

# Northern Long-Eared Bat/Endangered Species Act: U.S. Fish and Wildlife Service Finalizes 4(d) Rule



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

## Arkansas Environmental, Energy, and Water Law Blog

01/15/2016

The United States Fish and Wildlife Service (“Service”) has finalized a rule pursuant to Section 4(d) of the Endangered Species Act (“ESA”) addressing the Northern Long-eared Bat (“Bat”).

Issues associated with the Bat and the previously published interim 4(d) rule were discussed here <http://www.mitchellwilliamslaw.com/northern-long-eared-bat/endangered-species-act-john-metrailer-pollution-management-inc-reminder/update>.

The Service states that the final rule that was published:

... using flexibilities under Section 4(d) of the Endangered Species Act (ESA) to tailor protection areas affected by white-nosed syndrome (“WNS”) during the bat’s most sensitive life stages. The rule is designed to protect the bat while minimizing regulatory requirements for landowners, land managers, government agencies and others within the species’ range.

The Bat had previously been designated as threatened under the ESA. Its range includes portion of Arkansas and 36 other states.

By way of summary, the final rule provides that incidental take resulting from otherwise lawful activities will not be prohibited in areas not yet affected by WNS. Take of bats in their hibernacula (which includes caves, mines, and other locations where bats hibernate in winter) is prohibited in areas affected by WNS, unless permitted under Section 10(a)(1)(A) of the ESA. “Take” of bats inside of hibernacula is stated to include disturbing or disrupting hibernating individuals when they are present as well as the physical or other alteration of the hibernaculum’s entrance or environment where bats are not present if the result of the activity will impair a central behavior or patterns, including sheltering bats.

As to bats outside of hibernacula, the Service establishes separate prohibitions from take activities involving tree removal and activities that do not involve tree removal. Incidental take of bats outside of hibernacula resulting from activities other than tree removal is not prohibited.

Incidental take resulting from tree removal is prohibited if it:

1. Occurs within a 0.25 mile radius of known Northern Bat hibernacula
2. Cuts or destroys known occupied maternity roost trees or any other trees within a 150-foot radius from the known maternity tree during the pup season (June 1 – July 31)

A link to the final rule can be found here <https://www.gpo.gov/fdsys/pkg/FR-2016-01-14/pdf/2016-00617.pdf>.

