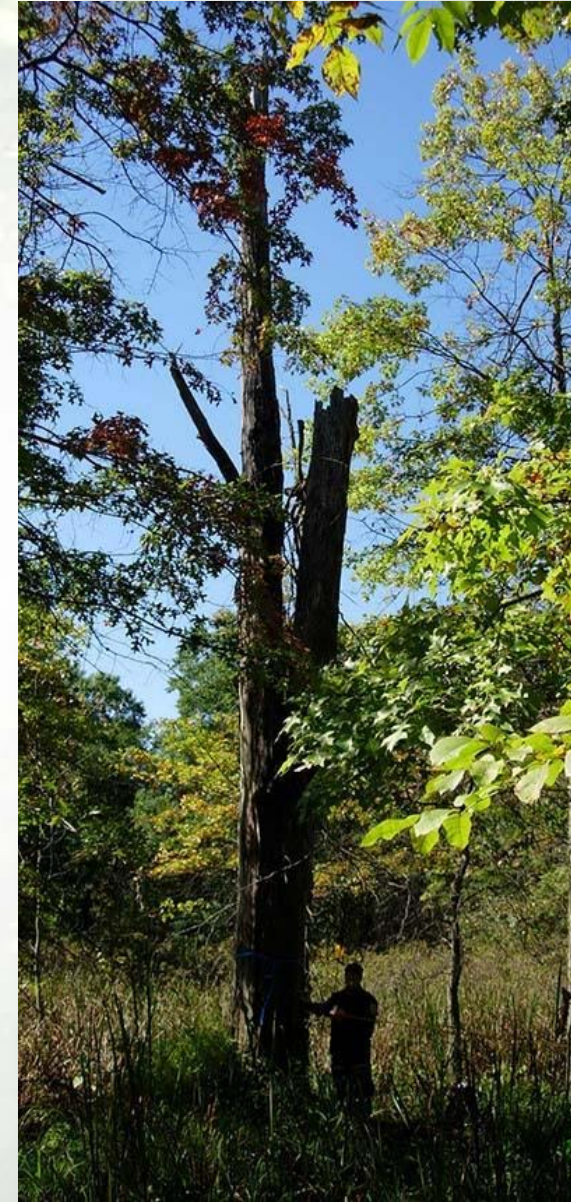
- Programmatic intra-Service consultation for final 4(d) rule
- Federal agencies may rely on this Biological Opinion and framework to fulfill their project-specific section 7(a)(2) responsibilities
- Federal agency makes a determination that action “may affect” but will not cause prohibited take
- Framework is efficient means for FWS to verify federal agency determinations





# Actions that “May Affect”

- Project-level documentation that any potential incidental take is not prohibited under final 4(d) rule
- Federal agency must provide written notification to appropriate ES Field Office
- Service concurrence not required
- If Service does not respond within 30 days; presume determination is correct and proceed



*Indiana bat roost tree  
by USFWS; Marilyn Kitchell*



# Analysis Supporting 4(d) Rule

- WNS is only range-wide threat
- Populations are healthy pre-WNS and outside WNS zone
- Extensive range
- Uses variety of habitat types
- Small percent of habitat impacted each year
- Tolerant of human activities

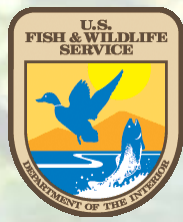


*Photo courtesy of Steve Taylor; University of Illinois*



# Analysis Supporting 4(d) Rule (cont'd.)

- Broad habitat protections are impractical
  - Uses a variety of habitat types
  - species distribution is patchy
  - low relative exposure to non-WNS threats
- Post-WNS fewer bats exposed to human activities
- Until we can address WNS, regulatory prohibitions are not practical tools for conserving bats. Minimizing prohibitions will help foster partnerships for recovery



# Highest Priority is to Find a Solution to White-Nose Syndrome

- Causative fungus has spread to 30 states and 5 provinces since 2007
- FWS leads international response; over 100 partners
- International coalition has prepared and implemented a response plan, identified the cause, and funded research
- 2016 pivotal year: field trials of promising experimental treatments are underway



# Conservation Priorities for Northern Long-Eared Bats

- Develop methods to abate WNS as quickly as possible
- Monitor populations in summer habitat
- Improve monitoring techniques
- Expand research
- Protect known hibernacula
- Protect known occupied maternity roost trees





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# Northern Long-eared Bat 4(d) Rule

## Questions?

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