

Item 4d – USFWS Protected Species Coordination

DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701-2070



03E15000 - 2014 - I - 0791

To: U.S. Fish and Wildlife Service, Columbus, Ohio Field Office

Request for review pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 and/or coordination required by the Fish & Wildlife Coordination Act.

Date: June 17, 2015

ATTENTION OF

CELRH-RD-N

Permit Application Number: LRH-2015-307-TUS

Project Name: Cornerstone Pipeline

County: Stark, Tuscarawas, Carroll, and Harrison

U.S. Army Corps of Engineers Contact: Teresa Spagna

(teresa.d.spagna@usace.army.mil)

Listed species with potential to occur in proposed project area: (E) – Endangered; (T) – Threatened

- American burying beetle (E)
- Clubshell mussel (E)
- Eastern prairie fringed orchid (T)
- Fanshell mussel (E)
- Indiana bat (E)
- Northern long-eared bat (T)
- Northern monkshood (T)
- Northern riffleshell mussel (E)
- Pink mucket pearly mussel (E)
- Purple cat's paw pearly mussel (E)
- Rabbitsfoot mussel (T)
- Rayed bean mussel (E)
- Running buffalo clover (E)
- Scioto madtom (E)
- Sheepnose mussel (E)
- Snuffbox mussel (E)
- Small whorled pogonia (T)
- Virginia spiraea (T)

See attached project description (including any conservation measures that are part of the proposal), permit conditions, permit application details, and rationale for the following determination(s).

The U.S. Army Corps of Engineers has determined the proposed project:

- will result in no effect to
- may affect _____
- may affect, but is not likely to adversely affect Indiana bat and northern long-eared bat
- is likely to adversely affect _____
- will not result in take of bald eagles under the **Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act** (if applicable)

The U.S. Army Corps of Engineers requests:



USFWS concurrence with our determination(s)

Additional assistance to make our determination

Other: _____

The U.S. Fish and Wildlife Service:

Requests additional time for review

Concurs with your determination and has no further ESA comments

Will provide FWCA comments separately

Has no comments pursuant to FWCA

USFWS Contact(s): *Charles Allen*
Charles Allen

Date: *June 19, 2015*



DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701-2070

REPLY TO
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- | | |
|---|---|
| <input type="checkbox"/> American burying beetle (E) | <input type="checkbox"/> Purple cat's paw pearly mussel (E) |
| <input type="checkbox"/> Clubshell mussel (E) | <input type="checkbox"/> Rabbitsfoot mussel (T) |
| <input type="checkbox"/> Eastern prairie fringed orchid (T) | <input type="checkbox"/> Rayed bean mussel (E) |
| <input type="checkbox"/> Fanshell mussel (E) | <input type="checkbox"/> Running buffalo clover (E) |
| <input checked="" type="checkbox"/> Indiana bat (E) | <input type="checkbox"/> Scioto madtom (E) |
| <input checked="" type="checkbox"/> Northern long-eared bat (T) | <input type="checkbox"/> Sheepnose mussel (E) |
| <input type="checkbox"/> Northern monkshood (T) | <input type="checkbox"/> Snuffbox mussel (E) |
| <input type="checkbox"/> Northern riffleshell mussel (E) | <input type="checkbox"/> Small whorled pogonia (T) |
| <input type="checkbox"/> Pink mucket pearly mussel (E) | <input type="checkbox"/> Virginia spiraea (T) |

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- may affect _____
- may affect, but is not likely to adversely affect Indiana bat and northern long-eared bat
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The U.S. Army Corps of Engineers requests:

- USFWS concurrence with our determination(s)
- Additional assistance to make our determination
- Other: _____

The U.S. Fish and Wildlife Service:

- Requests additional time for review
- Concurs with your determination and has no further ESA comments
- Will provide FWCA comments separately
- Has no comments pursuant to FWCA

USFWS Contact(s):

Date:

Project Location: The overall project area is located almost entirely within the Tuscarawas River Hydrologic Unit Code (HUC) 05100101. A small portion of the project area (< 0.1 mile) does fall within the Upper Ohio-Wheeling HUC Code 05030106 at the extreme southern end of the proposed alignment; however, there are no waters of the U.S. located within the Upper Ohio-Wheeling HUC portion of the proposed Cornerstone Pipeline project. The proposed project is located in east-central Ohio and runs from Cadiz (Harrison County) to Canton (Stark County). The line traverses from south to north, portions of Harrison, Carroll, Tuscarawas, and Stark counties. The coordinates for the approximate center of the project are: 40.474849/-81.248801. The proposed Breezehill Pipeline removal activity is located entirely within Stark County and its southern end is located at Mile Post 46.05 of the proposed Cornerstone pipeline and continues north for approximately 4.1 miles to its terminus within Marathon's Canton Refinery, running parallel to and in close proximity to the Cornerstone alignment. Appendix 1 shows the proposed pipeline alignment plotted on USGS 7.5 minute USGS quadrangle maps.

Project Description: Marathon Pipe Line LLC proposes to construct approximately 50 miles of petroleum pipeline from Cadiz to Canton, Ohio, and to remove approximately 4.1 miles of Marathon's Breezehill pipeline, an inactive, purged 4-inch gas line in Stark County as part of the overall Cornerstone Pipeline Project. The proposed petroleum pipeline would be composed of two sizes with 16-inch diameter pipe from Cadiz (Mile Post 0.0) to East Sparta (Mile Post 41.5) and 8-inch diameter pipe from East Sparta to Canton (Mile Post 50.1). The purpose of the project is to construct a pipeline for the transport of Utica Shale condensate from processing facilities to the MPC Canton Refinery and the ORPL East Sparta Tank Farm. The Cornerstone pipeline is production-driven and designed to provide the necessary new pipeline infrastructure to transport liquids from the Utica Shale production area in Ohio.

The proposed Cornerstone pipeline installation would result in the temporary discharge of dredged and/or fill material into 1.16 acres of wetlands as indicated below:

- 0.124 acre are to PFO dominated wetland systems (0.062 to PFO; 0.054 to PFO/PSS/PEM; and 0.008 to PFO/PEM);
- 0.079 acre are to PSS dominated wetland systems (0.050 to PSS and 0.029 to PSS/PEM);
- 0.953 acre are to PEM dominated wetland systems (0.809 to PEM; 0.099 to PEM/PSS; and 0.045 to PEM/PFO)

The proposed Breezehill pipeline removal would result in the temporary discharge of dredged and/or fill material into 0.111 acre of wetlands as indicated below:

- 0.022 acre in one PFO dominated wetland system; and
- 0.089 acre in PEM wetlands (five separate PEM wetlands involved)

Ninety-nine stream crossings resulting in the temporary discharge of fill material into 366.8 linear feet of streams (i.e., temporary dredge and fill impacts) would occur as a result of installation of the proposed Cornerstone pipeline installation as indicated below:

- 18 are perennial (total length of crossings = 136.5 feet), 38 are intermittent (total length of crossings = 128.1 feet), and 43 are ephemeral (total length of crossings = 102.2 feet)

Ten stream crossings resulting in the temporary discharge of fill material into 57 linear feet of streams would occur as a result of the Breezehill pipeline removal activity.

Approximately 0.02 acre of one pond would be temporarily affected by the discharge of dredged and/or fill material associated with the Cornerstone pipeline installation.

The proposed discharge of dredged and/or fill material into waters of the United States is being considered for Department of the Army permit authorization under the Nationwide Permit 12 described in the 21 February 2012 Federal Register, Reissuance of Nationwide Permits (77 FR 10184).

Avoidance, Minimization and Compensation: This office has determined 80,470 linear feet of streams, 78.63 acres of wetlands and 13.63 acres of ponds are located within the proposed project area and may be waters of the United States in accordance with the Regulatory Guidance Letter for jurisdictional determinations issued by the Corps on June 26, 2008 (Regulatory Guidance Letter No. 08-02).

The construction right-of-way (ROW) width was reduced from 90 feet to 75 feet for work within wetlands and streams located along the ROW, resulting in a minimization of the temporary impacts during construction of the crossing and from equipment travel. For the removal of the inactive, purged Breezehill pipe, the construction ROW would range in width from 20 feet to 40 feet depending on site-specific conditions, e.g., proximity to proposed Cornerstone alignment, proximity to other in-place pipelines, other environmental constraints, etc. To facilitate pipeline construction (Cornerstone) or pipe removal (Breezehill) within waterbodies, ATWS, i.e., staging areas, would be needed adjacent to waterbodies and in some cases wetlands, to assemble and fabricate the length of pipe necessary to complete the crossing (Cornerstone) and/or to stockpile excavated ditch spoil (Cornerstone and Breezehill). These work areas are in addition to the normal construction ROW. Wetlands and streams, if located within ATWS areas would be avoided; any required equipment crossings of wetlands would be carried out on timber mats, and any required stream crossings would be completed through the use of installed bridges. Of the 243 wetlands identified within the Survey Corridor, 176 would not be impacted by the discharge of dredged and fill activities. Of the 176 avoided wetlands, 15 would be avoided by using Horizontal Directional Drilling (HDD) crossings and 161 have been avoided by selective routing decisions, to include three Category 3 wetlands that were avoided through specific reroutes designed subsequent to the ORAM evaluation identifying these three wetlands as Category 3.

Appropriate best management practices would be implemented during the construction activities to decrease erosion and sedimentation during and after construction of the project. Topsoil would be segregated during excavation. After replacement of backfill is complete, the segregated topsoil would be reapplied over the trench and the area would be recontoured to preconstruction contours and elevations, and restored in accordance with the project's Storm Water Pollution Prevention Plan. All disturbed areas would be seeded and/or revegetated with native species and approved seed mixes (where practicable) after completion of construction activities for stabilization and to help preclude the establishment of non-native invasive species. To offset the conversion of forested wetlands to emergent wetland, the applicant has proposed to purchase 2.67 acres of wetland mitigation credit from the Stream + Wetland Foundation's In-Lieu Fee Program.

Endangered and/or Threatened Species: The proposed project is located within the known or historic range of the endangered Indiana bat (*Myotis sodalis*) and the proposed endangered northern long-eared bat (*Myotis septentrionalis*).

Existing Conditions: The land that would be crossed by the Cornerstone and Breezehill pipeline activities is predominantly deciduous forest (approximately 56 percent) followed by open land (approximately 39 percent developed, barren, open space, row crops, and hay/pasture) per NLCD 2006 Land Cover data. The land crossed by the pipeline activities within the northern 2.6 miles of the alignment is predominantly deciduous forest. The land crossed by the pipeline activities in the southern 47.5 miles of the alignment is predominantly deciduous forest.

Effect Determination: Project actions would include excavation and construction of an underground condensate pipeline, which would require the removal of potentially suitable habitat for the Indiana bat and the northern long-eared bat. The project alignment was co-located within existing ROWs to limit the amount of potentially suitable habitat that would be removed as a result of the proposed activities. The applicant would use a 100-foot construction ROW that would be narrowed down to 75 feet in wetlands and at stream crossings where tree clearing would occur.

According to the applicant's PCN, one known Indiana bat roost is located within 0.75 mile of the proposed alignment on the northern end and the presence of the northern long-eared bats has been recorded along the nearly the entire proposed alignment. The applicant has agreed to comply with the recommended seasonal clearing restrictions (prior to April 1 and after September 30) to minimize effects to the Indiana bat and the northern long-eared bat. We have determined the proposed project may affect, but is not likely to adversely affect either the Indiana bat or the northern long-eared bat.

Additional Information: In a letter dated 26 February 2014, the USFWS stated "Because the project will result in a small amount of forest clearing relative to the available habitat in the immediately surrounding area, habitat removal is unlikely to result in significant impacts to this species. However, because northern long-eared bat presence in the vicinity of the project has been confirmed, clearing of trees during the summer roosting season may result in direct take of individuals. Therefore, we recommend that any unavoidable tree clearing at the site occur only from October 1 through March 31."

Enclosures:

Location map

Correspondence between the applicant and the USFWS

Bauer, Bruce

From: Boyer, Angela <angela_boyer@fws.gov>
Sent: Monday, February 10, 2014 9:53 AM
To: Steffen, Bradley
Cc: lamckee@marathonpetroleum.com; Bauer, Bruce
Subject: Re: Marathon's Cornerstone Pipeline - 24 January meeting summary

I agree with your summary. I do not think it is possible to identify all the PRT for a project of this size. Furthermore, all PRT for the northern long-eared bat (NLE) are not easily identified. NLE frequently roost singly in trees and it is not uncommon for them to use trees as small as 3" dbh. The nooks they use can easily be overlooked. There would also be the issue of removing foraging habitat while the species is present which could also affect the species. I do not think trying to remove PRT in the winter and the rest of the trees in the summer is a viable option.

Angie

On Fri, Feb 7, 2014 at 1:43 PM, Steffen, Bradley <BSteffen@trcsolutions.com> wrote:

Angie,

I wanted to touch base with you and summarize our meeting on 24 January 2014 to make sure that we fully understand the USFWS position regarding Marathon's Cornerstone Pipeline project in Carroll, Harrison, Stark and Tuscarawas counties. Discussion highlights are as follows:

Project Overview:

- 46 mile non-FERC regulated pipeline from Canton to Cadiz
- 100-foot construction right-of-way (ROW)
- Construction to occur in 2016

Threatened and Endangered Species:

- One known Indiana bat roost within $\frac{3}{4}$ miles of the proposed alignment on the northern end
- Known northern long-eared bat records along nearly all of the proposed alignment
- At this time USFWS is recommending seasonal clearing restrictions (1 April to 30 September) to address listed bat concerns relating to the project. If seasonal clearing restrictions are not feasible, formal consultation under Section 7 of the ESA would be required.

- At this time we assume that no other federal T&E species will be impacted by the proposed project
- A Technical Assistance request to address all federal T&E species that may potentially be impacted by the project has been submitted to your office via ohio@fws.gov. We assume that the Technical Assistance Letter will include recommendations to address listed bat concerns as well as any additional federally listed species.

If I have mischaracterized any of the above discussion points, please correct me.

I also have a quick question regarding the seasonal clearing window. Marathon is currently evaluating the feasibility of clearing the entire proposed ROW during the winter however, in the event they determine that it will be difficult to do so, they also want to explore the possibility of clearing PRTs that are identified within the proposed construction corridor during the cutting window, with the remainder of tree clearing to occur in the spring and summer. Removing potentially suitable roost trees while bats are not present would eliminate the potential for direct take of either MYSO or MYSE. Would this be an acceptable alternative to clearing all of the ROW during the cutting Window?

Bradley J. Steffen
Bat Program Director

BSteffen@trcsolutions.com



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From: susan_zimmermann@fws.gov on behalf of Ohio, FW3 <ohio@fws.gov>
Sent: Wednesday, February 26, 2014 2:35 PM
To: Steffen, Bradley
Subject: Marathon - Cornerstone Pipeline Project

TAILS# 03E15000-2014-TA-0791

Dear Mr. Steffen,

We have received your recent correspondence requesting information about the subject proposal. There are no Federal wilderness areas, wildlife refuges or designated critical habitat within the vicinity of the project area. The following comments and recommendations will assist you in fulfilling the requirements for consultation under section 7 of the Endangered Species Act of 1973, as amended (ESA).

The Service recommends that proposed developments avoid and minimize water quality impacts and impacts to high quality fish and wildlife habitat (e.g., forests, streams, wetlands). Additionally, natural buffers around streams and wetlands should be preserved to enhance beneficial functions. If streams or wetlands will be impacted, the Corps of Engineers should be contacted to determine whether a Clean Water Act section 404 permit is required. Best management practices should be used to minimize erosion, especially on slopes. All disturbed areas should be mulched and revegetated with native plant species. Prevention of non-native, invasive plant establishment is critical in maintaining high quality habitats.

ENDANGERED SPECIES COMMENTS: All projects in the State of Ohio lie within the range of the northern long-eared bat (*Myotis septentrionalis*), a species that is currently proposed for listing as federally endangered. Recently white-nose syndrome (WNS), a novel fungal pathogen, has caused serious declines in the northern long-eared bat population in the northeastern U.S. WNS has also been documented in Ohio, but the full extent of the impacts from WNS in Ohio are not yet known.

During winter, northern long-eared bats hibernate in caves and abandoned mines. Summer habitat requirements for the species are not well defined but the following are considered important:

- (1) Roosting habitat in dead or live trees and snags with cavities, peeling or exfoliating bark, split tree trunk and/or branches, which may be used as maternity roost areas;
- (2) Foraging habitat in upland and lowland woodlots and tree lined corridors;
- (3) Occasionally they may roost in structures like barns and sheds.

The proposed project is in the vicinity of one or more confirmed records of northern long-eared bats. Should habitat exhibiting the characteristics described above be present at the proposed project site, we recommend that they, as well as surrounding trees, be saved wherever possible. Because the project will result in a small amount of forest clearing relative to the available habitat in the immediately surrounding area, habitat removal is unlikely to result in significant impacts to this species. However, because northern long-eared bat presence in the vicinity of the project has been confirmed, clearing of trees during the summer roosting season may result in direct take of individuals. Therefore, we recommend that any unavoidable tree clearing at the site occur only from October 1 through March 31. Following these seasonal tree clearing restrictions should ensure that any effects to northern long-eared bats are insignificant or discountable. Please note that, because northern long-eared bat presence has already been confirmed in the project vicinity, any additional surveys would not constitute presence/absence surveys.

All projects in the State of Ohio lie within the range of the Indiana bat (*Myotis sodalis*), a federally listed endangered species. Since first listed as endangered in 1967, their population has declined by nearly 60%. Several factors have contributed to the decline of the Indiana bat, including the loss and degradation of suitable hibernacula, human disturbance during hibernation, pesticides, and the loss and degradation of forested habitat, particularly stands of large, mature trees. Fragmentation of forest habitat may also contribute to declines. During winter, Indiana bats hibernate in caves and abandoned mines. Summer habitat requirements for the species are not well defined but the following are considered important:

- (1) dead or live trees and snags with peeling or exfoliating bark, split tree trunk and/or branches, or cavities, which may be used as maternity roost areas;
- (2) live trees (such as shagbark hickory and oaks) which have exfoliating bark;
- (3) stream corridors, riparian areas, and upland woodlots which provide forage sites.

Should habitat exhibiting the characteristics described above be present at the proposed project site, we recommend that they, as well as surrounding trees, be saved wherever possible. However, if these trees cannot be avoided, they should only be cut between October 1 and March 31.

If there is a Federal nexus for the project (e.g., Federal funding provided, Federal permits required to construct), no tree clearing on any portion of the parcel should occur until consultation under section 7 of the ESA, between the Service and the Federal action agency, is completed. We recommend that the Federal action agency submit a determination of effects to this office, relative to the Indiana bat, for our review and concurrence.

Due to the project type, size, and location, we do not anticipate adverse effects to any other federally endangered, threatened, proposed, or candidate species. Should the project design change, or during the term of this action, additional information on listed or proposed species or their critical habitat become available, or if new information reveals effects of the action that were not previously considered, consultation with the Service should be initiated to assess any potential impacts.

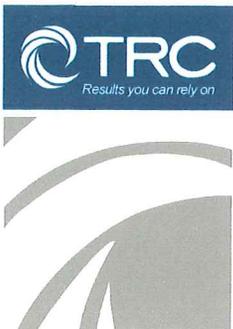
These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (ESA), as amended, and are consistent with the intent of the National Environmental Policy Act of 1969 and the U. S. Fish and Wildlife Service's Mitigation Policy. This letter provides technical assistance only and does not serve as a completed section 7 consultation document.

Sincerely,

A handwritten signature in blue ink that reads "Mary Knapp".

Mary Knapp, PhD.
Field Supervisor

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>



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6 February 2014

U.S. Fish and Wildlife Service
2645 Morse Road
Columbus, OH

RE: Request for Technical Assistance

To Whom it May Concern,

On behalf of Marathon Petroleum Company, I am requesting Technical Assistance regarding the Cornerstone Pipeline Project in Stark, Tuscarawas, Carroll, and Harrison counties, Ohio. We are requesting information regarding Threatened and Endangered (T&E) species that may be impacted by the proposed project, as well USFWS recommendation for addressing any T&E species concerns that may exist.

The proposed, non-FERC regulated project spans approximately 46 miles from Marathon's Canton refinery to a proposed facility near Cadiz. Marathon will utilize a 100-foot construction Right-of-Way (narrowed down to 75 feet in wetlands and at stream crossings) along the currently proposed alignment where tree clearing will occur. GIS data of the current alignment has been previously provided to Angela Boyer. On 24 January 2014, Marathon, URS, and TRC met with Angela Boyer to discuss the project as it relates to Indiana and northern long-eared bats. We are requesting recommendations relative to these species as well as any other federally listed species that may be effected by project. If further detail is required please contact me at 513.489.2255 ext 1045 or email me at bsteffen@trcsolutions.com.

Sincerely,

Bradley J. Steffen

Bat Program Director