



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Pennsylvania Field Office  
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State College, Pennsylvania 16801-4850

September 27, 2016

Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE, Room 1A  
Washington, DC 20426

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SECRETARY OF THE  
COMMISSION  
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FEDERAL ENERGY  
REGULATORY COMMISSION

RE: Draft Environmental Impact Statement (EIS) and Biological Assessment for the planned PennEast Pipeline Project by PennEast Pipeline Company, LLC, Hunterdon and Mercer Counties, New Jersey; and, Luzerne, Carbon, Northampton and Bucks Counties, Pennsylvania (Docket Number CP15-558-000)

Dear Secretary Bose:

The U.S. Fish and Wildlife Service (Service), New Jersey Field Office (NJFO) has reviewed the Federal Energy Regulatory Commission's (FERC) July 25, 2016 draft environmental impact statement (DEIS) for the planned PennEast Pipeline Project (Project) in Luzerne, Carbon, Northampton, and Bucks Counties, Pennsylvania. The pipeline is also proposed in Hunterdon and Mercer Counties, New Jersey. The Service's New Jersey Field Office will provide additional comments under separate cover for project impacts that may occur in their geographic jurisdiction.

The following comments are provided pursuant to the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) to ensure the protection of endangered and threatened species and the Migratory Bird Treaty Act (MBTA, 16 U.S.C. 703-712; Ch. 128; July 13, 1918; 40 Stat. 755, as amended) to ensure the protection of migratory bird species.

### Federally Listed Species

The DEIS has made a preliminary determination of potential adverse effects to federally listed species. The FERC is also requesting that the DEIS serve as a biological assessment (BA) for federally listed species. The FERC's preliminary determination is based on an assumption of both direct and indirect impacts. Provided below are comments concerning federally listed species addressed in the DEIS and FERC's preliminary determination on potential adverse effects.

## **Bog Turtle**

As outlined in the DEIS, PennEast committed to conduct Phase 1 surveys for bog turtles within all delineated wetlands within the 400-foot survey corridor around the Project, then conduct a Phase 2 survey in any wetland that was identified as potential bog turtle habitat during the Phase 1 surveys (as outlined in the FWS Bog Turtle Recovery Plan). A qualified bog turtle surveyor conducted Phase 1 surveys within all delineated wetlands within Pennsylvania where land-owner/manager access was granted. In those accessible areas, Phase 2 surveys are currently ongoing in wetlands identified as potential bog turtle habitats. While potential bog turtle habitat exists along the Project area, as yet, no bog turtles have been identified during these surveys.

Additional Phase 1 surveys were conducted by a qualified surveyor hired by a third party, where access was not permitted to PennEast. Some of these wetlands were identified as having potential bog turtle habitat. PennEast/FERC will either need to conduct Phase 2 surveys at the wetlands identified as having potential bog turtle habitat; assume presence of the bog turtle in these wetlands and avoid impacts; or assume presence in these wetlands and if impacts cannot be avoided, start the formal consultation process with the Service by submitting a Biological Assessment (see attachment Take (S9) and Take Authorization (S7) – Federal Nexus).

The currently proposed right-of-way is going through a known bog turtle wetland in Carbon County, Pennsylvania. If this proposed right-of-way is finalized, either FERC will need to formally consult with the Service to ensure that project actions do not jeopardize the continued existence of the species, or PennEast will need to demonstrate how they will avoid impacts to this known occupied wetland.

Consultation on this portion of the line is still on-going and further survey information for other areas of the line is anticipated before final determinations are made. For sites in which PennEast cannot obtain access, they can either assume presence of bog turtles and implement avoidance measures, or complete surveys to provide further information about these parcels.

The DEIS summarizes potential effects to the bog turtles if bog turtles occurs within the action area and notes that a bog turtle plan should be developed with the Service. The Service will work with PennEast to develop a Bog Turtle Plan that will minimize and avoid impacts to this species.

## **Indiana Bat**

The Project is within the range of the federally listed endangered Indiana bat (*Myotis sodalis*). Between April and September, Indiana bats inhabit floodplain, riparian, and upland forests, roosting under loose tree bark during the day, and foraging for flying insects in and around the tree canopy at night. Prior to hibernation, Indiana bats engage in fall swarming activity and may forage and roost within 10 miles from a hibernaculum. Indiana bats may forage and roost within the action area during the spring, summer, and fall (April 1 to September 30).

The DEIS briefly describes a mist net survey that was completed in August 2015. The mist net survey was completed in portions of the action area. No Indiana bats were captured. The DEIS also states that two sites in Pennsylvania could not be surveyed due to lack of property access.

The DEIS mentions a 0.25 mile buffer around hibernacula, it should be noted that the regulatory significance of this buffer is specific to northern long-eared bats and does not apply to Indiana bats.

After reviewing the DEIS, the Service is unable to make effects determination conclusions for Indiana bat because information we have is not complete. Without survey information from all sites in Pennsylvania, the Service cannot assess the overall effects of the Project on the Indiana bat. Therefore, the Company can either assume presence of this species on land parcels they are unable to access and implement avoidance measures, or complete surveys to provide further information about these parcels.

### **Northern long-eared bat**

The Project is within the range of the federally listed threatened northern long-eared bat (*Myotis septentrionalis*) (NLEB). Similar to the Indiana bat, NLEBs roost singly or in colonies underneath bark, in cavities, or in crevices of both live and dead trees. Maternity colonies generally consist of 30 to 60 females and young. Males and non-reproductive females may occur within the breeding and foraging range of maternity colonies, but some individuals are solitary in the summer and may roost in cooler places such as caves and mines. Roosting NLEBs have also been observed in man-made structures, such as buildings, barns, sheds, cabins, under eaves of buildings, and in bat houses.

A total of 20 NLEBs were captured during summer surveys in 2015. Similar to the Indiana bat, no specific details on the survey results are provided in the DEIS and additional information is still being sought about summer and winter habitat for this species. For instance, PennEast should not only be avoiding northern long-eared bat hibernacula by 0.25 miles, but avoiding subsurface impacts to known hibernacula, even if the impacts occur outside of the 0.25 mile surface radius.

As discussed in the DEIS, the project would be located within 0.25 mile of three known NLEB hibernacula (i.e., Durham Cave 1 and Durham Cave 2, and Tunnel 34). The Service has provided additional mine map data to PennEast in order for them to determine the subsurface extent of their impacts to these hibernacula.

Finally, the Service understands that FERC has determined that the Project may affect the NLEB. However, the Service is unaware if FERC plans to rely upon the findings of the Service's Section 7 programmatic biological opinion for the NLEB 4(d) rule. The Service requests FERC to clarify with the Service if the Service's biological opinion for the NLEB 4(d) rule will be used for impacts to forested habitat surrounding these hibernacula. Regardless of the

4(d) rule, FERC may need to enter into formal consultation with the Service if impacts to the hibernacula cannot be avoided.

### **Northeastern bulrush**

The project is within the known range of the northeastern bulrush (*Scirpus ancistrochaetus*), a federally listed, endangered plant. Potential habitat for this species could be affected if the project will directly or indirectly affect wetlands. The northeastern bulrush is typically found in ponds, wet depressions, shallow sinkholes, vernal pools, small emergent wetlands, or beaver-influenced wetlands. These wetlands are often located in forested areas and characterized by seasonally variable water levels.

The DEIS discussed that PennEast conducted surveys for the northeastern bulrush within all accessible wetlands in the Pennsylvania portion of the Project area (i.e., within the range of this species) that were delineated as of 2015 (wetland delineation surveys are approximately 79 percent complete in Pennsylvania). Eight additional wetlands delineated near MP 26.9 will be surveyed by PennEast in 2016. No northeastern bulrush were identified during the 2015 surveys; however, we await survey results for the remaining wetlands, as there may be undocumented occurrences of this species within the unsurveyed areas.

Further the DEIS discussed that PennEast should file with the Secretary the results of additional surveys to determine potential presence of northeastern bulrush. If the northeastern bulrush is identified within the proposed construction work area, PennEast should identify the specific measures that it would use to avoid impacts within 300 feet of wetlands or 150 feet of waterways where the species is found. PennEast should also provide documentation of the consultation with the Service. If PennEast is unable to adhere to its proposed 300-foot no disturbance buffer around wetlands and 150-foot no disturbance buffer around any waterways that support the northeastern bulrush, then the affected wetland should be crossed via a HDD method. The Service would like to see an Inadvertent Return (IR) Contingency Plan develop for any such HDD prior to making effects determination conclusions.

### Assessment of Risks to Migratory Birds

The Service is the principal Federal agency charged with protecting and enhancing populations and habitat of migratory bird species. The Migratory Bird Treaty Act (MBTA) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. While the MBTA has no provision for authorizing incidental take, the Service recognizes that some birds may be killed even if all reasonable measures to avoid take are implemented.

On March 30, 2011, the Service and the Commission entered into a Memorandum of Understanding between the FERC and Service regarding Implementation of Executive Order 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds" (MOU). The MOU outlines a collaborative approach to promoting the conservation of migratory bird populations and furthering implementation of the migratory bird conventions, the MBTA, and the BGEPA.

As discussed in the DEIS, there will be approximately 633 acres of forest impacts in both Pennsylvania and New Jersey. There will be 138.5 acres of interior forest impacts in Important Bird Areas (IBAs) just in Pennsylvania. To help reduce impacts PennEast is proposing a time of year restriction on clearing between November 1 and March 31. In addition to this clearing restriction, the Service recommends to:

- 1) Looks for alternatives to crossing these interior forested area (eg: reroute, or Horizontal Directional Drill, etc.).
- 2) *Significantly* neck down or reduce the right-of-way width in these interior forested areas.
- 3) Hold a specific meeting with the Service (PA and NJ Field Offices) to discuss MBTA and develop of a Migratory Bird Conservation Plan.

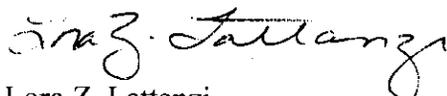
Additionally, bald eagles (*Haliaeetus leucocephalus*) could be within the project area. However at this time, we are only aware of four nests and the closest is within 3,170 feet of the project area. However, since this project is crossing major river systems, you should always be aware that bald eagle nests could appear as PennEast is moving through their construction schedule. Consequently, if an eagle nest is discovered, we recommend that you evaluate the project type, size, location and layout in light of the National Bald Eagle Management Guidelines to determine whether or not bald eagles might be disturbed as a direct or indirect result of this project. If it appears that disturbance may occur, we recommend that you consider modifying your project consistent with the Guidelines. These guidelines, as well as additional eagle information, are available at <http://www.fws.gov/northeast/EcologicalServices/eagle.html>. To assist you in making a decision regarding impacts to bald eagles, a screening form can be found at [http://www.fws.gov/northeast/pafo/bald\\_eagle.html](http://www.fws.gov/northeast/pafo/bald_eagle.html).

If you have additional questions regarding eagle permits, please contact Valerie Slocumb at [valerie\\_slocumb@fws.gov](mailto:valerie_slocumb@fws.gov).

*To avoid potential delays in reviewing your project, please use the above-referenced USFWS project tracking number in any future correspondence regarding this project.*

If you have any questions regarding this project or our comments, please contact Pamela Shellenberger of my staff at 814-234-4090.

Sincerely,



Lora Z. Lattanzi  
Field Office Supervisor

cc: NJFO – Steve Mars

Enclosure: Take (S9) and Take Authorization (S7) – Federal Nexus

## Take (S9) and Take Authorization (S7) – Federal Nexus

Section 9 of the Endangered Species Act prohibits the take of any federally listed animal species by any person subject to the jurisdiction of the United States. The term “person” is defined as “. . . an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States.” Section 11 of the Act provides for both civil and criminal penalties for those convicted of section 9 violations.

As defined in the Act, take means “. . . to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” “Harm” in the definition of take means an act which kills or injures wildlife. Such act may include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering (50 CFR part 17.3). “Harass” means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.

Under provisions of section 7(a)(2) of the Act, a federal agency that authorizes, permits, or carries out activities must consult with the Fish and Wildlife Service to ensure that its actions will not jeopardize the continued existence of any listed species. A federal agency is required to consult if an action “may affect” listed species or designated critical habitat, even if the effects are expected to be beneficial. A “may affect” determination includes actions that are “not likely to adversely affect,” as well as “likely to adversely affect” listed species. If the action is “not likely to adversely affect” listed species (*i.e.*, the effects are beneficial, insignificant, or discountable), and the Service agrees with that determination, the Service provides concurrence in writing and no further consultation is required. If the action is “likely to adversely affect” listed species, then the federal action agency must request initiation of formal consultation. This request is made in writing to the Service, and must include a complete initiation package. Formal consultation concludes with the Service’s issuance of a biological opinion to the federal action agency.

Document Content(s)

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