



United States Department of the Interior



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In Reply Refer To:

November 04, 2021

Consultation code: 05E1NE00-2022-TA-0386

Event Code: 05E1NE00-2022-E-01317

Project Name: Herring River Restoration, Phase 1

Subject: Verification letter for the 'Herring River Restoration, Phase 1' 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 Susi vonOettingen:

The U.S. Fish and Wildlife Service (Service) received on November 04, 2021 your effects determination for the 'Herring River Restoration, Phase 1' (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:

- Monarch Butterfly *Danaus plexippus* Candidate
- 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

Herring River Restoration, Phase 1

2. Description

The following description was provided for the project 'Herring River Restoration, Phase 1':

The Project proposes to restore up to approximately 570 acres of tidal wetlands. Replacing the existing Chequessett Neck Road dike and culverts with a new bridge and electrically controlled sluice gates is the restoration project's main tidal restoration element. A portion of the existing earthen dike and three-bay culvert structure at Chequessett Neck Road will be removed, and a new 165-foot wide bridge with adjustable sluice gates will be installed. The new bridge and sluice gates will allow for the gradual transition from the current restricted tidal flushing regime to conditions more closely resembling the River's natural flow prior to construction of the Chequessett Neck Road dike. The new Chequessett Neck Road Bridge and sluice gates and the Mill Creek water control structure will be configured to allow partial tidal flow into Herring River and Mill Creek up to a maximum water level specified for each respective basin.

Phase 1 includes partial restoration of tides in the Mill Creek sub-basin following implementation of mitigation measures designed to prevent water intrusion impacts to CYCC. A water control structure equipped with slide/flap tide sluice gates will be constructed across Mill Creek near the entrance to Lower Herring River. This structure will enable a controlled reintroduction of tidal exchange while protecting structures on private properties.

The Pole Dike Road will be raised to a sufficient elevation and with a larger culvert opening and a sluice gate structure will be installed at the culvert to restrict flow into Upper Pole Dike Creek. The Pole Dike Road culvert has been designed to include a combination slide/flap gate to restrict flood tide flow. Phase 1 will exclude tides from the Upper Pole Dike Creek sub-basin to protect several low-lying private properties that would require mitigation measures to prevent tidal flow impacts. The Pole Dike Creek crossing will be equipped with gates that allow unidirectional flow (drainage only) while preventing any tidal flow from entering Upper Pole Dike Creek basin as a result of Phase 1 restoration. Maximum water levels in all areas of the estuary affected by Phase 1 tidal restoration will be kept below elevations that could impact any private structures that are not protected by Phase 1 protection measures.

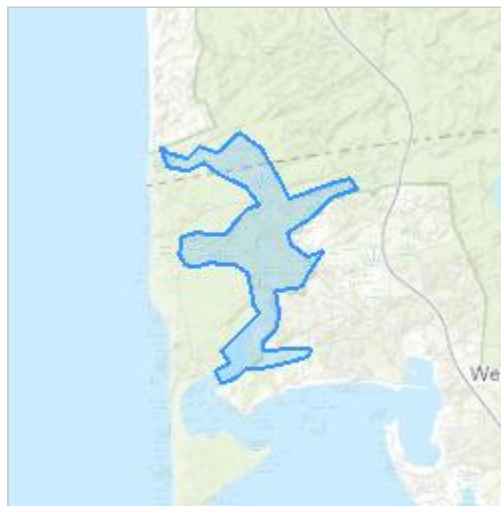
Complete removal of the earthen causeway and culvert crossing of Herring River at High Toss Road is a tide control component of the Project. A new Herring River channel will be excavated to its prior width of approximately 30 feet to match the

natural channel width and depth above and below the roadway crossing for tidal water conveyance; the new banks of the River will be loamed, seeded, and treated with erosion control blanket.

The Project area consists of several low-lying roadways that are vulnerable to high tide water levels with restored tidal flow. Pole Dike, Bound Brook Island and Old County Roads form a generally north-south roadway extending between Wellfleet Center and South Truro, crossing Pole Dike Creek, Herring River and Bound Brook. To prevent overtopping during the storm-of-record, segments of these roadways will be elevated to a minimum of six inches above the predicted water surface elevation during the modeled storm-of-record.

The limits of disturbance include the footprint of the respective tide control element and any ancillary area necessary during construction (i.e., staging areas). The limits of disturbance for the Chequessett Neck Road Bridge and High Toss Road causeway removal occur entirely on land owned by either the Town of Wellfleet or National Park Service.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@41.94751935,-70.0581530781654,14z>



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. [Semantic] 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 and other sources of information on the locations of northern long-eared bat roost trees and hibernacula is available at www.fws.gov/midwest/angered/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:

10

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
