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PF 14-22



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>



March 5, 2015

Mr. Timothy O'Sullivan
 AECOM
 500 Enterprise Drive, Suite 1A
 Rocky Hill, Connecticut 06067

Dear Mr. O'Sullivan:

This responds to your correspondence, dated January 14, 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 Tennessee Gas Pipeline Company's (Tennessee) proposal to construct and operate the Northeast Energy Direct Project. Subsequently, a notice of project changes was received via email on February 12, 2015. The proposed project involves the upgrade of an existing pipeline system in Pennsylvania, New York, Massachusetts, Connecticut and New Hampshire, including new pipeline sections in Connecticut, Massachusetts and New Hampshire. The locations of associated access roads, meter stations, valves, and pipe yards will be determined as the final pipeline locations are determined. Additional consultation with this office may be necessary.

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 Federal Energy Regulatory Commission (FERC), 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).

This letter addresses only those portions of the project located in Massachusetts, Connecticut and New Hampshire. The New York and Pennsylvania portions of the project are being reviewed by the Service's respective field offices.

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Endangered Species Comments

Two federally endangered species occur within the vicinity of the project area, the Dwarf wedgemussel (*Alasmidonta heterodon*) and the northeastern bulrush (*Scirpus ancistrochaetus*). No critical habitat for these species occurs within the project area.

Dwarf wedgemussel

The 14.57-mile-long Line 300 lateral running through Hartford County, Connecticut crosses the Farmington River in East Granby where the dwarf wedgemussel is known to occur. Since the proposed project crosses habitat known to support dwarf wedgemussel, further consultation with this office regarding the project is recommended.

You should conduct a survey of the action area¹ for dwarf wedgemussels in order to ascertain their presence or absence. If dwarf wedgemussels are located within the action area and adverse effects cannot be avoided, formal consultation must be initiated. However, FERC may also assume presence and initiate formal consultation if it is determined that the proposed crossing will adversely affect dwarf wedgemussels.

Please provide all project information, including survey results, to FERC, with a copy to us, as FERC is responsible for making an effect determination pursuant to the ESA. If the project can be designed to avoid take² of listed species, take authorization will not be required. However, if take of dwarf wedgemussels cannot be avoided, it will be necessary for FERC to formally consult with the Service to ensure that their Federal action (e.g., the issuance of their license) will not jeopardize the continued existence of this species and to obtain take authorization. The Service is available to provide technical assistance to FERC and Tennessee to avoid take of dwarf wedgemussels.

Northeastern bulrush

Our records indicate that the northeastern bulrush is known to occur within the area of the proposed mainline pipeline facility in Massachusetts that crosses through the towns of Montague and Warwick in Franklin County. Northeastern bulrush is an obligate wetland plant, being found in wetlands 99 percent of the time. Northeastern bulrush may be found in small wetlands, sinkhole ponds or wet depressions with seasonally fluctuating water levels. It may be found at the water's edge, in deep water, or in just a few inches of water. During dry spells, there may not be any water visible where the plant is growing.

The northeastern bulrush population that exists in Warwick is not within the vicinity of the currently proposed pipeline. In Montague, we recommend that you conduct a survey of the project area where there will be direct or indirect impacts to wetlands to determine if there is habitat capable of

¹ Action area means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. [50 CFR §402.02]

² Take is defined in section 3 of the ESA as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

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supporting the northeastern bulrush. If habitat is present, a survey should be conducted by a qualified botanist.

Species Undergoing Review

In an effort to improve ESA implementation, the Service developed a multi-year-listing work plan that will enable the agency to systematically review and address the needs of more than 250 species listed on the 2010 Candidate Notice of Review, to determine if they should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. This work plan was subsequently filed as part of a Multi-District Litigation (MDL) court-approved settlement agreement with the Center for Biological Diversity and WildEarth Guardians, whereby the Service has committed to publish certain ESA listing actions (i.e., petition findings, listing determinations, and critical habitat designations) in fiscal years (FY) 2013 to 2016 (the Federal fiscal year ends September 30). The Service recently extended the MDL work plan to include FYs 2017 and 2018 (see the work plan available at: http://www.fws.gov/endangered/improving_ESA/listing_workplan_FY13-18.html [accessed March 2015]).

Although not currently listed, the New England cottontail rabbit (*Sylvilagus transitionalis*) and the northern long-eared bat (*Myotis septentrionalis*) are species that appear on the MDL work plan and may occur in the vicinity of the project. Early consideration of these species in project planning may allow the project to be designed in a manner that avoids adverse effects to these species. This early consideration may help to avert future project delays, since a determination that listing of these species under authority of the ESA is warranted will trigger the need for consultation pursuant to section 7 of the ESA.

New England cottontail

The Service's MDL work plan schedule specifies that we will develop a Proposed Rule to list the New England cottontail or conclude that listing of the New England cottontail is not warranted during FY 2015. We are not aware that any comprehensive surveys or other studies have been conducted for this species within the project area. However, a portion of the project in Hillsborough and Rockingham Counties, New Hampshire is located within a New England cottontail focus area, in the vicinity where the New England cottontail is known to occur. Vegetation management along utility rights-of-way can have a significant impact on the New England cottontail. Long-term management that converts scrub-shrub corridors into herbaceous vegetative cover eliminates habitat and hinders cottontail dispersal, while short-term management of shrubs results in a temporary impact to habitat. These short-term impacts to shrub communities may be necessary to ensure vegetation succession does not proceed to the point where habitat is no longer suitable for the New England cottontail. Given the conservation status of the New England cottontail and their potential presence in the project area, consideration of the species during project planning is strongly advised.

Northern long-eared bats

The northern long-eared bat is currently proposed for listing under the ESA. The Service will develop a Final Rule to list the northern long-eared bat or conclude that listing of the species is not

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warranted in April 2015. During summer months, northern long-eared bats roost singly or in colonies underneath bark, in cavities, or in crevices of both live and dead trees. Males and non-reproductive females may also roost in cooler places, like caves and mines. This bat species appears to be opportunistic in selecting roosts, using various tree species based on suitability to retain bark or provide cavities or crevices. It has also been found in rare instances roosting in structures like barns and sheds.

As you indicated in your correspondence, the project is located within the known range of the northern long-eared bat and you would like to proactively address this species by requesting guidance from this office. At this time, we recommend that you review the Northern Long-eared Bat Interim Conference and Planning Guidance (<http://www.fws.gov/midwest/endangered/mammals/nlba/pdf/NLEBinterimGuidance6Jan2014.pdf>) (accessed March 2015) until such time as the Service has made a determination whether to list the species.

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 Atlantic Northern Forest Bird Conservation Region (BCR) 14 and the New England/Mid-Atlantic Coast BCR 30. BCRs are ecologically based units for planning, implementing, and evaluating cooperative bird conservation efforts across North America. Activities associated with this project, particularly in areas of new pipeline, may result in direct and secondary impacts to forest-interior breeding birds and their natural habitats. In these areas, there will 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 Tennessee to consider when developing avoidance, minimization and mitigation measures.

A Memorandum of Understanding (MOU) between FERC and the Service regarding Implementation of Executive Order 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds," was signed in 2011. Section F of the MOU lists FERC's obligations under the MOU, one of which includes identifying and evaluating bird conservation measures and best management practices to avoid or minimize adverse effects, and mitigation. We are available to provide assistance regarding avoidance, minimization and mitigation measures.

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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 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 States 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. This information may allow you to plan the project in a way that minimizes disturbance to bald eagles.

Thank you for your coordination on this project. Please contact Maria Tur of this office at 603-223-2541 with any additional information or for further assistance.

Sincerely yours,



Abby
Thomas R. Chapman
Supervisor
New England Field Office

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cc: FERC
Tennessee Gas
FWS, New York Field Office, David Stilwell
FWS, Pennsylvania Field Office, Lora Zimmerman
Reading file

ES: MTur:3-5-15:603-223-2541

Document Content(s)

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