



United States Department of the Interior



FISH AND WILDLIFE SERVICE
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In Reply Refer To:

08/14/2024 20:00:12 UTC

Project code: 2024-0130453

Project Name: Draft General Permit for Private Commercial, Industrial and Institutional Stormwater Discharges

Federal Nexus: yes

Federal Action Agency (if applicable): Environmental Protection Agency

Subject: Record of project representative's no effect determination for 'Draft General Permit for Private Commercial, Industrial and Institutional Stormwater Discharges'

Dear John Nagle:

This letter records your determination using the Information for Planning and Consultation (IPaC) system provided to the U.S. Fish and Wildlife Service (Service) on August 14, 2024, for 'Draft General Permit for Private Commercial, Industrial and Institutional Stormwater Discharges' (here forward, Project). This project has been assigned Project Code 2024-0130453 and all future correspondence should clearly reference this number. **Please carefully review this letter.**

Ensuring Accurate Determinations When Using IPaC

The Service developed the IPaC system and associated species' determination keys in accordance with the Endangered Species Act of 1973 (ESA; 87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) and based on a standing analysis. All information submitted by the Project proponent into IPaC must accurately represent the full scope and details of the Project.

Failure to accurately represent or implement the Project as detailed in IPaC or the Northern Long-eared Bat Rangewide Determination Key (Dkey), invalidates this letter. ***Answers to certain questions in the DKey commit the project proponent to implementation of conservation measures that must be followed for the ESA determination to remain valid.***

Determination for the Northern Long-Eared Bat

Based upon your IPaC submission and a standing analysis, your project has reached the determination of "No Effect" on the northern long-eared bat. To make a no effect determination, the full scope of the proposed project implementation (action) should not have any effects (either

positive or negative), to a federally listed species or designated critical habitat. Effects of the action are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action. (See § 402.17).

Under Section 7 of the ESA, if a federal action agency makes a no effect determination, no consultation with the Service is required (ESA §7). If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required except when the Service concurs, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat [50 CFR §402.02, 50 CFR§402.13].

Other Species and Critical Habitat that May be Present in the Action Area

The IPaC-assisted determination for the northern long-eared bat does not apply to the following ESA-protected species and/or critical habitat that also may occur in your Action area:

- Monarch Butterfly *Danaus plexippus* Candidate
- Piping Plover *Charadrius melodus* Threatened
- Roseate Tern *Sterna dougallii dougallii* Endangered
- Tricolored Bat *Perimyotis subflavus* Proposed Endangered

You may coordinate with our Office to determine whether the Action may affect the animal species listed above and, if so, how they may be affected.

Next Steps

Based upon your IPaC submission, your project has reached the determination of “No Effect” on the northern long-eared bat. If there are no updates on listed species, no further consultation/coordination for this project is required with respect to the northern long-eared bat. However, the Service recommends that project proponents re-evaluate the Project in IPaC if: 1) the scope, timing, duration, or location of the Project changes (includes any project changes or amendments); 2) new information reveals the Project may impact (positively or negatively) federally listed species or designated critical habitat; or 3) a new species is listed, or critical habitat designated. If any of the above conditions occurs, additional coordination with the Service should take place to ensure compliance with the Act.

If you have any questions regarding this letter or need further assistance, please contact the New England Ecological Services Field Office and reference Project Code 2024-0130453 associated with this Project.

Action Description

You provided to IPaC the following name and description for the subject Action.

1. Name

Draft General Permit for Private Commercial, Industrial and Institutional Stormwater Discharges

2. Description

The following description was provided for the project 'Draft General Permit for Private Commercial, Industrial and Institutional Stormwater Discharges':

Once this Draft NPDES General Permit becomes final, it will be in effect for five years. The United States Environmental Protection Agency, Region 1 (“EPA” or “Region 1”) proposes to issue a draft National Pollutant Discharge Elimination System (“NPDES”) General Permit for discharges of pollutants in stormwater. Specifically, this “Draft General Permit for Private Commercial, Industrial and Institutional Stormwater Discharges in the Charles, Mystic and Neponset River Watersheds in Massachusetts” (“CII GP”) covers stormwater discharges from certain commercial, industrial and institutional properties (referred to as “CII properties,” “properties,” “permittees,” “CII sites” and/or “sites”) to the Charles, Mystic, and Neponset River Watersheds in the Commonwealth of Massachusetts. Discharges EPA covered under this CII GP consist of stormwater originating from private properties with one acre or more of impervious surface in the Charles, Mystic, and Neponset River Watersheds that are designated as “commercial,” “industrial,” or “institutional” land uses, as classified in the Massachusetts Tax Codes. This permit covers stormwater discharges that discharge directly to receiving waters or through the MS4 or a private separate storm system into the receiving waters. As defined in the draft CII GP, “impervious surface” is “any surface that prevents or significantly impedes the infiltration of water into the underlying soil. This can include but is not limited to: roads, driveways, parking areas and other areas created using nonporous material; buildings, rooftops, structures, artificial turf and compacted gravel or soil .”

Once authorized to discharge under this general permit, the permittee must meet the stormwater treatment requirements included in Part 2 of the Draft CII GP, which will lead to compliance with applicable Federal and State water quality standards (WQs). All permittees are also subject to the reporting requirements included in Part 3 of the CII GP. Failure to comply with the limitations and conditions of the CII GP could result in penalties generally described in Attachment B, Standard Conditions, of the draft permit.

EPA expects that there are approximate 3,000 potential permittees in the Charles, Mystic, and Neponset River Watersheds that will submit CII GP NOIs once the permit is finalized.

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@42.285285,-71.19030127943485,14z>



DETERMINATION KEY RESULT

Based on the information you provided, you have determined that the Proposed Action will have no effect on the Endangered northern long-eared bat (*Myotis septentrionalis*). Therefore, no consultation with the U.S. Fish and Wildlife 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 for those species.

QUALIFICATION INTERVIEW

1. Does the proposed project include, or is it reasonably certain to cause, intentional take of the northern long-eared bat or any other listed species?

Note: Intentional take is defined as take that is the intended result of a project. Intentional take could refer to research, direct species management, surveys, and/or studies that include intentional handling/encountering, harassment, collection, or capturing of any individual of a federally listed threatened, endangered or proposed species?

No

2. Does any component of the action involve construction or operation of wind turbines?

Note: For federal actions, answer 'yes' if the construction or operation of wind power facilities is either (1) part of the federal action or (2) would not occur but for a federal agency action (federal permit, funding, etc.).

No

3. Is the proposed action authorized, permitted, licensed, funded, or being carried out by a Federal agency in whole or in part?

Yes

4. Is the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), or Federal Transit Administration (FTA) funding or authorizing the proposed action, in whole or in part?

No

5. Are you an employee of the federal action agency or have you been officially designated in writing by the agency as its designated non-federal representative for the purposes of Endangered Species Act Section 7 informal consultation per 50 CFR § 402.08?

Note: This key may be used for federal actions and for non-federal actions to facilitate section 7 consultation and to help determine whether an incidental take permit may be needed, respectively. This question is for information purposes only.

Yes

6. Is the lead federal action agency the Environmental Protection Agency (EPA) or Federal Communications Commission (FCC)? Is the Environmental Protection Agency (EPA) or Federal Communications Commission (FCC) funding or authorizing the proposed action, in whole or in part?

Yes

7. Have you determined that your proposed action will have no effect on the northern long-eared bat? Remember to consider the [effects of any activities](#) that would not occur but for the proposed action.

If you think that the northern long-eared bat may be affected by your project or if you would like assistance in deciding, answer “No” below and continue through the key. If you have determined that the northern long-eared bat does not occur in your project’s action area and/or that your project will have no effects whatsoever on the species despite the potential for it to occur in the action area, you may make a “no effect” determination for the northern long-eared bat.

Note: Federal agencies (or their designated non-federal representatives) must consult with USFWS on federal agency actions that may affect listed species [50 CFR 402.14(a)]. Consultation is not required for actions that will not affect listed species or critical habitat. Therefore, this determination key will not provide a consistency or verification letter for actions that will not affect listed species. If you believe that the northern long-eared bat may be affected by your project or if you would like assistance in deciding, please answer “No” and continue through the key. Remember that this key addresses only effects to the northern long-eared bat. Consultation with USFWS would be required if your action may affect another listed species or critical habitat. The definition of [Effects of the Action](#) can be found here: <https://www.fws.gov/media/northern-long-eared-bat-assisted-determination-key-selected-definitions>

Yes

PROJECT QUESTIONNAIRE

Will all project activities be completed by November 30, 2024?

No

IPAC USER CONTACT INFORMATION

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