

Raskin, Morgan

From: Mahon, Donna <Donna.Mahon@dep.nj.gov>
Sent: Tuesday, June 03, 2014 5:46 PM
To: Raskin, Morgan; Shaw, Heather; Sliker, Laura
Cc: Henne, Laura; Jenkins, Dave; 'Kiser, Jonathan VL'; neil.sullivan@icfi.com; Keltos, Lauren
Subject: FW: Section 7 consultation for NLE Bats -- HUD Sandy Project - NEP0226

Please see below concerning bats. According to the below emails between Dave Jenkins, Chief of the DEP's Endangered and NonGame Species Program and Jeremy Markuson of the USF&WS the clearing of two acres on this site will not adversely affect the LE bat population. No acoustic testing or any type of mitigation is required.

This email satisfies the USF&WS consultation and should be included in the file.

From: Dave Jenkins [mailto:djenkins_ensp@verizon.net]
Sent: Tuesday, June 03, 2014 7:43 AM
To: Mahon, Donna; Jenkins, Dave
Subject: RE: Section 7 consultation for NLE Bats -- HUD Sandy Project

Correct.

Dave Jenkins, ENSP

Sent from my Windows Phone

From: [Mahon, Donna](#)
Sent: 6/2/2014 6:28 PM
To: [Jenkins, Dave](#)
Subject: Re: Section 7 consultation for NLE Bats -- HUD Sandy Project

Dave, thank you. This means no mitigation, right.

From: Jenkins, Dave
Sent: Monday, June 02, 2014 04:35 PM
To: Mahon, Donna
Subject: FW: Section 7 consultation for NLE Bats -- HUD Sandy Project

Regarding Berkeley Township project.

Dave Jenkins, Chief
N.J. Division of Fish and Wildlife
Endangered and Nongame Species Program
501 E. State St. Mail Code: 501-03
Trenton, NJ 08625-0420

tel. 609-292-9101
cell: 609-203-1593
fax. 609-292-8207

From: Markuson, Jeremy [mailto:jeremy_markuson@fws.gov]

Sent: Monday, June 02, 2014 4:33 PM
To: Jenkins, Dave
Cc: Valent, Mike
Subject: Re: Section 7 consultation for NLE Bats -- HUD Sandy Project

Hi Dave,

It was nice speaking with you on the phone concerning this HUD project. I concur with your determination that the clearing of two acres of forested habitat is unlikely to result in jeopardy of the northern long-eared bat.

Jeremy

On Thu, May 29, 2014 at 5:46 PM, Jenkins, Dave
<Dave.Jenkins@dep.nj.gov<<mailto:Dave.Jenkins@dep.nj.gov>>> wrote:

Jeremy,

Under the agreement we have with the NJ Field Office for review of HUD-funded Sandy projects, we are to request initiation of Section 7 consultation (or conference) with your office if we cannot reach a conclusion of “no effect” with respect to a proposed activity. For NLE bats, your office’s guidance was that for activities that avoided clearing trees during the summer months, we could reach a no effects conclusions provided the clearing was less than 1 acre. For tree clearing that occurred during the summer months or that exceeded an acre in size, consultation/conference was recommended. Based on this guidance, the consultant performing reviews of these projects requested conference with USFWS and received the attached response from you. They are now proposing to perform an acoustic survey to determine if NLE bats are in fact using the area, but are resisting the use of mist net surveys should their acoustic surveys reveal the presence of *Myotis* bats that could include NLE bats. At our meeting regarding forestry projects yesterday, you indicated that additional analysis of acoustic data may be sufficient to determine if NLE bats are included in the recording and negate the need for mist net surveys. Can you provide guidance with respect to this project if, as seems to be the case, they wish to proceed with tree clearing during the summer months?

In addition to this question about suitable surveys to reach a conclusion of “not likely to adversely affect,” there is a larger issue being questioned here with respect activities that will occur while NLE bat is a “proposed” species and not yet listed. Section 7 of the ESA , requires the action agency to confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Since no critical habitat is yet proposed, the requirement to confer only applies for actions that raise to the level of possibly jeopardizing the continued existence of the species. This begs the question as to what, if anything, would be required if the acoustic survey and/or mist netting revealed the presence of NLE bats on the site? I raise this because the question is being asked regarding mitigation measures for a very small area of disturbance possibly being less expensive than performing the surveys, especially if they must include mist net surveys.

So, to cut to the central questions:

1. can acoustic surveys alone be used to rule out NLE bat presence on a site, and, if so, what are the methods (number and timing of surveys, expertise required for species-specific resolution, etc..)?
2. What mitigating measure would be required for clearing of ~ 1-2 acres of oak-pine forest in Ocean County if we assume that NLE bats are present on the site?

Feel free to call me to discuss.

Dave Jenkins, Chief
N.J. Division of Fish and Wildlife
Endangered and Nongame Species Program
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Trenton, NJ 08625-0420

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