

Attachment M4 – USFWS SEC 7 ESA Determination



United States Department of the Interior

FISH AND WILDLIFE SERVICE
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In Reply Refer To:

August 23, 2019

Consultation Code: 05E1NE00-2019-TA-2677

Event Code: 05E1NE00-2019-E-06954

Project Name: CTDOT 301-176

Subject: Verification letter for the 'CTDOT 301-176' project under the January 5, 2016, Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-eared Bat and Activities Excepted from Take Prohibitions.

Dear Christopher Samorajczyk:

The U.S. Fish and Wildlife Service (Service) received on August 23, 2019 your effects determination for the 'CTDOT 301-176' (the Action) using the northern long-eared bat (*Myotis septentrionalis*) key within the Information for Planning and Consultation (IPaC) system. This IPaC key assists users in determining whether a Federal action is consistent with the activities analyzed in the Service's January 5, 2016, Programmatic Biological Opinion (PBO). The PBO addresses activities excepted from "take"^[1] prohibitions applicable to the northern long-eared bat under the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based upon your IPaC submission, the Action is consistent with activities analyzed in the PBO. The Action may affect the northern long-eared bat; however, any take that may occur as a result of the Action is not prohibited under the ESA Section 4(d) rule adopted for this species at 50 CFR §17.40(o). Unless the Service advises you within 30 days of the date of this letter that your IPaC-assisted determination was incorrect, this letter verifies that the PBO satisfies and concludes your responsibilities for this Action under ESA Section 7(a)(2) with respect to the northern long-eared bat.

Please report to our office any changes to the information about the Action that you submitted in IPaC, the results of any bat surveys conducted in the Action area, and any dead, injured, or sick northern long-eared bats that are found during Action implementation. If the Action is not completed within one year of the date of this letter, you must update and resubmit the information required in the IPaC key.

This IPaC-assisted determination allows you to rely on the PBO for compliance with ESA Section 7(a)(2) only for the northern long-eared bat. It **does not** apply to the following ESA-protected species that also may occur in the Action area:

- Red Knot, *Calidris canutus rufa* (Threatened)
- Roseate Tern, *Sterna dougallii dougallii* (Endangered)

If the Action may affect other federally listed species besides the northern long-eared bat, a proposed species, and/or designated critical habitat, additional consultation between you and this Service office is required. If the Action may disturb bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act is recommended.

[1]Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct [ESA Section 3(19)].

Action Description

You provided to IPaC the following name and description for the subject Action.

1. Name

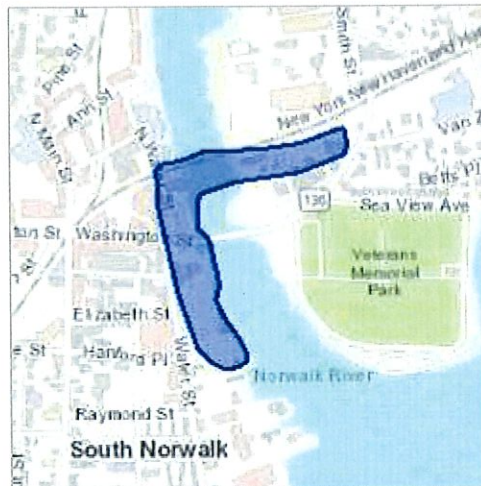
CTDOT 301-176

2. Description

The following description was provided for the project 'CTDOT 301-176':

Replacement of the New Haven Line Railroad Bridge (Walk Bridge, Bridge No. 04288R) crossing the Norwalk River, including removal of existing structure and replacement with two side-by-side 240-foot vertical lift spans

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/41.09866905922066N73.41555632219195W>

**Determination Key Result**

This Federal Action may affect the northern long-eared bat in a manner consistent with the description of activities addressed by the Service's PBO dated January 5, 2016. Any taking that may occur incidental to this Action is not prohibited under the final 4(d) rule at 50 CFR §17.40(o). Therefore, the PBO satisfies your responsibilities for this Action under ESA Section 7(a)(2) relative to the northern long-eared bat.

Determination Key Description: Northern Long-eared Bat 4(d) Rule

This key was last updated in IPaC on May 15, 2017. Keys are subject to periodic revision.

This key is intended for actions that may affect the threatened northern long-eared bat.

The purpose of the key for Federal actions is to assist determinations as to whether proposed actions are consistent with those analyzed in the Service's PBO dated January 5, 2016.

Federal actions that may cause prohibited take of northern long-eared bats, affect ESA-listed species other than the northern long-eared bat, or affect any designated critical habitat, require ESA Section 7(a)(2) consultation in addition to the use of this key. Federal actions that may affect species proposed for listing or critical habitat proposed for designation may require a conference under ESA Section 7(a)(4).

Determination Key Result

This project may affect the threatened Northern long-eared bat; therefore, consultation with the Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.) is required. However, based on the information you provided, this project may rely on the Service's January 5, 2016, *Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-Eared Bat and Activities Excepted from Take Prohibitions* to fulfill its Section 7(a)(2) consultation obligation.

Qualification Interview

1. Is the action authorized, funded, or being carried out by a Federal agency?

Yes

2. Have you determined that the proposed action will have "no effect" on the northern long-eared bat? (If you are unsure select "No")

No

3. Will your activity purposefully **Take** northern long-eared bats?

No

4. Is the project action area located wholly outside the White-nose Syndrome Zone?

Automatically answered

No

5. Have you contacted the appropriate agency to determine if your project is near a known hibernaculum or maternity roost tree?

Location information for northern long-eared bat hibernacula 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.

Yes

6. Will the action affect a cave or mine 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?

No

7. Will the action involve Tree Removal?

Yes

8. Will the action only remove hazardous trees for the protection of human life or property?

No

9. Will the action remove trees within 0.25 miles of a known northern long-eared bat hibernaculum at any time of year?

No

10. Will the action remove a known occupied northern long-eared bat maternity roost tree or any trees within 150 feet of a known occupied maternity roost tree from June 1 through July 31?

No

Project Questionnaire

If the project includes forest conversion, report the appropriate acreages below. Otherwise, type '0' in questions 1-3.

1. Estimated total acres of forest conversion:

0

2. If known, estimated acres of forest conversion from April 1 to October 31

0

3. If known, estimated acres of forest conversion from June 1 to July 31

0

If the project includes timber harvest, report the appropriate acreages below. Otherwise, type '0' in questions 4-6.

4. Estimated total acres of timber harvest

0

5. If known, estimated acres of timber harvest from April 1 to October 31

0

6. If known, estimated acres of timber harvest from June 1 to July 31

0

If the project includes prescribed fire, report the appropriate acreages below. Otherwise, type '0' in questions 7-9.

7. Estimated total acres of prescribed fire

0

8. If known, estimated acres of prescribed fire from April 1 to October 31

0

9. If known, estimated acres of prescribed fire from June 1 to July 31

0

If the project includes new wind turbines, report the megawatts of wind capacity below. Otherwise, type '0' in question 10.

10. What is the estimated wind capacity (in megawatts) of the new turbine(s)?

0



STATE OF CONNECTICUT

DEPARTMENT OF TRANSPORTATION

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August 24, 2019

NOTE TO FILE: CTDOT 301-176 USFWS SEC 7 ESA No-Effect Determination

USFWS IPaC ESA MAPPER identifies the threatened Northern long-eared bat (*Myotis septentrionalis*) and threatened red knot (*Calidris cantus rufa*) as occurring within the Project area. IPaC also identifies the endangered roseate tern (*Sterna dougalli dougalli*) as occurring adjacent to the project site. State of Connecticut Natural Diversity Data Base (NDDB) records identify the threatened piping plover (*Charadrius melodus*) as occurring near the Project area.

CTDOT 301-176 involves the full replacement of Bridge No. 04288R Metro North Railroad Bridge over the Norwalk River. This Project was submitted to the United States Fish & Wildlife Service (USFWS) under the final 4 (d) streamlined consultation process for the Northern long-eared bat (*Myotis septentrionalis*) and has a not likely to adversely affect (NLLA) determination. This Project is located in a highly urbanized area with all bridge work being conducted from crane pads and barges. Habitat for the federally listed red knot, roseate tern, and piping plover does not exist within the Project area but does exist further out in the Norwalk Harbor and outer barrier islands. The Project area is located up past the inner harbor and contains no preferred habitat for nesting, resting, and/or foraging for listed species. These species depend on true coastal shores with very little public impact. The Project area is located in and away from any coastal shore within a downtown urban setting 2 miles north of any preferred habitat and close to a mile of even suitable habitat. Also, in consultation with state NDDB data there are no state records of either the roseate tern or red knot located in or anywhere near the Project area. There will be no impact to any ESA listed species associated with this Project.

It is for the above reasons that this Office concludes, on behalf of FHWA, a finding of no-effect for this Project on any USFWS ESA species (other than *Myotis septentrionalis*) identified in or in proximity to this Project. This memo will be retained with the file documents.

Christopher Samorajczyk

Wildlife Biologist CTDOT