



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: Docket No. FD 34797 (Sub-No. 1)

September 30, 2016

Danielle Gosselin
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Dear Ms. Gosselin:

This responds to Victoria Rutson's letter, dated August 11, 2016, and received in our office on August 15, 2016, requesting our review and preliminary comments on the updated proposal filed with the Surface Transportation Board (Board) by the New England Transrail, LLC (NET) to acquire, construct, and operate various rail lines and transloading facilities (Project) in the towns of Wilmington and Woburn, Massachusetts. Specifically, you are requesting information regarding the presence of federally listed threatened and endangered species. Our comments are provided in accordance with the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531, *et seq.*) and the Fish and Wildlife Coordination Act of 1956 (16 U.S.C. 742a, *et seq.*).

Endangered Species Review

Your letter provided a list of federally threatened species known to occur in Middlesex County, Massachusetts, in which the Project is located. Of the four species listed (red knot, roseate tern, small whorled pogonia, and northern long-eared bat), only the threatened northern long-eared bat (*Myotis septentrionalis*) may be present in the project vicinity if suitable habitat is present (as noted in your letter). This species roosts singly or in colonies underneath bark, in cavities or in crevices of live trees with a diameter at breast height of 3 inches or greater, and snags (dead trees). Northern long-eared bats seem to be flexible in selecting roosts, choosing roost trees based on suitability to retain bark or provide cavities or crevices. Northern long-eared bats have also been documented to roost in structures, including houses (behind shingles, shutters or trim), barns, small outbuildings, and telephone poles (underneath plastic sheeting). Northern long-eared bats spend the winter hibernating in caves and mines (hibernacula) and possibly, to a lesser extent, structures.

On January 14, 2016, the U.S. Fish and Wildlife Service published a final rule under section 4(d) of the Endangered Species Act (Final Rule) that defines prohibited take of the northern long-eared bat and its habitat. This rule went into effect on February 16, 2016. Under the Final Rule,

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Federal agencies may implement an optional framework, the Key to the Northern Long-Eared Bat 4(d) Rule for Federal Actions that May Affect Northern Long-Eared Bats, to streamline section 7 consultation for the northern long-eared bat (Framework).¹ According to our files, at this time there are no known maternity roost trees or hibernacula in the vicinity of the Project.

Fish and Wildlife Coordination Act Review

Based on our review of the information provided, we have determined that the Project as proposed will have only minimal effects on fish and wildlife resources in the project area. This determination does not preclude future evaluation and recommendations by the U.S. Fish and Wildlife Service, should project conditions change.

Bald and Golden Eagle Protection Act (BGEPA)

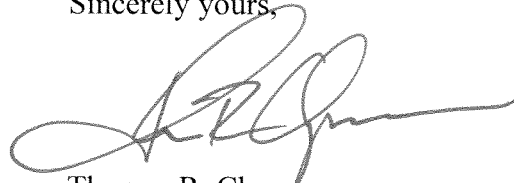
Please check with the Massachusetts Division of Fisheries and Wildlife (508-389-6360; <http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/>) for the most current nest information. If eagles are nesting in the vicinity of the Project, additional coordination under BGEPA may be necessary.

Migratory Bird Treaty Act

We have no comments specific to the Project to offer at this time.

Thank you for your cooperation, and please contact Ms. Susi von Oettingen of this office at (603) 227-6418 if you need any further assistance.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'T. R. Chapman', with a long horizontal flourish extending to the right.

Thomas R. Chapman
Supervisor
New England Field Office

¹ See <http://www.fws.gov/midwest/endangered/mammals/nleeb/KeyFinal4dNLEBFedProjects.html> (accessed September 2016) for information regarding the Framework.