



United States Department of the Interior



FISH AND WILDLIFE SERVICE

New England Field Office
70 Commercial Street, Suite 300
Concord, NH 03301-5087
<http://www.fws.gov/newengland>

REF: New England Clean Power Link Transmission Line
Alburgh to Ludlow, VT

July 13, 2015

Mr. Brian Mills
Office of Electricity Delivery and Energy Reliability
OE-20
U.S. Department of Energy
1000 Independence Avenue Southwest
Washington, DC 20585

Dear Mr. Mills:

This responds to your correspondence, dated January 12, 2015, requesting information on the presence of federally listed and/or proposed endangered or threatened species, as well as other ecological resources, in relation to the New England Clean Power Link Project (Project). The proposed Project involves the installation of a 1,000-megawatt high-voltage direct current electric power transmission system. The transmission line would run through Vermont, originating in Alburgh, and continuing under the waters of Lake Champlain to Benson. The transmission line would then continue overland to Ludlow, where a proposed converter station would be built.

Pursuant to section 7(a)(2) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531-1533), Federal agencies, including the U. S. Department of Energy (DOE), have a responsibility to consult with the U. S. Fish and Wildlife Service (Service) when projects they fund, authorize, or carry out result in effects to federally listed or proposed species. Our comments are provided in accordance with section 7 of the ESA, as well as the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712; Ch. 128; July 13, 1918; 40 Stat. 755) and the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d).

Endangered Species Comments

You identified the federally endangered Indiana bat (*Myotis sodalis*) and the threatened northern long-eared bat (*Myotis septentrionalis*) (NLEB) as occurring within the Project area. No other federally listed or proposed species or critical habitat occurs within the Project area.

Indiana Bat

The Indiana bat is known to occur where terrestrial portions of the Project are proposed to be located in the towns of Benson, West Haven and Fair Haven. The Indiana bat is a migratory bat that hibernates colonially in caves and mines in the winter. In the spring, reproductive females migrate and form maternity colonies where they bear and raise their young in wooded areas. Males and non-reproductive females typically do not roost in colonies and may stay close to their hibernaculum or migrate to summer habitat. Summer roosts are typically behind exfoliating bark of large, live or dead trees that are ≥ 5 inches dbh. Primary roosts usually receive direct sunlight for more than half the day. Roost trees are typically within canopy gaps in a forest, in a fence line, or along a wooded edge. Habitats in which maternity roosts occur include riparian zones, bottomland and floodplain habitats, wooded wetlands, and upland communities.

Based on recommendations from Susi von Oettingen of this office and Scott Darling of the Vermont Fish and Wildlife Department, you conducted a habitat assessment for Indiana bat in August and September of 2014. The habitat assessment documented 116 potential roost trees within the study area. In order to avoid adverse effects to the Indiana bat, you have proposed to avoid cutting these potential roost trees during construction and operation of the Project. If removal of a potential roost tree is necessary, you have proposed to conduct visual and/or acoustic bat exit surveys of such trees. If bats emerge, those trees should not be cut, and further consultation with this office may be necessary.

Northern Long-Eared Bat

Formerly, the NLEB bat was common throughout Vermont. However, following the detection of white-nose syndrome (a fungal infection resulting in high mortality of bats) in hibernating bats during the winter of 2008-2009, the abundance of NLEBs in Vermont has declined dramatically.

The Service developed an interim rule specific to the NLEB under section 4(d) of the ESA.¹ Under this interim rule, incidental take is not prohibited when it is associated with the maintenance and minimal expansion of transportation and utility rights-of-way, when carried out in accordance with the conservation measures provided in the 4(d) rule. Based on our understanding of the Project, the activities associated with this Project would not be considered maintenance and minimal expansion of transportation and utility rights-of-way. For example, construction of the new converter station would result in the clearing of approximately 10 acres of forest.

In order to avoid the killing or injuring of bats during the summer active season, when trees are used for daytime roosting and rearing of pups, tree clearing (≥ 3 inches dbh) should not occur during the period of April 15 to August 31. If you cannot adhere to this time-of-year restriction, we recommend that comprehensive surveys be performed that will allow us to determine the current distribution of the species along the Project route. Surveys should be performed in

¹ 80 FR 17974, April 2, 2015. Available at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-02/pdf/2015-07069.pdf>, accessed May 29, 2015.

accordance with current Indiana bat summer survey guidelines.² This occurrence information would allow us to assess the Project for take, as defined in section 3(19) of the ESA and 50 CFR §17.3, which could occur by killing or injuring bats during the summer active season, when trees are used for daytime roosting and rearing of pups.

Also, please note that this interim rule under section 4(d) of the ESA does not remove, or alter in any way, the consultation requirements under section 7 of the ESA.

Migratory Bird Treaty Act

The MBTA prohibits taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. Neither the MBTA nor its implementing regulations at 50 CFR Part 21 provide for permitting of “incidental take” of migratory birds. While take of migratory birds does not include habitat destruction or alteration, direct taking of birds, nests, eggs, or parts thereof is likely to occur if clearing or other ground disturbance occurs within migratory bird nesting habitat during the nesting season, when eggs or young are likely to be present. Vegetation removal activities should not occur during these periods.

This Project occurs within the Lower Great Lakes/St. Lawrence Plain Bird Conservation Region (BCR) 13. BCRs are ecologically based units for planning, implementing, and evaluating cooperative bird conservation efforts across North America. Activities associated with this Project, particularly within the forested area where the converter station is proposed to be built, may result in direct and secondary impacts to forest-interior breeding birds and their natural habitats. In this area, there may be an increase in disturbance of birds due to habitat fragmentation, increased populations of some predators due to edge effect, and possibly an increase in the spread of invasive species. These are important issues that we encourage you to consider when developing avoidance, minimization and mitigation measures.

A Memorandum of Understanding (MOU) between DOE and the Service regarding Implementation of Executive Order 13186, “Responsibilities of Federal Agencies to Protect Migratory Birds,” was signed in 2006. Section F of the MOU lists DOE’s obligations under the MOU, which include identifying and evaluating the effects of proposed projects on migratory birds and minimizing adverse impacts on migratory birds by evaluating all reasonable alternatives. We are available to provide assistance regarding avoidance, minimization and mitigation measures.

Bald and Golden Eagle Protection Act

Although protection of the bald eagle (*Haliaeetus leucocephalus*) pursuant to the ESA was removed in 2007 when the species was delisted, the species remains federally protected under the MBTA and the BGEPA. The BGEPA prohibits unpermitted take of bald eagles, with “take” defined as to “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest

² Available at <http://www.fws.gov/midwest/endangered/mammals/inba/inbasummersurveyguidance.html>, accessed May 29, 2015).

Mr. Brian Mills
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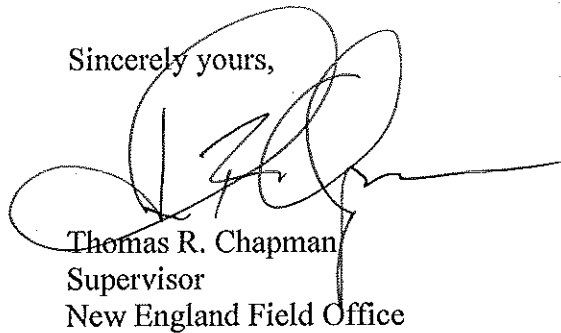
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or disturb" (16 U.S.C. 668c; 50 CFR 22.3. The regulations (50 CFR 22.3) also define "disturb" as "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause: (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior." If eagle nests are currently found in the vicinity of the Project, or if activities are proposed that may disturb bald eagles, (i.e., blasting within 0.5 mile of a known nest), a BGEPA permit may be required.

To ensure compliance with the BGEPA, we recommend that you contact the Vermont Fish and Wildlife Department annually to obtain updated information on bald eagles within your Project area. Upon receipt of this occurrence information, we recommend that you review the Service's National Bald Eagle Management Guidelines (<http://www.fws.gov/northeast/ecologicalservices/pdf/NationalBaldEagleManagementGuidelines.pdf>) (accessed April 2015). This information may allow you to plan the Project in a way that minimizes disturbance to bald eagles.

Thank you for your cooperation, and please contact Maria Tur of this office at 603-223-2541 for further assistance.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'T. Chapman', is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Thomas R. Chapman
Supervisor
New England Field Office

Mr. Brian Mills
July 13, 2015

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cc: Mike Adams – Corps of Engineers
Scott Darling – Vermont Fish and Wildlife
Reading file
ES: MTur:7-13-15;603-223-2541