



# CONNECTICUT DEPARTMENT OF TRANSPORTATION

## Office of Environmental Planning

### NORTHERN LONG-EARED BAT FACTSHEET

FACTSHEET

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## US FISH & WILDLIFE SERVICE RELEASES FINAL RULE FOR NORTHERN LONG-EARED BAT

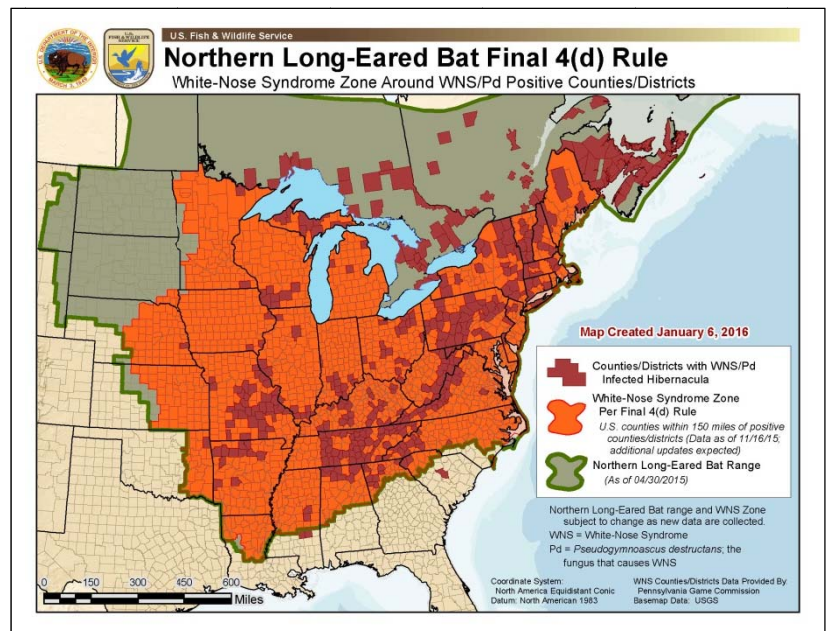
**Background:** On April 2, 2015, the U.S. Fish & Wildlife Service (Service) listed the Northern Long-Eared Bat (*Myotis septentrionalis*) [NLEB] as a federally threatened species under the Endangered Species Act (ESA). The listing had an effective date of May 4, 2015. When the listing became effective, it was published with an Interim rule under Section 4(d) of the Endangered Species Act ("the act"). Section 4(d) of the act allows the Service to issue rules which are necessary and advisable to provide for the conservation of the species. At the time of the issuance of the Interim 4(d) rule, conservation measures included time-of-year restrictions for the cutting of trees  $\geq 3"$  in diameter which met the definition of a potential habitat tree, as well as other measures. Since the Interim rule was released, the Service has undergone 150 days of open comment period and received more than 40,000 comments from the Public. After careful evaluation of the comments and current understanding of the life history and current threats to the bat, the Service published a Final 4(d) rule in the Federal Register on January 14, 2016. The rule was effective on February 16, 2016. The CTDOT, as a recipient of federal funding and subject to federal regulatory programs, is bound by the provisions of the ESA. The Final rule recognizes that White Nose Syndrome (WNS), a fungal based disease which results in high mortality, is the top threat to the species' continued existence. WNS affects bats in much of the species current range, and is expected to spread throughout the entire range in as little as the next seven years.

The Final rule addresses both purposeful take<sup>1</sup> and incidental take<sup>2</sup> of the species, and established rules for both types of take.

The Service has defined two regional applications of the Final rule based on geographic proximity to the WNS zone. Connecticut is determined to be within the active WNS zone. Under the Final rule, there are three main activities which have been prohibited within the WNS zone which pertain directly to CTDOT projects:

- (1) purposeful take, with few exceptions;
- (2) incidental take resulting from tree removal within  $\frac{1}{4}$  mile of a known hibernacula entrance at any time of year; and,
- (3) incidental take resulting from the removal of any tree within 150ft of a known documented summer roost tree during the pup season (June 1- July 31).

The Office of Environmental Planning (OEP) will continue to screen all CTDOT projects to evaluate project locations in proximity to known hibernacula locations and known maternity roost tree sites. This evaluation will take place in consultation with the CT Department of Energy and Environmental Protection (CTDEEP) Wildlife Division. FHWA, Connecticut Division Office will be informed as to the results of these evaluations for purposes of reporting under NEPA.



The Service has established a framework for streamlined consultation for all projects with a federal nexus for activities which are excepted from incidental take prohibition. Submission of project related information to the Service under this framework will fulfill the responsibilities of the Federal Agency under Section 7(a)(2) of the Act. Such documentation will include whether or not the project is located within  $\frac{1}{4}$  mile of a known hibernacula or within 150ft of a documented roost tree, project description, location, and estimated tree clearing area. While concurrence from the Service is not required, the Service may indicate that additional information is requested, or that the activities are not covered by the Final 4(d) rule. Upon submission, if the Service does not respond within 30 days, obligations under Section 7(a)(2) are to be considered fulfilled. OEP will prepare and submit the required documentation to the Service under the streamlined framework in consultation with FHWA, FRA, FTA, FAA, ACOE or any other federal agency associated with the project. The Service released the reporting form to be used by Federal Agencies to the public on March 1, 2016, and the use of the form was concurred upon by FHWA HQ the same day.

<sup>1</sup> Take: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct.

<sup>2</sup> Incidental take: Any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, an otherwise lawful activity.

With the issuance of the Final rule (effective February 16, 2016), there are no longer blanket time-of-year restrictions for tree cutting for NLEB. CTDOT projects with consultation under the Final 4(d) rule are no longer subject to such restrictions for the NLEB unless specifically required by USFWS as part of informal consultation for projects within ¼ mi of hibernacula or within 150ft of roost trees. OEP has prepared a “Frequently Asked Questions” document which will address common questions related to projects which have already been evaluated under the previous system, for which tree clearing restriction commitments have already been made, and for additional information related to the Final 4(d) rule. Please see that document for further information.

Should any project be determined to fall within ¼mi of a known hibernacula or within 150ft of a documented maternity roost tree, OEP in conjunction with the appropriate Federal Action agency, will enter into consultation with the Service as may be required based on project activities. The Department of Energy and Environmental Protection Wildlife Division (CTDEEP) has revised hibernacula mapping to coincide with the Final 4(d) rule, and that map is attached to this factsheet. If your project falls within one of the mapped towns, OEP will confirm whether or not your project is located within ¼mi of the hibernacula. It should be noted, as part of routine State NDDB review, time-of-year restrictions for tree cutting may still be required by the DEEP Wildlife Division as there are 7 state listed bat species in addition to the NLEB. The presence of any State listed bats will be determined early in the project, and contract provisions provided to the design engineer accordingly.

For projects which have no federal nexus either by way of funding or permit action, consultation may still be required if projects are within 1/4mi of a known hibernacula or within 150ft of a documented maternity roost tree. OEP will consult directly with the Service as necessary for those projects

Projects which are conducted under either the *State Local Bridge Program* or the *Local Transportation Capital Improvement Program* should advise the Towns of their potential obligations under the Endangered Species Act. OEP and the Department will not be involved in Consultation with the Service for projects within these programs.

#### **Additional Information:**

- USFWS Northern Long-eared bat webpage: <http://www.fws.gov/midwest/endangered/mammals/nlba/index.html>
- Federal listing: <http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/FRnlebFinalListing02April2015.pdf>
- Final 4(d) Rule: <http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/FRnlebFinal4dRule14Jan2016.pdf>
- Programmatic Biological Opinion on the Final 4(d) rule: <http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/BOonlebFinal4d.pdf>
- FAQ's on the Final rule: <http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/FAQsFinal4dRuleNLEB.pdf>
- Factsheet about the bat: <http://www.fws.gov/midwest/endangered/mammals/nleb/nlebFactSheet.html>

#### **Contact Information:**

All consultation and project submittals to the USFWS will be done by either Amanda Saul or Christopher Samorajczyk from the OEP. All questions regarding the listing and consultation procedures should be directed to Amanda or Chris.

Amanda Saul: [amanda.saul@ct.gov](mailto:amanda.saul@ct.gov) (860) 594-2939

Christopher Samorajczyk: [christopher.samorajczyk@ct.gov](mailto:christopher.samorajczyk@ct.gov) (860) 594-2938

General Questions: [DOT.NLEB@ct.gov](mailto:DOT.NLEB@ct.gov)



Source: USFWS



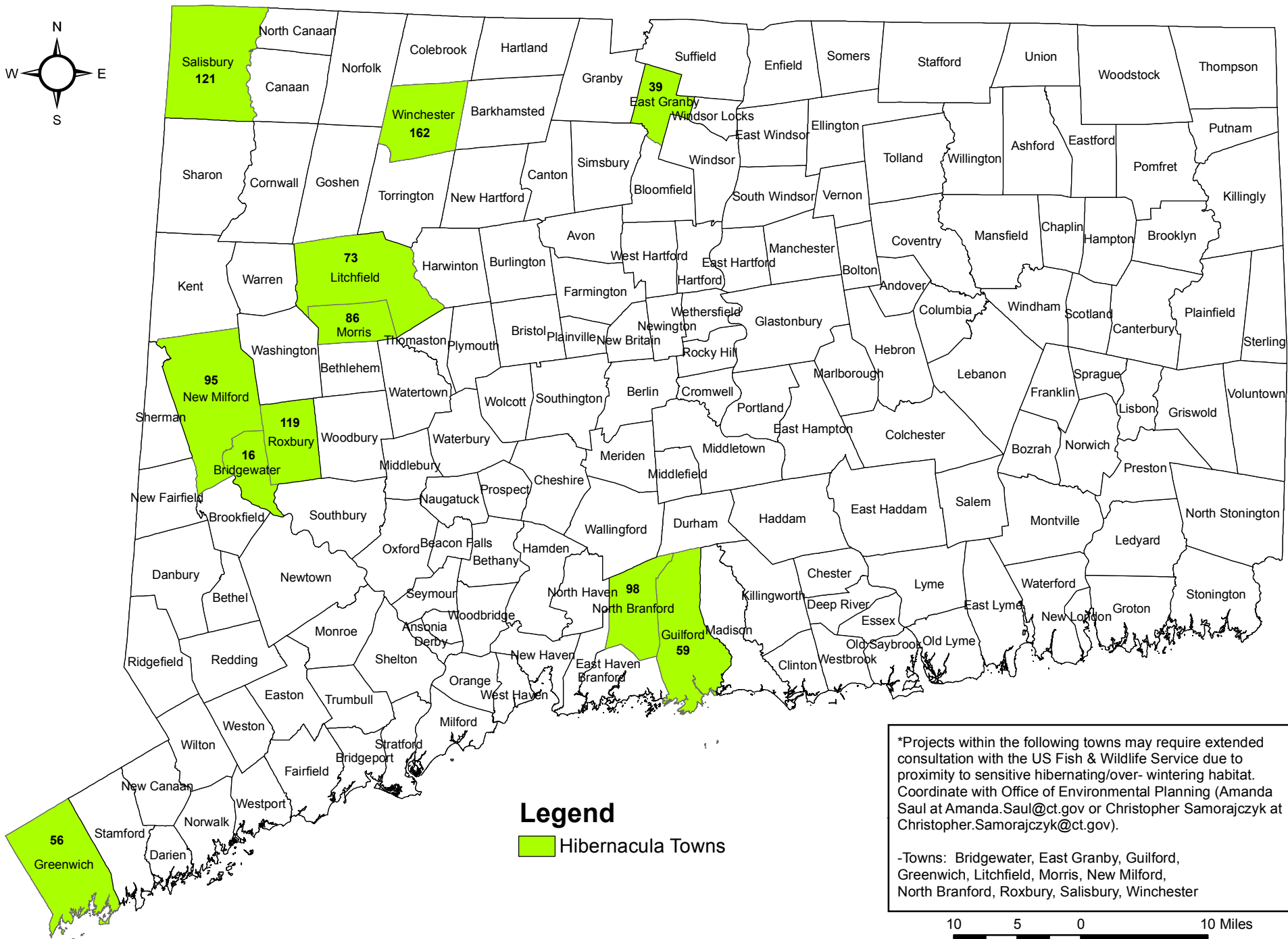
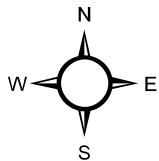
# CONNECTICUT DEPARTMENT OF TRANSPORTATION

## Office of Environmental Planning

### NORTHERN LONG-EARED BAT (NLEB)

#### FREQUENTLY ASKED QUESTIONS ABOUT THE FINAL 4(d) RULE

1. **Are there tree clearing time-of-year restrictions with the Final 4(d) rule?** There will be no more blanket time-of-year restrictions for tree cutting for the NLEB. However, if your project is within 1/4mi of a hibernacula, we will have to complete separate consultation with USFWS, and there could be clearing restrictions as part of that process.
  - a. Reminder: during the NDDB review process, if your project location has State listed bats, you may have tree clearing restrictions. State restrictions tend to be shorter in duration than what was previously required for the NLEB. OEP staff assigned to your project will provide additional assistance as needed if you have State listed bats identified during an NDDB review.
2. **What if my project has already been awarded with tree clearing restrictions in place?** For state advertised/administered projects advertised before 12/19/2015, agreements/specs were placed in the contract to enforce the time-of-year restrictions; those projects are now proceeding with clearing before April 15<sup>th</sup> under supervision of the District. Should additional clearing be needed during the construction season, it will be addressed by OEP and the District as necessary. Projects advertised after that date will be submitted under the Final 4(d) rule process.
3. **What if my project has already advertised (but not yet been awarded) with tree clearing restrictions?** There should be no state advertised/administered projects that fall into this category (see 2 above). However, for Town jobs with federal funding, OEP will re-submit the project under the Final 4(d) rule to allow for flexibility during construction.
4. **What if my project has not advertised yet, but I already gave OEP a tree clearing time-of-year restriction commitment?** If project schedule allows, those commitments can remain in place. However, in an effort to provide additional flexibility, OEP will re-submit such projects under the Final 4(d) rule.
5. **Why are there no blanket tree clearing restrictions now, but there were before?** The USFWS has taken into consideration additional research and public comments regarding the protection of the species. Because little was known about the overall distribution of those bats who have survived WNS, the Service was inclined to presume presence throughout all suitable habitat. However, recent conclusions that the main threat to the continued existence of the species is WNS, and not habitat loss, has allowed them the comfort to not assume presence in all suitable habitats.
6. **How do I know if my project is near a hibernacula or a documented roost tree?** OEP has been given data from the DEEP Wildlife Division and will determine if your project is within the protected buffers around hibernacula or maternity roost trees. A revised hibernacula town map (2/16/2016) has been prepared so that you will know if your project needs additional screening for proximity to a hibernacula. At this time, OEP does not have data from DEEP to produce a map of documented maternity roost trees.
7. **What information do I need to submit to OEP for them to complete consultation under the Final 4(d) rule?** OEP will have basic project information from your PNDF submittal; however we will also need rough estimate for tree clearing for our reporting purposes.
8. **Do my consultants need to continue doing "Bat habitat reports"?** No, please inform your consultants that we will no longer be asking for such reports, or separate site plans with clearing limits depicted. We will only need to know rough estimates for tree clearing (see 7, above).
9. **When will the Consultation with USFWS be completed for my project?** For projects scheduled to be advertised in 2016, OEP is in the process of submitting the required paperwork to USFWS for all projects. Going forward, the consultation will be completed during the PNDF review process.
10. **What if my project has no Federal "hook"?** If your project has no federal connection (either by funding or permits) you will not need consultation with USFWS unless the project is within 1/4mi of a hibernacula or within 150ft of maternity roost tree. OEP will complete that consultation as required.
11. **Who do I call with questions about NLEB, federal species, or consultations?** Please contact either Amanda Saul (860.594.2939) or Chris Samorajczyk (860.594.2938) in OEP with questions, or email general questions to [DOT.NLEB@ct.gov](mailto:DOT.NLEB@ct.gov).



## Towns with Documented Bat Hibernacula

Northern Long-Eared Bat Protection under the Final 4(d) Rule





# CONNECTICUT DEPARTMENT OF TRANSPORTATION

## Office of Environmental Planning

### NORTHERN LONG-EARED BAT FACTSHEET

FACTSHEET  
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#### INTRODUCTION TO THE FEDERAL LISTING

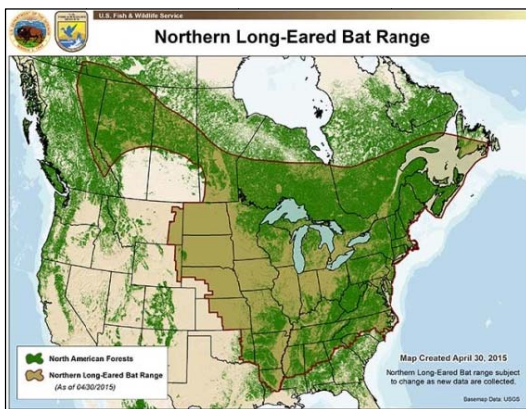
**Background:** On April 2, 2015, the U.S. Fish & Wildlife Service (USFWS) listed the Northern Long-Eared Bat (*Myotis septentrionalis*) as a federally threatened species under the Endangered Species Act (ESA). The listing has an effective date of May 4, 2015. The federal listing affords protections under the ESA and covers 38 states. All of Connecticut falls within the Bat's range, however some limited, mostly urbanized, areas of the State have been identified as non-habitat areas. Threatened species are animals and plants that are likely to become endangered in the foreseeable future. Threats to the species include White-nose syndrome, a fungal based disease which results in high mortality, impacts to hibernacula, and loss of summer habitat amongst other things.

The Northern Long-eared Bat spends winters hibernating in cave systems and summers roosting singly or in colonies in forested areas. Females give birth sometime in late May or early June, and the pups are able to fly by late July or early August. In the fall, the bats begin to swarm back at their winter cave sites where breeding occurs. Hibernation begins in early November.



Courtesy USFWS 2015

The Department, as a recipient of federal funding and subject to federal regulatory programs, is bound by the provisions of Section 7 of the ESA. Section 7(a)(2) directs all Federal agencies to insure that any action they authorize, fund, or carry-out does not jeopardize the continued existence of an endangered or threatened species or designated or proposed critical habitat (collectively, referred to as protected resources). There are no grandfather provisions under the ESA. The Office of Environmental Planning (OEP) has been working with the USFWS, Federal Transportation Agencies, DEEP and other New England DOT's to determine the effect this listing will have on Department programs and projects and how to meet the goals of project delivery.



A programmatic range-wide informal consultation (the programmatic) covering 38 states was undertaken by FHWA Headquarter and FRA Headquarters regarding certain transportation projects and the likely effect on the bats from such projects. USFWS issued concurrence on this informal consultation which has resulted in a framework for streamlined consultation on minor project types. The programmatic includes certain avoidance and minimization measures (AMMs) to

lessen likely impacts on the bats. Such measures include Time-of-Year (TOY) restrictions on tree cutting, limits on distance of cutting from road edge, inspections of bridges for the presence of bats, etc.

**Major Activities of Concern:** The following is a list of project activities which are of concern as relates to potential effect on bats.

- New Roadway/Trail on new alignment
- Tree removal of any tree  $\geq 3$  inches in diameter which exhibits cracks, crevices, or peeling bark.
- Bridge or structure maintenance or replacement at sites with bat activity.
- Impacts to water/wetlands where suitable habitat is present.
- Increased lighting.

**Impact on Department Projects:** All Department projects will have to be evaluated for potential impacts to the bats. For projects with a federal connection, whether through funding or permitting, coordination with USFWS must take place. Depending upon project specific activities and the location of the project, the coordination can take four different avenues:

1. Memo to file: projects which meet the "no effect" determination definition.
2. Programmatic consultation: projects determined "not likely to adversely affect" submission to USFWS under the programmatic. Typically a 14 day review period with opportunity for USFWS to comment. If no comment is received, concurrence is assumed. Time-of-Year restriction for tree clearing may be included and are predicated upon location, known bat presence, and proximity to sensitive habitat areas.
3. Individual informal consultation: projects with activities which do not qualify under the PA will be submitted to USFWS along with an assessment of effect and justification. Consultation must be submitted and concurrence received from USFWS. Process can take 30-90 days on average.

4. Formal consultation: projects which may have an adverse impact on the bats will require detailed evaluation and documentation. This process is estimated to take approximately 135 days to complete, depending on project specifics.

#### **What Can Designers Expect:**

- OEP/FHWA/FRA/FTA will be handling all necessary consultation and submissions, but will require the cooperation from the designer for project specific information.
- For projects already in design, OEP will be requesting information regarding tree clearing and other project activities while conducting design and permit reviews in order to determine what avenue of consultation is appropriate for the project. We are currently working with other offices in the Department, as well as FHWA and other Federal sponsoring agencies to track all projects which are currently advertised or will be going to advertising in the upcoming months so that appropriate consultation can be documented.
- Projects early in the design phase and those which are just being initiated will be reviewed early in the design phase. Field studies to assess the presence/absence of the bats may need to be conducted for projects going into the future. OEP will work with Designers to incorporate appropriate AMMs to reduce the likelihood of adverse effects to the bats.
- OEP will continue to disseminate information further detailing the federal listing and the consultation process and updates as they arise.

**OEP Commitment:** OEP is committed to working with the Designers to make the transition to this new consultation process as simplified as possible, however consultation on this level is new for both our office and the Department, as it is for many of the other 38 states covered by the listing. We fully expect that there will be bumps in the road and that information and guidance may change as we move forward. As those changes arise, we will make every effort to inform Design in a timely manner. The New England Field Office of the USFWS will be handling consultation for all of the New England States with the exception of Maine, which is a tremendous undertaking for their staff as well. At this time we cannot guarantee the consultation timeframes for individual informal and formal consultation, however we are providing estimates as they are currently available.

#### **Additional Information:**

- USFWS Northern Long-eared bat webpage: <http://www.fws.gov/midwest/endangered/mammals/nlba/index.html>
- Federal listing: <http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/FRnlebFinalListing02April2015.pdf>
- Factsheet about the bat: <http://www.fws.gov/midwest/endangered/mammals/nleb/nlebFactSheet.html>
- Biological Assessment (basis for the informal programmatic consultation between FHWA, FRA & USFWS):  
<http://www.fws.gov/midwest/endangered/mammals/nleb/nlebFactSheet.html>
  - Appendix B of the BA, Bridge Inspection Guide:  
[http://www.fws.gov/midwest/endangered/section7/fhwa/pdf/BridgeGuidanceAppB\\_BA.pdf](http://www.fws.gov/midwest/endangered/section7/fhwa/pdf/BridgeGuidanceAppB_BA.pdf)
  - Concurrence of the programmatic consultation:  
[http://www.fws.gov/midwest/endangered/section7/fhwa/pdf/USFWS\\_ConcurLtrBAT20April2015.pdf](http://www.fws.gov/midwest/endangered/section7/fhwa/pdf/USFWS_ConcurLtrBAT20April2015.pdf)
  - Users guide for implementing the informal programmatic consultation:  
[http://www.fws.gov/midwest/endangered/section7/fhwa/pdf/USFWS\\_ConcurLtrBAT20April2015.pdf](http://www.fws.gov/midwest/endangered/section7/fhwa/pdf/USFWS_ConcurLtrBAT20April2015.pdf)

#### **Contact Information:**

You may be receiving questions about your project from any one of the OEP staff members and you will exchange information with that staff member regarding specific project elements however the actual consultation being conducted with the USFWS will be done by either Amanda Saul or Christopher Samorajczyk as we make the transition. All questions regarding the listing and consultation procedures should be directed to Amanda or Chris.

Amanda Saul: [amanda.saul@ct.gov](mailto:amanda.saul@ct.gov) (860) 594-2939

Christopher Samorajczyk: [christopher.samorajczyk@ct.gov](mailto:christopher.samorajczyk@ct.gov) (860)594-2938

### **OEP WOULD LIKE TO THANK YOU IN ADVANCE FOR YOUR COOPERATION**



Hibernating northern long-eared bat by Ann Froschauer/USFWS