



United States Department of the Interior



FISH AND WILDLIFE SERVICE

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In Reply Refer To:

June 01, 2020

Consultation Code: 03E19000-2020-TA-1463

Event Code: 03E19000-2020-E-04373

Project Name: Duluth Vessel Yard Repairs and Improvements

Subject: Verification letter for the 'Duluth Vessel Yard Repairs and Improvements' 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 Kevin Meyer:

The U.S. Fish and Wildlife Service (Service) received on June 01, 2020 your effects determination for the 'Duluth Vessel Yard Repairs and Improvements' (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:

- Canada Lynx, *Lynx canadensis* (Threatened)
- Gray Wolf, *Canis lupus* (Threatened)
- Piping Plover, *Charadrius melodus* (Endangered)
- Red Knot, *Calidris canutus rufa* (Threatened)

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

Duluth Vessel Yard Repairs and Improvements

2. Description

The following description was provided for the project 'Duluth Vessel Yard Repairs and Improvements':

The August, 2019 survey of the Vessel Yard by a USACE geotechnical engineer and found both piers to be in poor condition and several areas where voids are present, or likely present, under the concrete apron capping the structures. Storm events have caused lateral movement of the North Pier and voids and sinkholes behind the face of the South Pier. Several prior sinkholes behind the face of the South Pier have required more than 10 yards of material to fill. These observations and conditions are cause for concern given the industrial nature of the site and the use of large vehicles both on the piers and in the water. The proposed repair and improvements are necessary because the voids and storm damage have reduced the lateral support and stability of the piers. Future storm events, regular industrial use, or expansion of voids and sinkholes could ultimately collapse portions of both piers and the headwall structure. This would result in reduced operational capacity of the Vessel Yard, the need to secure alternate mooring sites for vessels (and associated costs), and a safety hazard to USACE personnel and equipment. Proposed repairs and improvements are designed to meet the current and future operational needs of the DuAO and USACE mission, including the Duluth-Superior Federal Navigation Project.

The proposed Federal project will be contained within the Federal property limits of the Vessel Yard. The Vessel Yard's footprint is approximately 4.25 acres, of this approximately 2.3 acres is open water, 0.2 acres is the north pier, and 0.85 acres is the south pier. The existing seawall including both piers and the east headwall extends approximately 1,950 linear feet.

The existing pier and headwall structures generally consist of timber substructures and cribbing with granular infill capped with reinforced concrete cap blocks. The cap blocks are, in turn, supporting mooring bollards for the mooring of ships, barges, and floating plants. Battered piles/wooden struts are intermittently spaces to provide lateral support. Repairs and reconstruction efforts over time appear to have used Wakefield sheeting to supplement the original structures.

The project repairs and improvements involve constructing new steel sheet pile (SSP) seawalls surrounding the existing piers, backfilling any space between the

new and old SSP walls, and then constructing a new concrete cap that extends to the limits of the new SSP seawall. Additional improvements would be installed during construction as part of the new pier design. Alternative 3 is the proposed action as this method would stabilize the existing (deteriorating) piers in-place, reduce the risk of compromising the stability of adjacent dock walls or structures during construction by leaving them in place, restore and stabilize the substrate under the piers, and reduce the amount of demolition and excavation necessary.

The major elements of the proposed Alternative include:

- a. Building new mooring bit foundations and seawalls using SSP;
- b. Installing new utility conduits;
- c. Backfilling areas within newly constructed seawalls;
- d. Grading and placing an aggregate base for new parking areas and work yards;
- e. Placing a concrete cap, concrete curbing, and fencing over the newly constructed piers, and;
- f. Installation of light poles and fixtures.

USACE is preparing an Environmental Assessment for this project in accordance with the National Environmental Policy Act (NEPA) to document potential impacts to the human environment resulting from Federal actions and determine whether preparation of an Environmental Impact Statement is required.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/46.77550890627698N92.09288558828229W>



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?

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:

0

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