U.S. Department of Transportation
Federal Highway Administration

Maine Division

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December 2, 2013

In Reply Refer To:
HDA-ME

Laury Zicari
Field Supervisor
U.S. Fish and Wildlife Service
Maine Field Office
17 Godfrey Drive, Suite 2
Orono, ME 04473-3702

Dear Ms. Zicari:

Enclosed, per your request, please find the information regarding the Northern long-eared bat and Meadow Brook for the I-395/Route 9 Transportation Study (Federal Project No. NH-8483(20)E, USFWS Log Number: 05E1ME00-2013-F-0067), which was not previously addressed in the Biological Assessment.

If you have any questions, please contact me at 207-512-4921 or by e-mail at cassandra.chase@dot.gov.

Sincerely,

Cassandra K. Chase

Cassandra Chase
Environmental Engineer

cc:
Mark Hasselmann, FHWA (e copy)
Eric Ham, MaineDOT (e copy)
Amanda Shearin, MaineDOT (e copy)
Tom Davidowicz, USFWS (e copy)
Russ Charette, MaineDOT (e copy)

Northern Long-eared bat

The northern long eared bat (*Myotis septentrionalis*) (NLEB) was proposed for listing under the Federal Endangered Species Act (ESA) on October 2, 2013 (Federal Register Vol. 78, No. 191, pages 61046-61080). Critical habitat for this species is not currently designated. Due to the recent proposed listing, MaineDOT, on behalf of the Federal Highway Administration (FHWA), is conferencing under 50 CFR 402.10. The U.S. Fish and Wildlife Service (USFWS) has not yet developed guidance regarding avoidance and minimization measures and are currently developing known life history data gaps in Maine. The NLEB is dependent on forests, using trees as summer and maternity roosts (Federal Register Vol. 78, No. 191, pages 61046-61080). Specific NLEB summer and maternity roost location information currently is unavailable for Maine, but USFWS asserts that NLEB roosts occur throughout the entire state and, therefore, could be present in the project area. Only three winter hibernacula are known for NLEB in Maine. These hibernacula occur in northern and western Maine and are located approximately 95 miles from the project area.

FHWA and MaineDOT have used the best available scientific and commercial data to conclude that this project will not jeopardize the continued existence of the NLEB for the following reasons:

1. The amount of forested clearing associated with this project represents a very small fraction of forest available to NLEB at several scales.

Maine contains approximately 17.7 million acres of forest (Maine Forest Service 2013). Since USFWS believes the NLEB is distributed statewide, a large portion of this forested area is likely available to the species. This proposed project would result in the removal of approximately 72 acres of forest or approximately 0.0004% of Maine's forested cover. At a smaller, project-level scale, the I-395 study area consists of 28,538 acres; approximately 22,736 acres of this is forested, of which 0.3% would be removed by the proposed linear project. The direct impacts, 72 acres, for the proposed clearing were calculated by using the limits of the preliminary cut/fill lines and adding 25 feet of clearing to the ROW line if the distance to the ROW line was less than 25 feet.

FHWA and MaineDOT also examined impacts to forest cover within a potential species-appropriate review area for NLEB. USFWS has suggested Indiana bat (*Myotis sodalist*) may be useful for developing interim conservation recommendations for NLEB. Based on Indiana bat recommendations, MaineDOT identified a potential NLEB review area consisting of a 2.5 mile band on either side of the Alternative 2B-2/Preferred Alternative right-of-way (Figure 1). This distance is based on a Summer Action Area for Indiana bat jointly developed by FHWA, the USFWS Bloomington Field Office, and the Indiana Department of Transportation. There are approximately 32,056 acres contained within the 2.5 mile buffer on either side of the Alternative 2B-2/Preferred Alternative right-of-way; 24,177 of these acres are forested. Project clearing (72 acres) would account for 0.3% of the total forested area within the potential review area for NLEB.

2. The project is not located near known hibernacula.

NLEB hibernate in caves and mines. Only three hibernacula are known for this species in Maine. All are in northern and western Maine, approximately 95 miles from the project location.

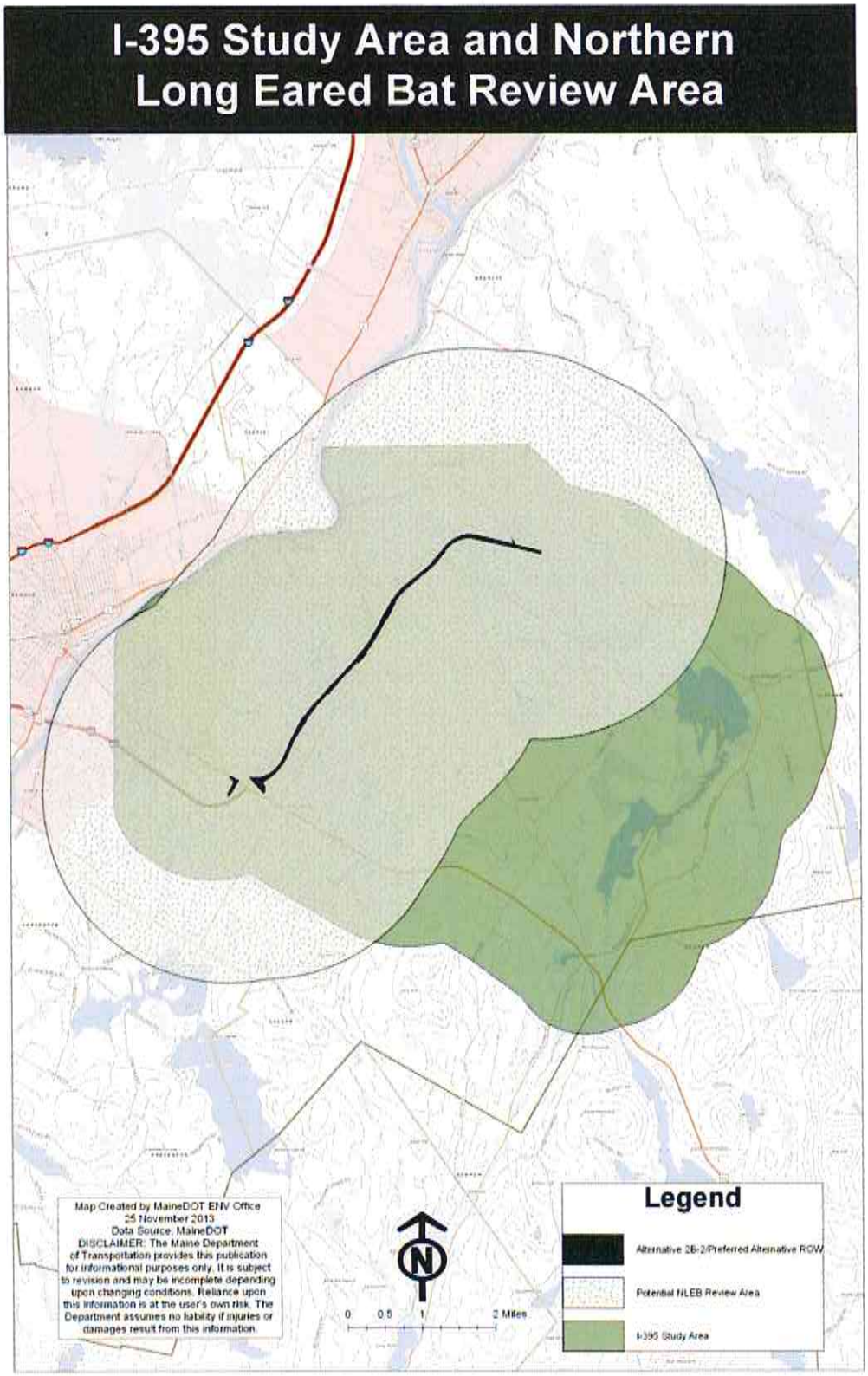
3. The project scope is not one identified by USFWS as being most likely to result in lethal impacts or significant adverse impacts to NLEB.

On November 9, 2013, FHWA and MaineDOT received guidance from USFWS on prioritizing projects for conferencing on potential effects to NLEB. USFWS identified the following project types for prioritization: projects in the vicinity of known summer captures or acoustic detections, known roosts, known telemetry points and known hibernacula; projects most likely to result in lethal impacts or significant adverse impacts to NLEB (including wind projects, projects that alter hibernacula, and extensive forest removal/conversion); and, projects that will still be in progress during/after the final listing. There are no known NLEB roosts or detections within the project study area and forest removal will not occur at an extensive scale likely to result in lethal impacts or significant adverse impacts to the species.

Implications Post-listing of NLEB

Construction of this project is not anticipated to begin until after October 1, 2014. MaineDOT and FHWA will re-initiate Section 7 consultation when the NLEB and/or its critical habitat become officially listed under the ESA.

Figure 1 – NLEB Review Area



Meadow Brook

The information provided below is in response to USFWS' letter dated November 19, 2013 and received on November 21, 2013, which states: "During the BA review period, the Service identified a stream within the action area that was not addressed. The Service believes potential effects to this stream should be addressed."

Action Description in the Meadow Brook Watershed

The new connector that is proposed and described in Chapter 1 of the Biological Assessment (BA) will intersect with Route 9 approximately 1200 feet easterly of the Route 9 crossing of Meadow Brook. Rehabilitation of existing Route 9 may occur within approximately 25 feet of Meadow Brook (see Alignment Sheets in Appendix D). Though no in water work is expected in Meadow Brook, the following activities will take place in the Meadow Brook watershed:

- Grading and clearing
- Increase of impervious area
- Induced growth
- Creation of staging areas

Potential Effects of the Action

- Sedimentation and Turbidity (see Chapter 4.1.5 in BA)
- Stormwater (See Appendix C in BA)
- Potential contaminants spills

Conservation measures to minimize effects

- Best management practices will be followed on all ground disturbances.
- State of Maine Chapter 500 Stormwater standards and temperature treatment as discussed in Chapter 4.1.5 and Appendix C of the Biological assessment will be followed for this portion of the new connector.
- A Spill Prevention and Countermeasure and Control (SPCC) plan will be followed during the work.
- Staging areas will be placed at least 100 feet away from Meadow Brook.

Effects Determination

With proper planning, installation and maintenance of Erosion and Sedimentation Control Best Management practices, sedimentation will likely not reach Meadow Brook. Sedimentation and turbidity may effect, are not likely to adversely affect Atlantic salmon or their critical habitat.

Contaminants spills are unlikely and the SPCC plan will ensure that any spills are addressed.

Stormwater treatment standards and commitments to water temperature mitigation methods will ensure that runoff from newly created impervious surfaces are not likely to adversely affect water quality in Meadow Brook.