



United States Department of the Interior



FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045

December 11, 2015

Ms. Erin Johnston
EDP Renewables, North America
Environmental Affairs
134 N. LaSalle Street, Ste. 2050
Chicago, IL 60602

Dear Ms. Johnston:

This letter is in response to EDP Renewable's (EDPR) December 10, 2015, request for technical assistance regarding the proposed Arkwright Summit Wind Farm (Project) located in the Town of Arkwright, Chautauqua County, New York. We understand that the Project will involve construction and operation of up to 36 2.2-megawatt wind turbines, along with associated infrastructure, with a total capacity of approximately 80 megawatts.

EDPR's request included a memorandum dated December 10, 2015 (enclosed) outlining measures EDPR will implement to avoid impacts to listed species during construction and operation of the Project. The U.S. Fish and Wildlife Service (Service) has reviewed the information provided in the memorandum and offers the following comments pursuant to the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). This response does not preclude additional Service comments under other legislation.

It appears that a federal agency, the U.S. Army Corps of Engineers (Corps), may be involved with the Project through authorizations under Section 404 of the Clean Water Act. As you are aware, federal agencies have responsibilities under Section 7 of the ESA to consult with the Service regarding projects that may affect federally-listed species or designated critical habitat, and confer with the Service regarding projects that are likely to jeopardize federally-proposed species and/or adversely modify proposed critical habitat. We advise providing the Corps with a copy of your avoidance strategy as part of the 404 permit application. Please be advised that no work should begin at the Project site until consultation is complete.

We understand that this avoidance strategy will be in place until a habitat conservation plan (HCP) is finalized and an ESA Section 10(a)(1)(B) incidental take permit is issued or until take

coverage is no longer necessary. The take¹ avoidance strategy addresses one species – the federally-listed threatened northern long-eared bat (*Myotis septentrionalis*).

Probable northern long-eared bat calls were detected at one location within the Project site during summer bat surveys in 2015. Northern long-eared bats may also fly through the Project site during spring and fall migration. There are no northern long-eared bat hibernacula located within anticipated fall swarming distance of the Project. Most documented northern long-eared bat fatalities have occurred during late summer/fall months. We agree with the conclusion that the period of greatest risk of fatalities for northern long-eared bats from the Project is during fall migration and, within the home range of the assumed maternity colony, during the summer.

EDPR has developed a strategy to avoid risk of take of northern long-eared bats. Table 1 of EDPR’s memorandum summarizes the components of the strategy.

Table 1. Summary of Avoidance Measures, by Season, for Northern Long-eared Bats at the Arkwright Summit Wind Farm.

Season	Dates	Wind Speed		Tree Removal
		Blades Feathered Below 32 turbines near positive NLEB ¹ acoustic ID	Remaining turbines	
Spring Migration	4/1 – 5/15	5.0 m/s	3.0 m/s	No ²
Summer Maternity (until Fall overlap)	5/16 – 7/31	6.9 m/s	3.0 m/s	No ²
Summer Maternity and Fall Migration	8/1 – 9/30	6.9 m/s	6.9 m/s	No ²
Fall Swarming and Late Fall	10/1 – 10/31	3.0 m/s (no feathering)	3.0 m/s (no feathering)	Yes
Winter Hibernation	11/1 – 3/31	3.0 m/s (no feathering)	3.0 m/s (no feathering)	Yes
Adaptive Management Triggers		NLEB carcass found in Spring, increase cut-in speed to 6.9 m/s	NLEB carcass found in any season, adopt cut-in speed of 5.0 m/s; confer with USFWS about limiting # of turbines affected	

¹ NLEB = northern long-eared bat

² Emergency tree removal and hazard tree removal will be conducted as needed following the avoidance protocol defined in the text.

¹ 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.

Construction

All tree removal associated with construction of the Project will occur between October 1 and March 31 when no northern long-eared bats are anticipated to be present in the Project area. Also, while northern long-eared bats are anticipated to occur in part of the Project area during the summer maternity season, the patchy nature of tree removal is such that we do not anticipate any harm to northern long-eared bats from any habitat removal.

Operations

Turbines will be operated in a manner that is anticipated to avoid take of northern long-eared bats. The strategy is tailored to the best available information about anticipated northern long-eared bat activity in the Project site. Bat fatalities at wind projects occur primarily due to turbine blade strikes at night when bats are active and bat activity is correlated with wind speeds. At higher wind speeds, there is less bat activity, especially for smaller-bodied bats. Therefore, preventing turbines from rotating above 1-2 revolutions per minute until wind speeds reach 6.9 meters per second (mps) (when no northern long-eared bat activity is expected) is anticipated to greatly reduce fatality of most bat species and completely avoid take of northern long-eared bats. As discussed above, the strategy targets the time of year and locations that bats are most vulnerable to determine which turbines should be operated at 6.9 mps and during what seasons of the year. All turbines will be operated at 6.9 mps during fall migration and the turbines within the assumed maternity colony will also be operated at 6.9 mps during the summer maternity season. There is some risk of spring migration fatalities (particularly within the northern long-eared bat maternity colony) and operating at 5.0 mps in that area is anticipated to further reduce (~60%) the potential for any take of northern long-eared bats to the point where it is not anticipated. The remainder of turbines will be operated at 3.0 mps during the spring migration period.

This office is not authorized to provide guidance regarding our Office of Law Enforcement (OLE) investigative priorities involving federally-listed species. However, we understand that OLE carries out its mission to protect federally-listed species through investigation and enforcement, as well as by fostering relationships with individuals, companies, and industries that have taken reasonable and effective steps to avoid take of listed species.

The OLE will make decisions whether to refer for prosecution any alleged take of species. Adherence to Service recommendations on take avoidance measures and related communication will generally be taken into account when exercising discretion with respect to such potential referral. Each developer or operator will be responsible for maintaining internal records sufficient to demonstrate adherence to such recommendations.


Based on implementing commitments in EDPR's avoidance memorandum, the New York Field Office anticipates that the Project is unlikely to incidentally take federally-listed species during construction and operation activities as currently proposed, and we agree with the proposed monitoring strategy. If project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered. The most recent compilation of federally-listed and proposed endangered and threatened species in

New York is available for your information. Until the proposed project is complete, we recommend that you check our website every 90 days from the date of this letter to ensure that listed species presence/absence information for the proposed project is current.*

Any additional information regarding the Project and its potential to impact listed species should be coordinated with both this office and with the New York State Department of Environmental Conservation Region 9 Office.

Thank you for your time and effort to conserve federally-listed species. If you require additional information please contact Robyn Niver at 607-753-9334.

Sincerely,


for David A. Stilwell
Field Supervisor

*Additional information referred to above may be found on our website at:
<http://www.fws.gov/northeast/nyfo/es/section7.htm>

Enclosure

cc: NYSDEC, Allegany, NY (A. Rothrock)
NYSDEC, Albany, NY (Wildlife: B. Gary, C. Herzog)
Corps, Buffalo, NY (S. Metivier)
FWS, Hadley, NY (L. Whitney)
FWS, Amherst, NY (L. Schneckenberger)