

**Re: [EXTERNAL] Request for Review under Road-Stream Crossing Programmatic-NAE-2019-01101-Apex Clean Energy/Downeast Wind-4 Stream Crossing**

Mahaney, Wende <wende\_mahaney@fws.gov>

Mon 2/13/2023 8:36 AM

To: Mahaney, Shawn B CIV USARMY CENAE (USA) <Shawn.B.Mahaney@usace.army.mil>

Dear Shawn,

The U.S. Fish and Wildlife Service has reviewed all of the information related to Downeast Wind, LLC's four proposed stream crossing projects associated with the construction of a 30-turbine commercial wind power project in Washington County, Maine. Three of these stream crossings are replacements of existing culverts and one is installation of a 3-sided box culvert that will replace an existing ford with road fill material in the stream channel. These four locations are at Upper Colonel Brook in Columbia (Apex 2) , Gosha Brook in Columbia (Apex 12), and two unnamed tributaries of Beech Hill Brook in T24 MD BPP (Apex 6 and Apex 11).

These four stream crossings are being reviewed through the Stream Crossing Programmatic process. Your request for section 7 consultation was received on February 8, 2023. We note that this programmatic Tier 2 section 7 consultation involves both formal (Apex 2 and Apex 12) and informal consultations (Apex 6 and Apex 11) for Atlantic salmon.

**Apex 2 and Apex 12 - Formal programmatic tier 2 consultation**

We concur with the Corps of Engineers' determination that the proposed projects at Apex 2 and Apex 12 are likely to adversely affect the endangered Atlantic salmon, given the possible presence of juvenile salmon in the project areas. Based on the analysis in our September 26, 2017 programmatic biological opinion, we conclude that these projects are not likely to jeopardize the continued existence of Atlantic salmon and will result in a net conservation benefit for this species by improving stream connectivity. We also concur with your determination that Apex 2 and Apex 12 are not likely to adversely affect designated critical habitat for Atlantic salmon.

Our concurrence is dependent on these two crossings being constructed following all requirement outlined in the September 26, 2017 stream crossing programmatic biological opinion, including submission of a project completion report to both the Corps and the Fish and Wildlife Service. **Please note that since this consultation for Atlantic salmon is formal, the Corps will need to address incidental take in your 2023 annual report (assuming that construction occurs in summer 2023). Downeast Wind, LLC will need to provide you with appropriate information related to fish evacuation activities.**

**Apex 6 and Apex 11 - Informal programmatic tier 2 consultation**

We concur with the Corps of Engineers' determination that the proposed projects at Apex 6 and Apex 11 are not likely to adversely affect the endangered Atlantic salmon and its designated critical habitat. Our concurrence is dependent on the project being constructed following all requirements outlined in the September 26, 2017 stream crossing programmatic biological opinion, including submission of a project completion report to both the Corps and the Fish and Wildlife Service.

**Reminder - Instream construction work must be completed in isolation from stream flow (Apex 2, Apex 12, Apex 6, and Apex 11)**

It is particularly important that Downeast Wind, LLC and their construction partners are aware that they must complete these four stream crossing projects with all instream work conducted in the dry, using cofferdams and pumps to bypass stream flow around the instream work area. Their most recent submittals associated with Apex 6 and Apex 11 imply that they will pull the existing culverts without the use of cofferdams, which is not allowed under the stream crossing programmatic consultation (unless drought conditions result in absolutely no stream flow at the time of construction).

### **Apex 7, 8, and 9**

At these locations, Downeast Wind will be installing new stream crossings where none exist now. Because Downeast Wind has indicated they will install these crossings without any instream work, the Corps of Engineers has made a no effect determination for Atlantic salmon and their critical habitat. The Corps will include special permit conditions for these three crossings that are designed to ensure that construction activities will have no impact on the streams.

### **Northern long-eared bat**

Acoustic bat call surveys conducted for this project identified the presence of the northern long-eared bat calls in very small numbers in July, August and September 2016 (surveys were conducted in spring, summer and fall 2016 and fall 2015). We note that those surveys were conducted based on a previous project layout, which did not include some of the current project area. We also note that at least some, if not all, of these surveys would not meet the requirements of the Fish and Wildlife Service's summer survey guidelines for northern long-eared bat and therefore could not be used to determine probable absence of the species.

We concur with the Corps' determination that the proposed project may affect the threatened northern long-eared bat and is consistent with the Fish and Wildlife Service's January 2016 programmatic biological opinion for this species and its associated 4(d) rule. A verification letter was provided by the Fish and Wildlife Service to Goni Iskali (on behalf of Downeast Wind, LLC) on March 11, 2022 acknowledging 335 acres of forest conversion to happen between August 1 and May 31.

As you are aware, the northern long-eared bat will be reclassified as an endangered species effective March 31, 2023 and the current 4(d) rule and associated streamlined section 7 consultation process will no longer be applicable. If ongoing project effects to bats may extend past March 30, 2023, the Corps may need to reinitiate section 7 consultation. A new rangewide determination key for this species will be available on our IPaC website, which may assist with reinitiation of consultation if warranted.

### **Tricolored bat**

During the same acoustic surveys mentioned above, bat calls identified as the tricolored bat were detected but very infrequently (n=3).

On September 13, 2022 the Fish and Wildlife Service proposed to list this species as endangered. The Fish and Wildlife Service has up to 12 months to make a final determination to list this species or withdraw the proposal. If listing for the tricolored bat is finalized and there are ongoing impacts from this project that may affect this species, the Corps may need to reinitiate section 7 consultation.

**We would appreciate receiving a copy of the final permit for this project.** Thank you for your cooperation on completing this section 7 consultation.

Wende

Wende S. Mahaney, C.W.B. (she/her/hers)  
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**From:** Mahaney, Shawn B CIV USARMY CENAE (USA) <Shawn.B.Mahaney@usace.army.mil>  
**Sent:** Wednesday, February 8, 2023 2:07 PM  
**To:** Mahaney, Wende <wende\_mahaney@fws.gov>  
**Subject:** [EXTERNAL] Request for Review under Road-Stream Crossing Programmatic-NAE-2019-01101-Apex Clean Energy/Downeast Wind-4 Stream Crossing

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Hi Wende,

Here are the 4 streams crossings to be replaced as part of the Apex Clean Energy/Downeast Wind project in Columbia, T18 MDD & T19 MDD to replaces existing round culvert with larger stream simulation structures to be reviewed under the Road-Stream Crossing Programmatic Consultation.

Based on the attached information the Corps believes that crossings Apex 2 & 12 will LAA and its designated critical habitat and crossings Apex 6 & 11 will NLAA Atlantic Salmon and its designated critical habitat and all 4 crossing may affect NLEB. The project is not in Canada Lynx range or critical habitat.

Our Application# is NAE-2019-01101

The Corps has reviewed the packets and they appears that all required information is included as well as the USFWS DRT signoff forms

We plan to use the standard conditions developed by the Corps/Service (attached).

Let me know if you need any additional information.


A separate set of conditions will be sent for your review for Apex 7, 8, & 9 to insure that these crossing do not have any affect on the streams.


Thank you.


Shawn


Shawn B. Mahaney, Senior Project Manager.

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