

Appendix H – US Fish & Wildlife (USFWS) Coordination



United States Department of the Interior

FISH AND WILDLIFE SERVICE
 New England Ecological Services Field Office
 70 Commercial Street, Suite 300
 Concord, NH 03301-5094
 Phone: (603) 223-2541 Fax: (603) 223-0104
<http://www.fws.gov/newengland>



In Reply Refer To:
 Consultation Code: 05E1NE00-2019-SLI-2285
 Event Code: 05E1NE00-2021-E-03250
 Project Name: Newington-Dover General Sullivan Bridge

January 19, 2021

Subject: Updated list of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2) (c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/eagle_guidance.html). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; <http://www.towerkill.com>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

New England Ecological Services Field Office
70 Commercial Street, Suite 300
Concord, NH 03301-5094
(603) 223-2541

Project Summary

Consultation Code: 05E1NE00-2019-SLI-2285

Event Code: 05E1NE00-2021-E-03250

Project Name: Newington-Dover General Sullivan Bridge

Project Type: TRANSPORTATION

Project Description: NHDOT and FHWA proposes to rehabilitate or replace the General Sullivan Bridge located over Little Bay in Newington and Dover, NH.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@43.11776020677442,-70.8259373684309,14z>



Counties: Rockingham and Strafford counties, New Hampshire

Endangered Species Act Species

There is a total of 1 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Mammals

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.



United States Department of the Interior



FISH AND WILDLIFE SERVICE
New England Ecological Services Field Office
70 Commercial Street, Suite 300
Concord, NH 03301-5094
Phone: (603) 223-2541 Fax: (603) 223-0104
<http://www.fws.gov/newengland>

In Reply Refer To:
Consultation Code: 05E1NE00-2019-SLI-2285
Event Code: 05E1NE00-2019-E-05854
Project Name: Newington-Dover General Sullivan Bridge

July 12, 2019

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 et seq.), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 et seq.), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/eagle_guidance.html). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; <http://www.towerkill.com>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

New England Ecological Services Field Office
70 Commercial Street, Suite 300
Concord, NH 03301-5094
(603) 223-2541

Project Summary

Consultation Code: 05E1NE00-2019-SLI-2285

Event Code: 05E1NE00-2019-E-05854

Project Name: Newington-Dover General Sullivan Bridge

Project Type: TRANSPORTATION

Project Description: NHDOT and FHWA proposes to rehabilitate or replace the General Sullivan Bridge located over Little Bay in Newington and Dover, NH.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/43.11776020677442N70.8259373684309W>



Counties: Rockingham, NH | Strafford, NH

Endangered Species Act Species

There is a total of 1 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Mammals

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
 New England Ecological Services Field Office
 70 Commercial Street, Suite 300
 Concord, NH 03301-5094
 Phone: (603) 223-2541 Fax: (603) 223-0104
<http://www.fws.gov/newengland>



IPaC Record Locator: 129-17510927

August 20, 2019

Subject: Consistency letter for the 'Newington-Dover General Sullivan Bridge' project (TAILS 05E1NE00-2019-R-2285) under the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat.

To whom it may concern:

The U.S. Fish and Wildlife Service (Service) has received your request dated to verify that the Newington-Dover General Sullivan Bridge (Proposed Action) may rely on the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based on the information you provided (Project Description shown below), you have determined that the Proposed Action is within the scope and adheres to the criteria of the PBO, including the adoption of applicable avoidance and minimization measures, and may affect, and is likely to adversely affect the endangered Indiana bat (*Myotis sodalis*) and/or the threatened Northern long-eared bat (*Myotis septentrionalis*). Consultation with the Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) is required.

This "may affect - likely to adversely affect" determination becomes effective when the lead Federal action agency or designated non-federal representative uses it to ask the Service to rely on the PBO to satisfy the agency's consultation requirements for this project. Please provide this consistency letter to the lead Federal action agency or its designated non-federal representative with a request for its review, and as the agency deems appropriate, transmittal to this Service Office for verification that the project is consistent with the PBO.

This Service Office will respond by letter to the requesting Federal action agency or designated non-federal representative within 30 calendar days to:

- verify that the Proposed Action is consistent with the scope of actions covered under the PBO;
- verify that all applicable avoidance, minimization, and compensation measures are included in the action proposal;
- identify any action-specific monitoring and reporting requirements, consistent with the monitoring and reporting requirements of the PBO, and
- identify anticipated incidental take.

ESA Section 7 compliance for this Proposed Action is not complete until the Federal action agency or its designated non-federal representative receives a verification letter from the Service.

For Proposed Actions that include bridge/structure removal, replacement, and/or maintenance activities: If your initial bridge/structure assessments failed to detect Indiana bats, but you later detect bats during construction, please submit the Post Assessment Discovery of Bats at Bridge/Structure Form (User Guide Appendix E) to this Service Office. In these instances, potential incidental take of Indiana bats may be exempted provided that the take is reported to the Service.

If the Proposed Action may affect any other federally-listed or proposed species and/or designated critical habitat, additional consultation between the lead Federal action agency and this Service Office is required. If the proposed action has the potential to take bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act may also be required. In either of these circumstances, please advise the lead Federal action agency for the Proposed Action accordingly.

Project Description

The following project name and description was collected in IPaC as part of the endangered species review process.

Name

Newington-Dover General Sullivan Bridge

Description

NHDOT and FHWA proposes to rehabilitate or replace the General Sullivan Bridge located over Little Bay in Newington and Dover, NH.

Determination Key Result

Based on your answers provided, this project is likely to adversely affect the endangered Indiana bat and/or the threatened Northern long-eared bat. Therefore, consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended 16 U.S.C. 1531 et seq.) is required. However, also based on your answers provided, this project may rely on the conclusion and Incidental Take Statement provided in the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat.

Qualification Interview

1. Is the project within the range of the Indiana bat^[1]?

[1] See [Indiana bat species profile](#)

Automatically answered

No

2. Is the project within the range of the Northern long-eared bat^[1]?

[1] See [Northern long-eared bat species profile](#)

Automatically answered

Yes

3. Which Federal Agency is the lead for the action?

A) Federal Highway Administration (FHWA)

4. Are all project activities limited to non-construction^[1] activities only? (examples of non-construction activities include: bridge/abandoned structure assessments, surveys, planning and technical studies, property inspections, and property sales)

[1] Construction refers to activities involving ground disturbance, percussive noise, and/or lighting.

No

5. Does the project include any activities that are greater than 300 feet from existing road/rail surfaces^[1]?

[1] Road surface is defined as the actively used [e.g. motorized vehicles] driving surface and shoulders [may be pavement, gravel, etc.] and rail surface is defined as the edge of the actively used rail ballast.

No

6. Does the project include any activities within 0.5 miles of a known Indiana bat and/or NLEB hibernaculum^[1]?

[1] For the purpose of this consultation, a hibernaculum is a site, most often a cave or mine, where bats hibernate during the winter (see suitable habitat), but could also include bridges and structures if bats are found to be hibernating there during the winter.

No

7. Is the project located within a karst area?

No

8. Is there any suitable^[1] summer habitat for Indiana Bat or NLEB within the project action area^[2]? (includes any trees suitable for maternity, roosting, foraging, or travelling habitat)

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] The action area is defined as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR Section 402.02). Further clarification is provided by the [national consultation FAQs](#).

Yes

9. Will the project remove any suitable summer habitat^[1] and/or remove/trim any existing trees within suitable summer habitat?

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

Yes

10. Will the project clear more than 20 acres of suitable habitat per 5-mile section of road/rail?

No

11. Have presence/probable absence (P/A) summer surveys^{[1][2]} been conducted^{[3][4]} within the suitable habitat located within your project action area?

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] Presence/probable absence summer surveys conducted within the fall swarming/spring emergence home range of a documented Indiana bat hibernaculum (contact local Service Field Office for appropriate distance from hibernacula) that result in a negative finding requires additional consultation with the local Service Field Office to determine if clearing of forested habitat is appropriate and/or if seasonal clearing restrictions are needed to avoid and minimize potential adverse effects on fall swarming and spring emerging Indiana bats.

[3] For projects within the range of either the Indiana bat or NLEB in which suitable habitat is present, and no bat surveys have been conducted, the transportation agency will assume presence of the appropriate species. This assumption of presence should be based upon the presence of suitable habitat and the capability of bats to occupy it because of their mobility.

[4] Negative presence/probable absence survey results obtained using the [summer survey guidance](#) are valid for a minimum of two years from the completion of the survey unless new information (e.g., other nearby surveys) suggest otherwise.

No

12. Does the project include activities within documented NLEB habitat^{[1][2]}?

[1] Documented roosting or foraging habitat - for the purposes of this consultation, we are considering documented habitat as that where Indiana bats and/or NLEB have actually been captured and tracked using (1) radio telemetry to roosts; (2) radio telemetry triangulation/triangulation to estimate foraging areas; or (3) foraging areas with repeated use documented using acoustics. Documented roosting habitat is also considered as suitable summer habitat within 0.25 miles of documented roosts.)

[2] For the purposes of this key, we are considering documented corridors as that where Indiana bats and/or NLEB have actually been captured and tracked to using (1) radio telemetry; or (2) treed corridors located directly between documented roosting and foraging habitat.

No

13. Will the removal or trimming of habitat or trees occur within suitable but undocumented NLEB roosting/foraging habitat or travel corridors?

Yes

14. What time of year will the removal or trimming of habitat or trees within suitable but undocumented NLEB roosting/foraging habitat or travel corridors occur?

C) During both the active and inactive seasons

15. Will any tree trimming or removal occur within 100 feet of existing road/rail surfaces?

Yes

16. Will more than 10 trees be removed between 0-100 feet of the road/rail surface during the active season^[1]?

[1] Areas containing more than 10 trees will be assessed by the local Service Field Office on a case-by-case basis with the project proponent.

No

17. Has a visual emergence survey^[1] been conducted?

[1] Refer to the [summer survey guidance](#)

No

18. Do you plan on conducting a visual emergence survey prior to removing trees^[1]?

[1] If bats are detected during a visual emergence survey conducted in suitable but undocumented Indiana and/or NLEB habitat, this consultation will no longer be valid and a new consultation will be conducted through IPaC with the habitat now considered as documented Indiana and/or NLEB habitat.

No

19. Will the tree removal alter any documented Indiana bat or NLEB roosts and/or alter any surrounding summer habitat within 0.25 mile of a documented roost?

No

20. Will any tree trimming or removal occur between 100-300 feet of existing road/rail surfaces?

Yes

21. Are all trees that are being removed clearly demarcated?

Yes

22. Will the removal of habitat or the removal/trimming of trees involve the use of temporary lighting?

No

23. Will the removal of habitat or the removal/trimming of trees include installing new or replacing existing permanent lighting?

Yes

24. Does the project include wetland or stream protection activities associated with compensatory wetland mitigation?

No

25. Does the project include slash pile burning?

No

26. Does the project include any bridge removal, replacement, and/or maintenance activities (e.g., any bridge repair, retrofit, maintenance, and/or rehabilitation work)?

Yes

27. Is there any suitable habitat^[1] for Indiana bat or NLEB within 1,000 feet of the bridge? (includes any trees suitable for maternity, roosting, foraging, or travelling habitat)

[1] See the Service's current [summer survey guidance](#) for our current definitions of suitable habitat.

Yes

28. Has a bridge assessment^[1] been conducted within the last 24 months^[2] to determine if the bridge is being used by bats?

[1] See [User Guide Appendix D](#) for bridge/structure assessment guidance

[2] Assessments must be completed no more than 2 years prior to conducting any work below the deck surface on all bridges that meet the physical characteristics described in the Programmatic Consultation, regardless of whether assessments have been conducted in the past. Due to the transitory nature of bat use, a negative result in one year does not guarantee that bats will not use that bridge/structure in subsequent years.

Yes

SUBMITTED DOCUMENTS

- GSB - Bat Assessment 2018 2.pdf <https://ecos.fws.gov/ipac/project/VTQSJMDQFJCKNB3XACPD4E33HA/projectDocuments/17505697>

29. Did the bridge assessment detect any signs of Indiana bats and/or NLEBs roosting in/under the bridge (bats, guano, etc.)^[1]?

[1] If bridge assessment detects signs of any species of bats, coordination with the local FWS office is needed to identify potential threatened or endangered bat species. Additional studies may be undertaken to try to identify which bat species may be utilizing the bridge prior to allowing any work to proceed.

Note: There is a small chance bridge assessments for bat occupancy do not detect bats. Should a small number of bats be observed roosting on a bridge just prior to or during construction, such that take is likely to occur or does occur in the form of harassment, injury or death, the PBO requires the action agency to report the take. Report all unanticipated take within 2 working days of the incident to the USFWS. Construction activities may continue without delay provided the take is reported to the USFWS and is limited to 5 bats per project.

No

30. Will the bridge removal, replacement, and/or maintenance activities include installing new or replacing existing permanent lighting?

Yes

31. Does the project include the removal, replacement, and/or maintenance of any structure other than a bridge? (e.g., rest areas, offices, sheds, outbuildings, barns, parking garages, etc.)

No

32. Will the project involve the use of temporary lighting during the active season?

Yes

33. Is there any suitable habitat within 1,000 feet of the location(s) where temporary lighting will be used?

Yes

34. Will the project install any new or replace any existing permanent lighting in addition to the lighting already indicated for habitat removal (including the removal or trimming of trees) or bridge/structure removal, replacement or maintenance activities?

Yes

35. Is there any suitable habitat within 1,000 feet of the location(s) where permanent lighting (other than the lighting already indicated for habitat removal (including the removal or trimming of trees) or bridge/structure removal, replacement or maintenance activities) will be installed or replaced?

Yes

36. Does the project include percussives or other activities (not including tree removal/trimming or bridge/structure work) that will increase noise levels above existing traffic/background levels?

No

37. Are all project activities that are not associated with habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives, limited to actions that DO NOT cause any additional stressors to the bat species?

Examples: lining roadways, unlighted signage, rail road crossing signals, signal lighting, and minor road repair such as asphalt fill of potholes, etc.

Yes

38. Will the project raise the road profile above the tree canopy?

No

39. Are the project activities that are not associated with habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives consistent with a No Effect determination in this key?

Automatically answered

Yes, other project activities are limited to actions that DO NOT cause any additional stressors to the bat species as described in the BA/BO

40. Is the habitat removal portion of this project consistent with a Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because tree removal that occurs during the active season occurs within 100 feet from the existing road/rail surface, is not in documented NLEB roosting/foraging habitat or travel corridors, and a visual survey has not been conducted

41. Is the habitat removal portion of this project consistent with a Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because tree removal that occurs during the active season is 100-300 feet from the existing road/rail surface and is not in documented NLEB roosting/foraging habitat or travel corridors

42. Is the habitat removal portion of this project consistent with a Not Likely to Adversely Affect determination in this key?
Automatically answered
Yes, because the tree removal/trimming that occurs outside of the active season occurs greater than 0.5 miles from the nearest hibernaculum, is less than 100 feet from the existing road/rail surface, includes clear demarcation of the trees that are to be removed, and does not alter documented roosts and/or surrounding summer habitat within 0.25 miles of a documented roost
43. Is the habitat removal portion of this project consistent with a Likely to Adversely Affect determination in this key?
Automatically answered
Yes, because the tree removal that occurs during the winter is 100-300 feet from the existing road/rail surface, and is not in documented roosting/foraging habitat or travel corridors
44. Is the bridge removal, replacement, or maintenance activities portion of this project consistent with a No Effect determination in this key?
Automatically answered
Yes, because the bridge has been assessed using the criteria documented in the BA and no signs of bats were detected
45. General AMM 1
Will the project ensure all operators, employees, and contractors working in areas of known or presumed bat habitat are aware of all FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable Avoidance and Minimization Measures?
Yes
46. Tree Removal AMM 1
Can all phases/aspects of the project (e.g., temporary work areas, alignments) be modified, to the extent practicable, to avoid tree removal^[1] in excess of what is required to implement the project safely?
Note: Tree Removal AMM 1 is a minimization measure, the full implementation of which may not always be practicable. Projects may still be NLAA as long as Tree Removal AMMs 2, 3, and 4 are implemented and LAA as long as Tree Removal AMMs 3, 5, 6, and 7 are implemented.

[1] The word "trees" as used in the AMMs refers to trees that are suitable habitat for each species within their range. See the USFWS' current summer survey guidance for our latest definitions of suitable habitat.

Yes

47. Tree Removal AMM 3
Can tree removal be limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits)?

Yes
48. Lighting AMM 1
Will all temporary lighting used during the removal of suitable habitat and/or the removal/trimming of trees within suitable habitat be directed away from suitable habitat during the active season?

Yes
49. Lighting AMM 2
Does the lead agency use the BUG (Backlight, Uplight, and Glare) system developed by the Illuminating Engineering Society^{[1][2]} to rate the amount of light emitted in unwanted directions?

[1] Refer to [Fundamentals of Lighting - BUG Ratings](#)

[2] Refer to [The BUG System - A New Way To Control Stray Light](#)

No
50. Lighting AMM 2
Will all permanent lighting used during removal of suitable habitat and/or the removal/trimming of trees within suitable habitat use downward-facing, full cut-off^[1] lens lights (with same intensity or less for replacement lighting)?

[1] Refer to [Luminaire classification for controlling stray light](#)

Yes
51. Lighting AMM 2
Will all permanent lighting used during removal of suitable habitat and/or the removal/trimming of trees within suitable habitat be directed away from all areas with suitable habitat?

Yes

52. Lighting AMM 1

Will all temporary lighting be directed away from suitable habitat during the active season?

Yes

53. Lighting AMM 2

Does the lead agency use the BUG (Backlight, Uplight, and Glare) system developed by the Illuminating Engineering Society^{[1][2]} to rate the amount of light emitted in unwanted directions?

[1] Refer to [Fundamentals of Lighting - BUG Ratings](#)

[2] Refer to [The BUG System - A New Way To Control Stray Light](#)

No

54. Lighting AMM 2

Will all permanent lighting (other than any lighting already indicated for tree clearing or bridge/structure removal, replacement or maintenance activities) use downward-facing, full cut-off^[1] lens lights (with same intensity or less for replacement lighting)?

[1] Refer to [Luminaire classification for controlling stray light](#)

Yes

55. Lighting AMM 2

Will the permanent lighting (other than any lighting already indicated for tree clearing or bridge/structure removal, replacement or maintenance activities) be directed away from all areas with suitable habitat?

Yes

56. For Indiana bat, if applicable, compensatory mitigation measures are required to offset adverse effects on the species (see Section 2.10 of the BA). Please select the mechanism in which compensatory mitigation will be implemented:

6. Not Applicable

Project Questionnaire

1. Have you made a No Effect determination for all other species indicated on the FWS IPaC generated species list?

N/A

2. Have you made a May Affect determination for any other species on the FWS IPaC generated species list?

N/A

3. How many acres^[1] of trees are proposed for removal between 0-100 feet of the existing road/rail surface?

[1] If described as number of trees, multiply by 0.09 to convert to acreage and enter that number.

0.1

4. How many acres^[1] of trees are proposed for removal between 100-300 feet of the existing road/rail surface?

[1] If described as number of trees, multiply by 0.09 to convert to acreage and enter that number.

0.1

5. Please verify:

All tree removal will occur greater than 0.5 mile from any hibernaculum.

Yes, I verify that all tree removal will occur greater than 0.5 miles from any hibernaculum.

6. Is the project location 0-100 feet from the edge of existing road/rail surface?

Yes

7. Is the project location 100-300 feet from the edge of existing road/rail surface?

Yes

8. Please verify:

No documented NLEB roosts or surrounding summer habitat within 150 feet of documented roosts will be impacted between June 1 and July 31.

Yes, I verify that no documented NLEB roosts or surrounding summer habitat within 150 feet of documented roosts will be impacted during this period.

9. Please describe the proposed bridge work:

The project proposes to replace the General Sullivan Bridge superstructure. The superstructure would be replaced with a steel girder system with a structural steel frame extending from the bottom of the girders to the top of the existing bridge piers. The existing piers would be used and would not require significant modifications.

10. Please state the timing of all proposed bridge work:

Fall 2021 - Spring 2023 (estimated)

11. Please enter the date of the bridge assessment:

9/26/2018, 9/27/2018

12. You have indicated that the following Avoidance and Minimization Measures (AMMs) will be implemented as part of the proposed project:

- General AMM 1
- Lighting AMM 1
- Lighting AMM 2
- Tree Removal AMM 1
- Tree Removal AMM 3

Avoidance And Minimization Measures (AMMs)

This determination key result includes the commitment to implement the following Avoidance and Minimization Measures (AMMs):

GENERAL AMM 1

Ensure all operators, employees, and contractors working in areas of known or presumed bat habitat are aware of all FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable AMMs.

LIGHTING AMM 1

Direct temporary lighting away from suitable habitat during the active season.

LIGHTING AMM 2

When installing new or replacing existing permanent lights, use downward-facing, full cut-off lens lights (with same intensity or less for replacement lighting); or for those transportation agencies using the BUG system developed by the Illuminating Engineering Society, be as close to 0 for all three ratings with a priority of "uplight" of 0 and "backlight" as low as practicable.

TREE REMOVAL AMM 1

Modify all phases/aspects of the project (e.g., temporary work areas, alignments) to avoid tree removal.

TREE REMOVAL AMM 3

Ensure tree removal is limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits).

Determination Key Description: FHWA, FRA, FTA
 Programmatic Consultation For Transportation Projects
 Affecting NLEB Or Indiana Bat

This key was last updated in IPaC on March 16, 2018. Keys are subject to periodic revision.

This decision key is intended for projects/activities funded or authorized by the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and/or Federal Transit Administration (FTA), which require consultation with the U.S. Fish and Wildlife Service (Service) under Section 7 of the Endangered Species Act (ESA) for the endangered Indiana bat (*Myotis sodalis*) and the threatened Northern long-eared bat (NLEB) (*Myotis septentrionalis*).

This decision key should only be used to verify project applicability with the Service's [February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects](#). The programmatic biological opinion covers limited transportation activities that may affect either bat species, and addresses situations that are both likely and not likely to adversely affect either bat species. This decision key will assist in identifying the effect of a specific project/activity and applicability of the programmatic consultation. The programmatic biological opinion is not intended to cover all types of transportation actions. Activities outside the scope of the programmatic biological opinion, or that may affect ESA-listed species other than the Indiana bat or NLEB, or any designated critical habitat, may require additional ESA Section 7 consultation.



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>



September 4, 2019

Marc G. Laurin
 Bureau of Environment
 NH Department of Transportation
 7 Hazen Drive, P.O. Box 483
 Concord, New Hampshire 03302-0483

Re: NH DOT Project 11238S, Newington and Dover, NH
 TAILS: 05E1NE00-2019-F-2285

Dear Mr. Laurin:

The U.S. Fish and Wildlife Service (Service) is responding to your request, dated August 20, 2019, to verify that the New Hampshire Department of Transportation (NHDOT) Project 11238S (Project), the proposed rehabilitation or replacement of the General Sullivan Bridge in Newington and Dover, New Hampshire, may rely on the December 15, 2016, Programmatic Biological Opinion (BO) for federally funded or approved transportation projects that may affect the northern long-eared bat (*Myotis septentrionalis*) (NLEB). We received your request and the associated LAA Consistency Letter on August 23, 2019. This letter provides the Service's response as to whether the Federal Highway Administration may rely on the BO to comply with section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; U.S.C. 1531 *et seq.*) for the Project's effects to the NLEB.

The NHDOT, as the non-Federal agency representative for the Federal Transportation Agency, has determined that the Project may affect, and is likely to adversely affect the NLEB. The Project consists of the rehabilitation or replacement of the General Sullivan Bridge over Little Bay for continued bike and pedestrian access. Approximately 0.2 acre of tree clearing will occur which may be implemented during the bat active season.

NHDOT also determined the Project may rely on the programmatic BO to comply with section 7(a)(2) of the ESA, because the Project meets the conditions outlined in the BO and all tree clearing related to the proposed work will occur farther than 0.25 mile from documented roosts and farther than 0.5 mile from any known hibernacula. The Service reviewed the LAA Consistency Letter and concurs with NHDOT's determination. This concurrence concludes your ESA section 7 responsibilities relative to this species for this Project, subject to the Reinitiation Notice below.

Conclusion

The Service has reviewed the effects of the proposed Project, which include the NHDOT's commitment to implement the impact avoidance, minimization, and compensation measures as indicated on the LAA Consistency Letter. We confirm that the proposed Project's effects are consistent with those analyzed in the BO. The Service has determined that the Project is consistent with the BO's conservation measures, and the scope of the program analyzed in the BO is not likely to jeopardize the continued existence of the NLEB. In coordination with your agency, the Federal Highway Administration, and the other sponsoring Federal Transportation Agencies, the Service will reevaluate this conclusion annually in light of any new pertinent information under the adaptive management provisions of the BO.

Incidental Take of the Northern Long-eared Bat

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of the NLEB. However, the Project is consistent with the BO, and such projects will not cause take of NLEBs that is prohibited under the final 4(d) rule for this species (50 CFR §17.40(o)). Therefore, this taking does not require exemption from the Service.

Reporting Dead or Injured Bats

The NHDOT, the Federal Highway Administration, its State/local cooperators, and any contractors must take care when handling dead or injured NLEBs that are found at the project site, in order to preserve biological material in the best possible condition and to protect the handler from exposure to diseases, such as rabies. Project personnel are responsible for ensuring that any evidence about determining the cause of death or injury is not unnecessarily disturbed. Reporting the discovery of dead or injured listed species is required in all cases to enable the Service to determine whether the level of incidental take exempted by this BO is exceeded, and to ensure that the terms and conditions are appropriate and effective. Parties finding a dead, injured, or sick specimen of any endangered or threatened species must promptly notify the Service's New England Field Office.

Reinitiation Notice

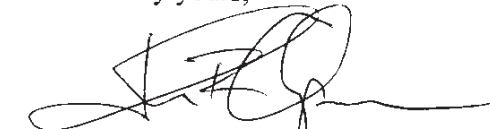
This letter concludes consultation for the proposed Project, which qualifies for inclusion in the BO issued to the Federal Transportation Agencies. To maintain this inclusion, a reinitiation of this project-level consultation is required where the Federal Highway Administration's discretionary involvement or control over the Project has been retained (or is authorized by law) and if:

1. new information reveals that the Project may affect listed species or critical habitat in a manner or to an extent not considered in the BO;
2. the Project is subsequently modified in a manner that causes an effect to listed species or designated critical habitat not considered in the BO; or
3. a new species is listed or critical habitat designated that the Project may affect.

In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease, pending reinitiation.

We appreciate your continued efforts to ensure that this Project is fully consistent with all applicable provisions of the BO. If you have any questions regarding our response, or if you need additional information, please contact Susi von Oettingen of this office at 603-227-6418.

Sincerely yours,



Thomas R. Chapman
Supervisor
New England Field Office