



## NLEB Protection/D&M Plan

**June 29, 2016**

**Melanie A. Bachman**  
**Acting Executive Director**  
**Connecticut Siting Council**  
**10 Franklin Square**  
**New Britain, CT 06051**

**APT Project No.: CT472100**

**Re: Petition No. 1178**  
**Fusion Solar Center, LLC**  
**Development and Management Plan**  
**Potash Hill Road, Sprague, CT**

Dear Ms. Bachman,

The Connecticut Siting Council's ("Council") decision on Petition No. 1178, dated September 22, 2015, required that the Development and Management Plan ("D&M") for this project include "A plan to mitigate impacts to the long-eared bat". On behalf of Fusion Solar Center, LLC ("Fusion"), All-Points Technology Corporation, P.C. ("APT") presents an updated assessment of the project's potential for impact to northern long-eared bat ("NLEB") under the federal Endangered Species Act ("ESA") final 4(d) rule for this species. At the time of Petition filing and decision, assessment of project impacts to NLEB was performed under the requirements of the ESA interim 4(d) rule for NLEB and in accordance with the U.S. Fish and Wildlife Service ("USFWS") New England Field Office's ("NEFO") July 7, 2015 policy memorandum. The interim 4(d) rule has since been replaced by the final 4(d) rule for NLEB, which became effective on February 16, 2016. The project's compliance with protection of NLEB under the final 4(d) rule by the U.S. Fish and Wildlife Service ("USFWS") and Connecticut Department of Energy & Environmental ("DEEP") project is provided below.

A USFWS NLEB assessment was recently prepared by APT, following the USFWS's *Key to the Northern Long-Eared Bat 4(d) Rule for Non-Federal Activities Key* ("USFWS Key"; January 13, 2016). This evaluation revealed that the nearest NLEB habitat resource to the proposed activity is a hibernacula located in North Branford ±40 miles to the southwest of the proposed Fusion solar project in Sprague; there are currently no known NLEB maternity roost trees in Connecticut. A copy of the USFWS's NLEB Compliance Determination, addressing the potential for impact to NLEB, is provided in Attachment A.

Previous State Listed Species consultation with the DEEP Natural Diversity Data Base ("NDDB") specific to NLEB included self-imposed protection measures. Those measures included restricting tree clearing activities from occurring between May 15 and August 31 to avoid likely adverse effects to northern long-eared bat that may be roosting in trees (assumed presence). In light of the final 4(d) rule for NLEB, DEEP was provided with the USFWS's NLEB assessment (Attachment A) and requested to remove the tree clearing restrictions associated with NLEB for the proposed solar project. DEEP issued an email on April 1, 2016 indicating that it concurred with our opinion that the project would not likely result in adverse impacts to NLEB and that no further action is required with regard to the protection of this federal threatened species. A copy of DEEP's correspondence is provided in Attachment B.

In light of the final 4(d) rule and per findings of the USFWS Key for NLEB and DEEP, the proposed Fusion Solar Center project will not result in a likely adverse effect or incidental take<sup>1</sup> to NLEB. Therefore, this updated NLEB assessment satisfies the Council's D&M Plan requirement for "A plan to mitigate impacts to the long-eared bat".

Thank you for your consideration of this request and please feel free to contact me with any questions by phone at (860) 663-1697 ext. 201 or via email at [dgustafson@allpointstech.com](mailto:dgustafson@allpointstech.com).

Sincerely,



Dean Gustafson  
Senior Environmental Scientist

Enclosures

cc: Ben Combs, Fusion Solar Center, LLC  
Joey Lee Miranda, Robinson & Cole LLP  
Kenneth C. Baldwin, Robinson & Cole LLP

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<sup>1</sup> "Incidental take" is defined by the Endangered Species Act as take that is "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." For example, harvesting trees can kill bats that are roosting in the trees, but the purpose of the activity is not to kill bats.

# Attachment A

## USFWS's NLEB Compliance Determination

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## NDDB NLEB Consultation

March 30, 2016

APT Project No.: CT472100

**Connecticut Department of Energy & Environmental Protection  
Wildlife Division  
79 Elm Street  
Hartford, CT 06106-5127  
Attn: Dawn McKay (via Email: Dawn.McKay@ct.gov)**

**Re: NDDB #201504279  
Proposed Fusion Solar Center  
20 megawatt AC Solar Facility  
Potash Hill Road  
Sprague, CT**

Dear Ms. McKay,

On behalf of Fusion Solar Center, LLC ("Fusion"), All-Points Technology Corporation, P.C. ("APT") performed an evaluation in accordance with the final 4(d) rule for northern long-eared bat ("NLEB") under the federal Endangered Species Act ("ESA") to determine if the planned activity may cause prohibited take of NLEB.

Previous State Listed Species consultation with the Connecticut Department of Energy & Environmental Protection ("CTDEEP") Natural Diversity Data Base ("NDDB") specific to NLEB included self-imposed protection measures. Those measures included restricting tree clearing activities from occurring between May 15 and August 31 to avoid likely adverse effects to northern long-eared bat that may be roosting in trees (assumed presence). At the time of that consultation, assessment of project impacts to NLEB was under the requirements of the ESA interim 4(d) rule for NLEB and in accordance with the U.S. Fish and Wildlife Service ("USFWS") New England Field Office's ("NEFO") July 7, 2015 policy memorandum. The interim 4(d) rule has since been replaced by the final 4(d) rule for NLEB, which became effective on February 16, 2016.

A NLEB assessment was recently prepared by APT, following the USFWS's *Key to the Northern Long-Eared Bat 4(d) Rule for Non-Federal Activities Key* ("USFWS Key"; January 13, 2016). This evaluation revealed that the nearest NLEB habitat resource to the proposed activity is a hibernacula located in North Branford ±40 miles to the southwest of the proposed Fusion solar project in Sprague; there are currently no known NLEB maternity roost trees in Connecticut. A copy of the NLEB Compliance Determination, addressing the potential for impact to NLEB, is provided in Attachment A.

In light of the final 4(d) rule and per findings of the USFWS Key for NLEB, the proposed Fusion solar project will not likely result in an adverse effect or incidental take<sup>1</sup> to NLEB. Therefore, Fusion respectfully requests that CTDEEP remove the tree clearing restrictions associated with NLEB for the proposed solar project.

Thank you for your consideration of this request and please feel free to contact me with any questions by phone at (860) 663-1697 ext. 201 or via email at dgustafson@allpointstech.com.

Sincerely,



Dean Gustafson  
Senior Environmental Scientist

Enclosure

cc: Ben Combs, Fusion Solar Center, LLC

---

<sup>1</sup> "Incidental take" is defined by the Endangered Species Act as take that is "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." For example, harvesting trees can kill bats that are roosting in the trees, but the purpose of the activity is not to kill bats.

# Attachment A

## NLEB Compliance Determination

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## NLEB Compliance Determination

**March 30, 2016**

**APT Project No.: CT472100**

**Fusion Solar Center, LLC  
P.O. Box 2055  
Charlottesville, Virginia 22902**

**Attn: Ben Combs  
Sr. Project Engineer**

**Re: Proposed Fusion Solar Center  
20 megawatt AC Solar Facility  
Potash Hill Road  
Sprague, CT**

Dear Mr. Combs,

On behalf of Fusion Solar Center ("Fusion"), All-Points Technology Corporation, P.C. ("APT") performed an evaluation with respect to possible Federally-listed, threatened or endangered species in order to determine if the proposed referenced facility would result in a potential adverse effect to Federally-listed species. APT understands through Fusion that the referenced project has no Federal nexus. As a result, this consultation was completed in accordance with Section 10 of the Endangered Species Act ("ESA") through initial consultation with the U.S. Fish and Wildlife Service's ("USFWS") Information, Planning, and Conservation System ("IPaC")<sup>1</sup> for a proposed solar facility ("proposed activity") at the referenced Site.

### **Northern Long-eared Bat**

One federally-listed<sup>2</sup> threatened species is known to occur in the vicinity of the Site documented as the northern long-eared bat ("NLEB"; *Myotis septentrionalis*). A copy of the IPaC report is enclosed as Attachment 1. Northern long-eared bat's range encompasses the entire State of Connecticut. Suitable northern long-eared bat roost habitat includes trees (live, dying, dead, or snag) with a diameter at breast height ("DBH") of three inches or greater. The proposed activity will result in the clearing of trees greater than three inches DBH. Therefore, since NLEB potentially occurs in the vicinity of the Site, the Site supports potential habitat for NLEB and the proposed activity may potentially impact its habitat, a determination of compliance with Section 10 of the ESA is required.

As a result of this preliminary finding and in accordance with the final 4(d) rule for NLEB<sup>3</sup> under the ESA, the following assessment is provided to determine if the planned activity may cause prohibited take of NLEB. This assessment follows the USFWS's *Key to the Northern Long-Eared Bat 4(d) Rule for Non-Federal Activities Key* ("USFWS Key"; January 13, 2016), as detailed below.

<sup>1</sup> IPaC Consultation Tracking Number: 05E1NE00-2016-SLI-1028, dated March 3, 2016

<sup>2</sup> Listing under the federal Endangered Species Act

<sup>3</sup> Effective February 16, 2016

1. *Will your activity purposefully take (see Definitions below) northern long-eared bats? For example, are you removing bats from a human structure or capturing bats for research?*

Response: No, the proposed activity does not include purposefully taking northern long-eared bats. Continue to #2.

2. *Is your activity located outside the White-nose Syndrome Zone?*

Response: No, the proposed activity is located inside the white-nose syndrome zone. Continue to #3.

3. *Will your activity take place within a cave or mine where northern long-eared bats hibernate (i.e., hibernaculum) or could it alter the entrance or the environment (physical or other alteration) of a hibernaculum?*

Response: No, the proposed activity will not take place within a northern long-eared bat hibernaculum or alter its entrance or environment. Continue to #4.

4. *Will your action involve tree removal<sup>4</sup>?*

Response: Yes. Continue to #5.

5. *Is your activity the removal of hazardous trees for protection of human life or property?*

Response: No, the proposed activity is not removing hazardous trees. Continue to #6.

6. *Will your tree removal activities include one or both of the following: 1) removing a northern long-eared bat known occupied maternity roost tree or any trees within 150 feet of a known occupied maternity roost tree from June 1 through July 31; or 2) removing any trees within 0.25 miles of a northern long-eared bat hibernaculum at any time of year?*

Response: Please refer to the *Northern long-eared bat areas of concern in Connecticut to assist with Federal Endangered Species Act Compliance* map (February 1, 2016)<sup>5</sup> provided in Attachment 2. This map reveals that there are currently no known NLEB maternity roost trees in Connecticut. The nearest NLEB habitat resource to the proposed activity is a hibernacula located in North Branford ±40 miles to the southwest.

Therefore, responses to both segments 1 and 2 of #6 are no.

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<sup>4</sup> "Tree removal" is defined in the 4(d) rule as cutting down, harvesting, destroying, trimming, or manipulating in any other way the trees, saplings, snags, or any other form of woody vegetation likely to be used by northern long-eared bats.

<sup>5</sup> Ms. Dawn McKay, CTDEEP Wildlife Division, confirmed that the information on this published map shows Connecticut towns that have known northern long-eared bat hibernacula; currently Connecticut does not have any known NLEB maternity roost trees (pers. comm. March 18, 2016; included in Attachment 2)

## Conclusion

In accordance with the USFWS Key for NLEB, the proposed Fusion solar project will not likely result in an adverse effect or incidental take<sup>6</sup> to NLEB and does not require a permit from USFWS. Therefore, no further consultation with USFWS is required for the proposed activity in accordance with the USFWS Key.

Please feel free to contact me with any questions by phone at (860) 663-1697 ext. 201 or via email at [dgustafson@allpointstech.com](mailto:dgustafson@allpointstech.com).

Sincerely,



Dean Gustafson  
Senior Environmental Scientist

Enclosures

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<sup>6</sup> "Incidental take" is defined by the Endangered Species Act as take that is "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." For example, harvesting trees can kill bats that are roosting in the trees, but the purpose of the activity is not to kill bats.

Attachment 1

**USFWS IPaC Threatened and  
Endangered Species Report**

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# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
New England Ecological Services Field Office  
70 COMMERCIAL STREET, SUITE 300  
CONCORD, NH 03301  
PHONE: (603)223-2541 FAX: (603)223-0104  
URL: [www.fws.gov/newengland](http://www.fws.gov/newengland)

Consultation Code: 05E1NE00-2016-SLI-1028

March 03, 2016

Event Code: 05E1NE00-2016-E-01427

Project Name: Fusion Solar Sprague Facility

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan ([http://www.fws.gov/windenergy/eagle\\_guidance.html](http://www.fws.gov/windenergy/eagle_guidance.html)). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; <http://www.towerkill.com>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment



United States Department of Interior  
Fish and Wildlife Service

Project name: Fusion Solar Sprague Facility

## Official Species List

### Provided by:

New England Ecological Services Field Office

70 COMMERCIAL STREET, SUITE 300

CONCORD, NH 03301

(603) 223-2541

<http://www.fws.gov/newengland>

**Consultation Code:** 05E1NE00-2016-SLI-1028

**Event Code:** 05E1NE00-2016-E-01427

**Project Type:** POWER GENERATION

**Project Name:** Fusion Solar Sprague Facility

**Project Description:** Fusion proposes to install a 20 megawatt AC solar-based electric generating facility in Town of Sprague, Connecticut. The subject property consists of two separate and abutting parcels north of Potash Hill Road, totaling 225Â± acres. The Site is bounded by undeveloped woods to the north, east and west; and a cleared agricultural field, residence and Potash Hill Road to the south.

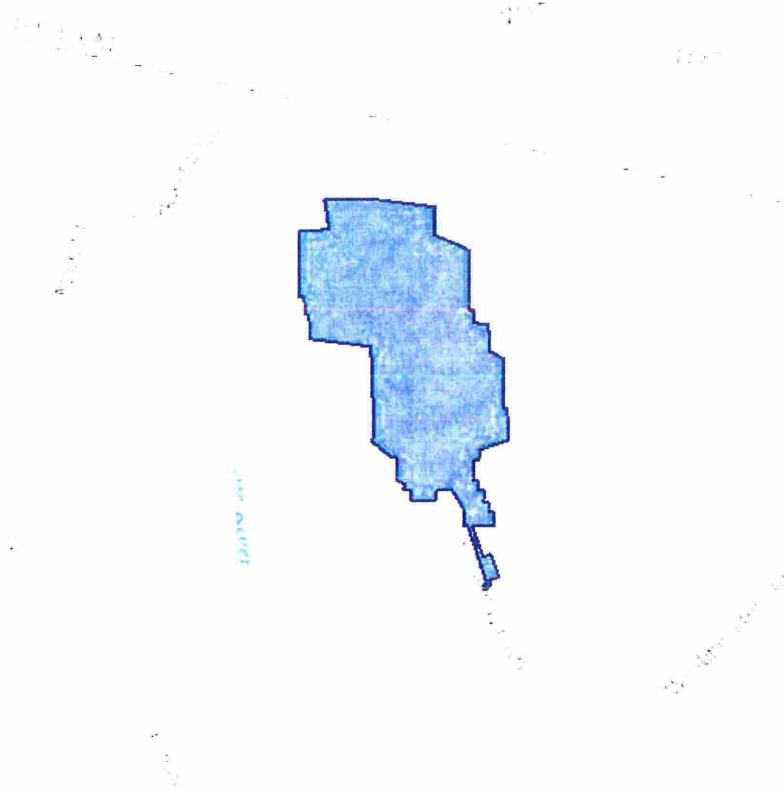
**Please Note:** The FWS office may have modified the Project Name and/or Project Description, so it may be different from what was submitted in your previous request. If the Consultation Code matches, the FWS considers this to be the same project. Contact the office in the 'Provided by' section of your previous Official Species list if you have any questions or concerns.



United States Department of Interior  
Fish and Wildlife Service

Project name: Fusion Solar Sprague Facility

**Project Location Map:**



**Project Coordinates:** The coordinates are too numerous to display here.

**Project Counties:** New London, CT



United States Department of Interior  
Fish and Wildlife Service

Project name: Fusion Solar Sprague Facility

## Endangered Species Act Species List

There are a total of 1 threatened or endangered species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Critical habitats listed under the **Has Critical Habitat** column may or may not lie within your project area. See the **Critical habitats within your project area** section further below for critical habitat that lies within your project. Please contact the designated FWS office if you have questions.

Mammals	Status	Has Critical Habitat	Condition(s)
Northern long-eared Bat ( <i>Myotis septentrionalis</i> )	Threatened		



United States Department of Interior  
Fish and Wildlife Service

Project name: Fusion Solar Sprague Facility

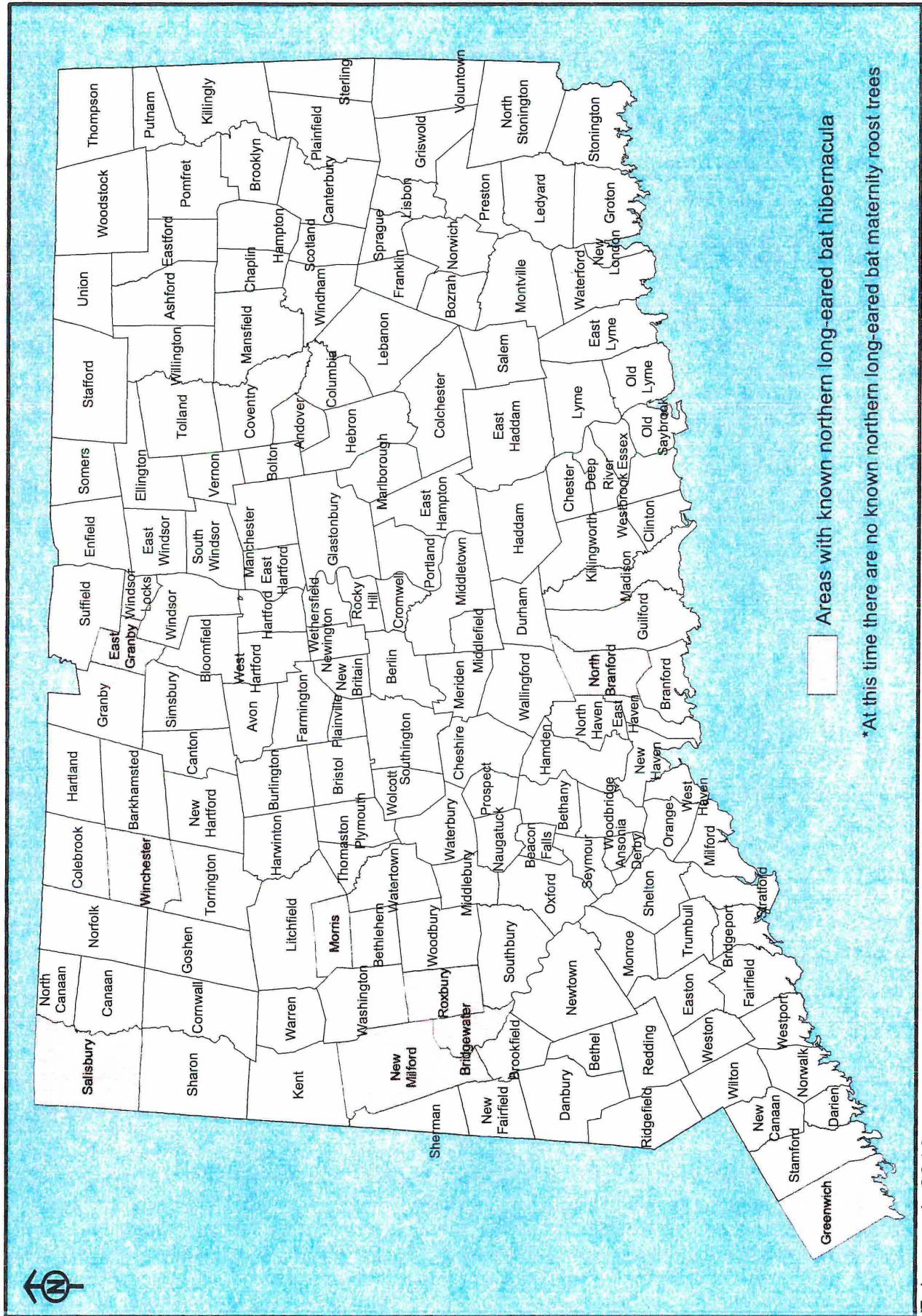
## Critical habitats that lie within your project area

There are no critical habitats within your project area.

Attachment 2  
Northern long-eared bat areas of  
concern in Connecticut to assist with  
Federal Endangered Species Act  
Compliance map and CTDEEP Wildlife  
Division March 18, 2016 email

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Northern long-eared bat areas of concern in Connecticut to assist with Federal Endangered Species Act Compliance



\*At this time there are no known northern long-eared bat maternity roost trees

\*

For information on federal requirements visit <http://www.fws.gov/midwest/endangered/mammals/nleb/>

February 1, 2016

## Deb Leonardo

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**From:** DEEP Nddbrequest <DEEP.Nddbrequest@ct.gov>  
**Sent:** Friday, March 18, 2016 10:46 AM  
**To:** Dean Gustafson  
**Cc:** Deb Leonardo  
**Subject:** Re: Request for NLEB Hibernaculum & Known Maternity Roost Tree Proximity Habitat Info  
**Attachments:** image001.jpg

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Dean

Dean,

Yes. I can confirm that this information is publically available on the published map on the CT NDDB page that shows Connecticut towns that have known bat hibernaculum. Currently CT does not have any known long-eared bat maternity roost trees.

Dawn McKay  
Dawn M. McKay  
Wildlife Division  
Bureau of Natural Resources  
Connecticut Department of Energy and Environmental Protection  
79 Elm Street, Hartford, CT 06106-5127  
P: 860.424.3592 | E: [dawn.mckay@ct.gov](mailto:dawn.mckay@ct.gov)<mailto:dawn.mckay@ct.gov>

---

From: Dean Gustafson <[dgustafson@allpointstech.com](mailto:dgustafson@allpointstech.com)>  
Sent: Friday, March 18, 2016 8:13 AM  
To: DEEP Nddbrequest  
Cc: Deb Leonardo  
Subject: Request for NLEB Hibernaculum & Known Maternity Roost Tree Proximity Habitat Info

Good morning Dawn,

The 4(d) Rule Keys (for both Federal Actions and Non-Federal Activities) requires determining if a project is located in proximity to the following northern long-eared bat ("NLEB") habitats (information which is to be provided by CTDEEP NDDB):

- \* Within 150 feet of a known occupied maternity roost tree; and,
- \* Within 0.25 mile and 5 miles from a hibernacula.

To minimize project specific requests for NLEB habitat data, please confirm that such information is now publically available in a published map on the NDDB page that shows towns in CT that have known bat hibernaculum and information about maternity colonies/trees. The link is here:  
[http://www.ct.gov/deep/lib/deep/endangered\\_species/images/nleb\\_approved2\\_16.pdf](http://www.ct.gov/deep/lib/deep/endangered_species/images/nleb_approved2_16.pdf). This map currently states that

"\*At this time there are no known northern long-eared bat maternity roost trees". In addition, NDDB "buffered areas" representing known NLEB hibernaculum locations is included in the current Natural Diversity Data Base Maps.

Thank you,  
Dean

Dean E. Gustafson  
Senior Environmental Scientist  
[cid:image004.jpg@01D09D27.E1152890]  
3 Saddlebrook Drive  
Killingworth, CT 06419  
860.663.1697 ext. 201 (office)  
860.984.9515 (mobile)  
[dgustafson@allpointstech.com](mailto:dgustafson@allpointstech.com)<<mailto:dgustafson@allpointstech.com>>

# Attachment B

## DEEP Nddb Correspondence

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## Dean Gustafson

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**From:** DEEP Nddbrequest <DEEP.Nddbrequest@ct.gov>  
**Sent:** Friday, April 01, 2016 11:11 AM  
**To:** Dean Gustafson  
**Cc:** Ben Combs; Deb Leonardo; DEEP Nddbrequest  
**Subject:** Re: NDD#201504279 - Proposed Fusion Solar Center, LLC, Potash Hill Road, Sprague, CT  
  
**Attachments:** image003.jpg

Dean,

I concur with your conclusion that this project will not likely result in adverse impacts to the northern long-eared bat and that no further action is required with regard to the protection of this federal threatened species.

Take care,

Dawn  
Dawn M. McKay  
Wildlife Division  
Bureau of Natural Resources  
Connecticut Department of Energy and Environmental Protection  
79 Elm Street, Hartford, CT 06106-5127  
P: 860.424.3592 | E: [dawn.mckay@ct.gov](mailto:dawn.mckay@ct.gov)

---

From: Dean Gustafson <[dgustafson@allpointstech.com](mailto:dgustafson@allpointstech.com)>  
Sent: Wednesday, March 30, 2016 7:45 AM  
To: DEEP Nddbrequest  
Cc: Ben Combs; Deb Leonardo  
Subject: NDD#201504279 - Proposed Fusion Solar Center, LLC, Potash Hill Road, Sprague, CT

Good morning Dawn,

The Department previously issued a final determination on January 28, 2016 for the referenced Fusion Solar project in Sprague which included the identification of northern long-eared bat ("NLEB"; *Myotis septentrionalis*) in the vicinity of this property. That rare species review was performed prior to the issuance of the final 4(d) rule for NLEB (effective March 16, 2016). We have evaluated the project with respect to a potential for a likely adverse impact to NLEB under the new framework for a non-federal action per the final 4(d) rule. This evaluation revealed that the nearest NLEB habitat resource to the proposed activity is a hibernacula located in North Branford  $\pm$ 40 miles to the southwest of the proposed Fusion solar project in Sprague; there are currently no known NLEB maternity roost trees in Connecticut. As a result, the proposed Fusion Solar project would not likely result in an adverse effect or incidental take to NLEB.

Therefore, in light of the final 4(d) rule and per the findings of the attached document, as summarized above, we respectfully request the Department reevaluate the project with respect to NLEB.

Thank you for your consideration of this request and please feel free to contact me with any questions.

Thank you,  
Dean

Dean E. Gustafson  
Senior Environmental Scientist  
[cid:image004.jpg@01D09D27.E1152890]  
3 Saddlebrook Drive  
Killingworth, CT 06419  
860.663.1697 ext. 201 (office)  
860.984.9515 (mobile)  
[dgustafson@allpointstech.com](mailto:dgustafson@allpointstech.com)<<mailto:dgustafson@allpointstech.com>>



## NDDB NLEB Consultation

March 30, 2016

APT Project No.: CT472100

**Connecticut Department of Energy & Environmental Protection  
Wildlife Division  
79 Elm Street  
Hartford, CT 06106-5127  
Attn: Dawn McKay (via Email: Dawn.McKay@ct.gov)**

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20 megawatt AC Solar Facility  
Potash Hill Road  
Sprague, CT**

Dear Ms. McKay,

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Previous State Listed Species consultation with the Connecticut Department of Energy & Environmental Protection ("CTDEEP") Natural Diversity Data Base ("NDDB") specific to NLEB included self-imposed protection measures. Those measures included restricting tree clearing activities from occurring between May 15 and August 31 to avoid likely adverse effects to northern long-eared bat that may be roosting in trees (assumed presence). At the time of that consultation, assessment of project impacts to NLEB was under the requirements of the ESA interim 4(d) rule for NLEB and in accordance with the U.S. Fish and Wildlife Service ("USFWS") New England Field Office's ("NEFO") July 7, 2015 policy memorandum. The interim 4(d) rule has since been replaced by the final 4(d) rule for NLEB, which became effective on February 16, 2016.

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In light of the final 4(d) rule and per findings of the USFWS Key for NLEB, the proposed Fusion solar project will not likely result in an adverse effect or incidental take<sup>1</sup> to NLEB. Therefore, Fusion respectfully requests that CTDEEP remove the tree clearing restrictions associated with NLEB for the proposed solar project.

Thank you for your consideration of this request and please feel free to contact me with any questions by phone at (860) 663-1697 ext. 201 or via email at dgustafson@allpointstech.com.

Sincerely,



Dean Gustafson  
Senior Environmental Scientist

Enclosure

cc: Ben Combs, Fusion Solar Center, LLC

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# Attachment A

## NLEB Compliance Determination

---



## NLEB Compliance Determination

March 30, 2016

APT Project No.: CT472100

**Fusion Solar Center, LLC**  
**P.O. Box 2055**  
**Charlottesville, Virginia 22902**

**Attn: Ben Combs**  
**Sr. Project Engineer**

**Re: Proposed Fusion Solar Center**  
**20 megawatt AC Solar Facility**  
**Potash Hill Road**  
**Sprague, CT**

Dear Mr. Combs,

On behalf of Fusion Solar Center ("Fusion"), All-Points Technology Corporation, P.C. ("APT") performed an evaluation with respect to possible Federally-listed, threatened or endangered species in order to determine if the proposed referenced facility would result in a potential adverse effect to Federally-listed species. APT understands through Fusion that the referenced project has no Federal nexus. As a result, this consultation was completed in accordance with Section 10 of the Endangered Species Act ("ESA") through initial consultation with the U.S. Fish and Wildlife Service's ("USFWS") Information, Planning, and Conservation System ("IPaC")<sup>1</sup> for a proposed solar facility ("proposed activity") at the referenced Site.

### **Northern Long-eared Bat**

One federally-listed<sup>2</sup> threatened species is known to occur in the vicinity of the Site documented as the northern long-eared bat ("NLEB"; *Myotis septentrionalis*). A copy of the IPaC report is enclosed as Attachment 1. Northern long-eared bat's range encompasses the entire State of Connecticut. Suitable northern long-eared bat roost habitat includes trees (live, dying, dead, or snag) with a diameter at breast height ("DBH") of three inches or greater. The proposed activity will result in the clearing of trees greater than three inches DBH. Therefore, since NLEB potentially occurs in the vicinity of the Site, the Site supports potential habitat for NLEB and the proposed activity may potentially impact its habitat, a determination of compliance with Section 10 of the ESA is required.

As a result of this preliminary finding and in accordance with the final 4(d) rule for NLEB<sup>3</sup> under the ESA, the following assessment is provided to determine if the planned activity may cause prohibited take of NLEB. This assessment follows the USFWS's *Key to the Northern Long-Eared Bat 4(d) Rule for Non-Federal Activities Key* ("USFWS Key"; January 13, 2016), as detailed below.

<sup>1</sup> IPaC Consultation Tracking Number: 05E1NE00-2016-SLI-1028, dated March 3, 2016

<sup>2</sup> Listing under the federal Endangered Species Act

<sup>3</sup> Effective February 16, 2016

1. *Will your activity purposefully take (see Definitions below) northern long-eared bats? For example, are you removing bats from a human structure or capturing bats for research?*

Response: No, the proposed activity does not include purposefully taking northern long-eared bats. Continue to #2.

2. *Is your activity located outside the White-nose Syndrome Zone?*

Response: No, the proposed activity is located inside the white-nose syndrome zone. Continue to #3.

3. *Will your activity take place within a cave or mine where northern long-eared bats hibernate (i.e., hibernaculum) or could it alter the entrance or the environment (physical or other alteration) of a hibernaculum?*

Response: No, the proposed activity will not take place within a northern long-eared bat hibernaculum or alter its entrance or environment. Continue to #4.

4. *Will your action involve tree removal<sup>4</sup>?*

Response: Yes. Continue to #5.

5. *Is your activity the removal of hazardous trees for protection of human life or property?*

Response: No, the proposed activity is not removing hazardous trees. Continue to #6.

6. *Will your tree removal activities include one or both of the following: 1) removing a northern long-eared bat known occupied maternity roost tree or any trees within 150 feet of a known occupied maternity roost tree from June 1 through July 31; or 2) removing any trees within 0.25 miles of a northern long-eared bat hibernaculum at any time of year?*

Response: Please refer to the *Northern long-eared bat areas of concern in Connecticut to assist with Federal Endangered Species Act Compliance* map (February 1, 2016)<sup>5</sup> provided in Attachment 2. This map reveals that there are currently no known NLEB maternity roost trees in Connecticut. The nearest NLEB habitat resource to the proposed activity is a hibernacula located in North Branford ±40 miles to the southwest.

Therefore, responses to both segments 1 and 2 of #6 are no.

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<sup>4</sup> "Tree removal" is defined in the 4(d) rule as cutting down, harvesting, destroying, trimming, or manipulating in any other way the trees, saplings, snags, or any other form of woody vegetation likely to be used by northern long-eared bats.

<sup>5</sup> Ms. Dawn McKay, CTDEEP Wildlife Division, confirmed that the information on this published map shows Connecticut towns that have known northern long-eared bat hibernaculum; currently Connecticut does not have any known NLEB maternity roost trees (pers. comm. March 18, 2016; included in Attachment 2)

## Conclusion

In accordance with the USFWS Key for NLEB, the proposed Fusion solar project will not likely result in an adverse effect or incidental take<sup>6</sup> to NLEB and does not require a permit from USFWS. Therefore, no further consultation with USFWS is required for the proposed activity in accordance with the USFWS Key.

Please feel free to contact me with any questions by phone at (860) 663-1697 ext. 201 or via email at dgustafson@allpointstech.com.

Sincerely,



Dean Gustafson  
Senior Environmental Scientist

Enclosures

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<sup>6</sup> "Incidental take" is defined by the Endangered Species Act as take that is "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." For example, harvesting trees can kill bats that are roosting in the trees, but the purpose of the activity is not to kill bats.

# Attachment 1

## USFWS IPaC Threatened and Endangered Species Report

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# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
New England Ecological Services Field Office  
70 COMMERCIAL STREET, SUITE 300  
CONCORD, NH 03301  
PHONE: (603)223-2541 FAX: (603)223-0104  
URL: [www.fws.gov/newengland](http://www.fws.gov/newengland)



Consultation Code: 05E1NE00-2016-SLI-1028

March 03, 2016

Event Code: 05E1NE00-2016-E-01427

Project Name: Fusion Solar Sprague Facility

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan

([http://www.fws.gov/windenergy/eagle\\_guidance.html](http://www.fws.gov/windenergy/eagle_guidance.html)). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at:

<http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>;

<http://www.towerkill.com>; and

<http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment



United States Department of Interior  
Fish and Wildlife Service

Project name: Fusion Solar Sprague Facility

## Official Species List

**Provided by:**

New England Ecological Services Field Office  
70 COMMERCIAL STREET, SUITE 300  
CONCORD, NH 03301  
(603) 223-2541  
<http://www.fws.gov/newengland>

**Consultation Code:** 05E1NE00-2016-SLI-1028

**Event Code:** 05E1NE00-2016-E-01427

**Project Type:** POWER GENERATION

**Project Name:** Fusion Solar Sprague Facility

**Project Description:** Fusion proposes to install a 20 megawatt AC solar-based electric generating facility in Town of Sprague, Connecticut. The subject property consists of two separate and abutting parcels north of Potash Hill Road, totaling 225± acres. The Site is bounded by undeveloped woods to the north, east and west; and a cleared agricultural field, residence and Potash Hill Road to the south.

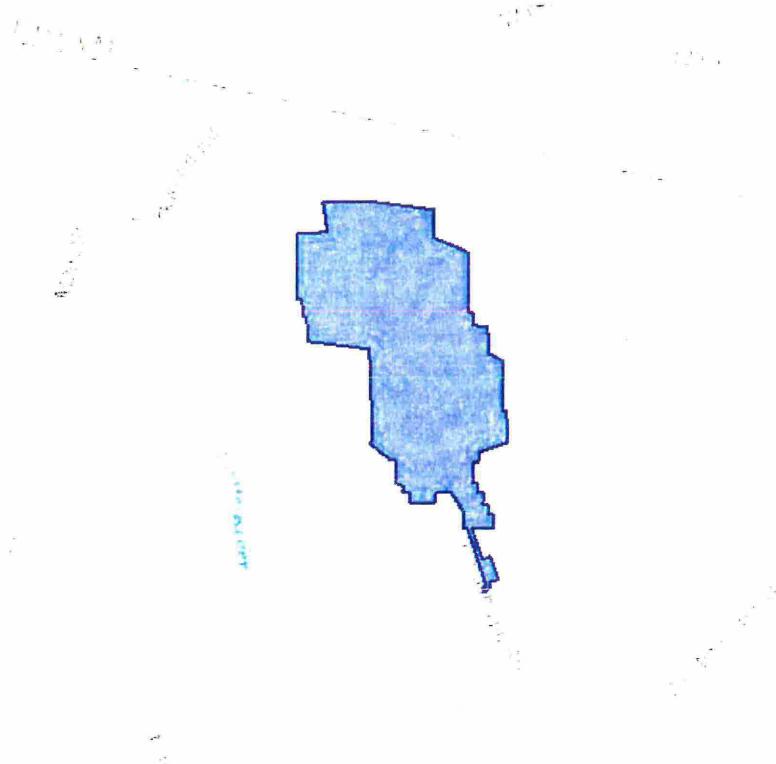
**Please Note:** The FWS office may have modified the Project Name and/or Project Description, so it may be different from what was submitted in your previous request. If the Consultation Code matches, the FWS considers this to be the same project. Contact the office in the 'Provided by' section of your previous Official Species list if you have any questions or concerns.



United States Department of Interior  
Fish and Wildlife Service

Project name: Fusion Solar Sprague Facility

### Project Location Map:



**Project Coordinates:** The coordinates are too numerous to display here.

**Project Counties:** New London, CT



United States Department of Interior  
Fish and Wildlife Service

Project name: Fusion Solar Sprague Facility

## Endangered Species Act Species List

There are a total of 1 threatened or endangered species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Critical habitats listed under the **Has Critical Habitat** column may or may not lie within your project area. See the **Critical habitats within your project area** section further below for critical habitat that lies within your project. Please contact the designated FWS office if you have questions.

Mammals	Status	Has Critical Habitat	Condition(s)
Northern long-eared Bat ( <i>Myotis septentrionalis</i> )	Threatened		



United States Department of Interior  
Fish and Wildlife Service

Project name: Fusion Solar Sprague Facility

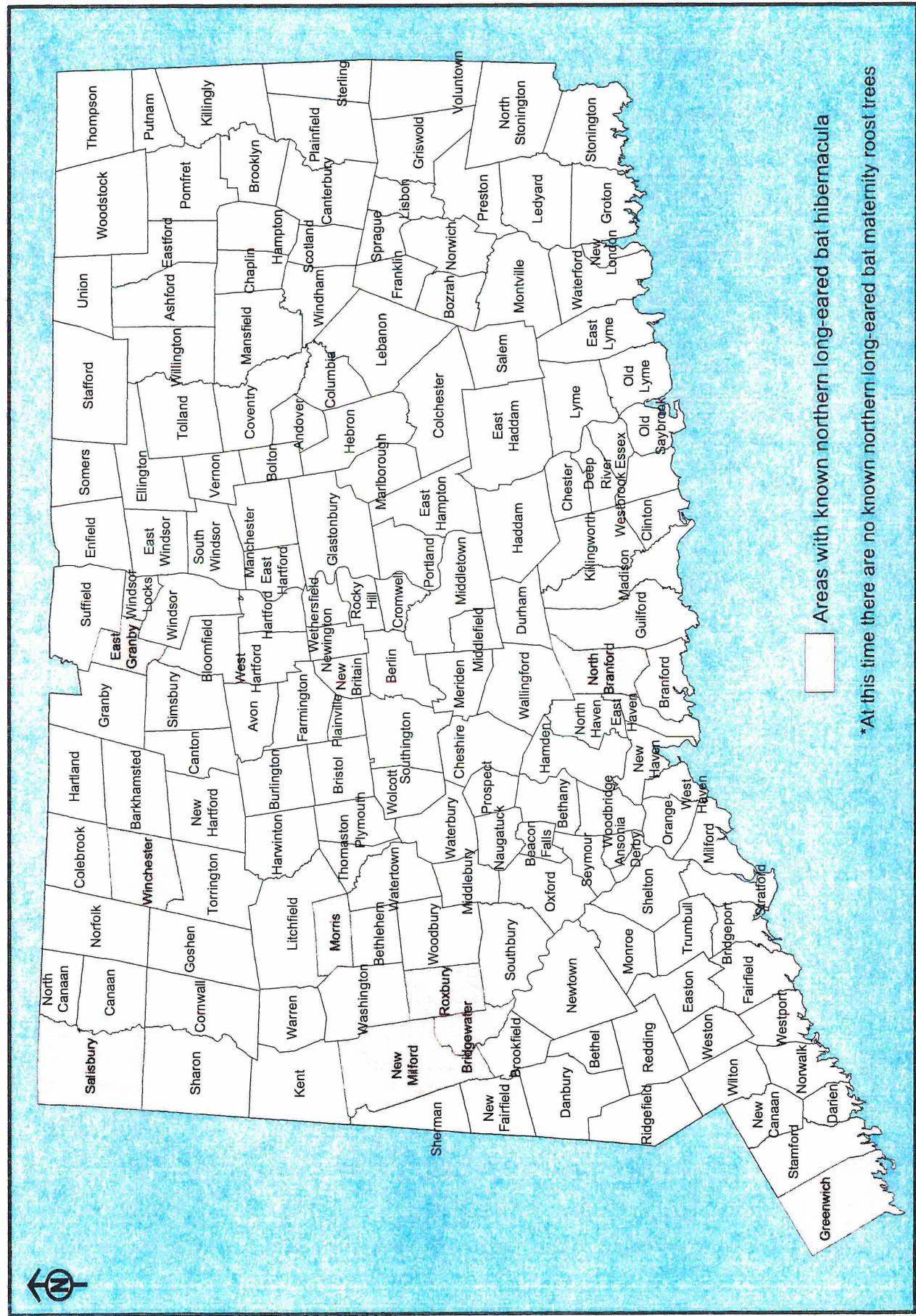
## Critical habitats that lie within your project area

There are no critical habitats within your project area.

Attachment 2  
Northern long-eared bat areas of  
concern in Connecticut to assist with  
Federal Endangered Species Act  
Compliance map and CTDEEP Wildlife  
Division March 18, 2016 email

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## Northern long-eared bat areas of concern in Connecticut to assist with Federal Endangered Species Act Compliance



February 1, 2016

For information on federal requirements visit <http://www.fws.gov/midwest/endangered/mammals/nleb/>

## Deb Leonardo

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**From:** DEEP Nddbrequest <DEEP.Nddbrequest@ct.gov>  
**Sent:** Friday, March 18, 2016 10:46 AM  
**To:** Dean Gustafson  
**Cc:** Deb Leonardo  
**Subject:** Re: Request for NLEB Hibernaculum & Known Maternity Roost Tree Proximity Habitat Info  
**Attachments:** image001.jpg

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Dean

Dean,

Yes. I can confirm that this information is publically available on the published map on the CT NDDB page that shows Connecticut towns that have known bat hibernaculum. Currently CT does not have any known long-eared bat maternity roost trees.

Dawn McKay  
Dawn M. McKay  
Wildlife Division  
Bureau of Natural Resources  
Connecticut Department of Energy and Environmental Protection  
79 Elm Street, Hartford, CT 06106-5127  
P: 860.424.3592 | E: [dawn.mckay@ct.gov](mailto:dawn.mckay@ct.gov)

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From: Dean Gustafson <[dgustafson@allpointstech.com](mailto:dgustafson@allpointstech.com)>  
Sent: Friday, March 18, 2016 8:13 AM  
To: DEEP Nddbrequest  
Cc: Deb Leonardo  
Subject: Request for NLEB Hibernaculum & Known Maternity Roost Tree Proximity Habitat Info

Good morning Dawn,

The 4(d) Rule Keys (for both Federal Actions and Non-Federal Activities) requires determining if a project is located in proximity to the following northern long-eared bat ("NLEB") habitats (information which is to be provided by CTDEEP NDDB):

- \* Within 150 feet of a known occupied maternity roost tree; and,
- \* Within 0.25 mile and 5 miles from a hibernacula.

To minimize project specific requests for NLEB habitat data, please confirm that such information is now publically available in a published map on the NDDB page that shows towns in CT that have known bat hibernaculum and information about maternity colonies/trees. The link is here:  
[http://www.ct.gov/deep/lib/deep/endangered\\_species/images/nleb\\_approved2\\_16.pdf](http://www.ct.gov/deep/lib/deep/endangered_species/images/nleb_approved2_16.pdf). This map currently states that

"\*At this time there are no known northern long-eared bat maternity roost trees". In addition, NDDB "buffered areas" representing known NLEB hibernaculum locations is included in the current Natural Diversity Data Base Maps.

Thank you,  
Dean

Dean E. Gustafson  
Senior Environmental Scientist  
[cid:image004.jpg@01D09D27.E1152890]  
3 Saddlebrook Drive  
Killingworth, CT 06419  
860.663.1697 ext. 201 (office)  
860.984.9515 (mobile)  
[dgustafson@allpointstech.com](mailto:dgustafson@allpointstech.com)<<mailto:dgustafson@allpointstech.com>>

## Attachment B

# DEEP Nddb Correspondence

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## Dean Gustafson

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**From:** DEEP Nddbrequest <DEEP.Nddbrequest@ct.gov>  
**Sent:** Friday, April 01, 2016 11:11 AM  
**To:** Dean Gustafson  
**Cc:** Ben Combs; Deb Leonardo; DEEP Nddbrequest  
**Subject:** Re: NDDB#201504279 - Proposed Fusion Solar Center, LLC, Potash Hill Road, Sprague, CT  
**Attachments:** image003.jpg

Dean,

I concur with your conclusion that this project will not likely result in adverse impacts to the northern long-eared bat and that no further action is required with regard to the protection of this federal threatened species.

Take care,

Dawn  
Dawn M. McKay  
Wildlife Division  
Bureau of Natural Resources  
Connecticut Department of Energy and Environmental Protection  
79 Elm Street, Hartford, CT 06106-5127  
P: 860.424.3592 | E: [dawn.mckay@ct.gov](mailto:dawn.mckay@ct.gov)<<mailto:dawn.mckay@ct.gov>>

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**From:** Dean Gustafson <[dgustafson@allpointstech.com](mailto:dgustafson@allpointstech.com)>  
**Sent:** Wednesday, March 30, 2016 7:45 AM  
**To:** DEEP Nddbrequest  
**Cc:** Ben Combs; Deb Leonardo  
**Subject:** NDDB#201504279 - Proposed Fusion Solar Center, LLC, Potash Hill Road, Sprague, CT

Good morning Dawn,

The Department previously issued a final determination on January 28, 2016 for the referenced Fusion Solar project in Sprague which included the identification of northern long-eared bat ("NLEB"; *Myotis septentrionalis*) in the vicinity of this property. That rare species review was performed prior to the issuance of the final 4(d) rule for NLEB (effective March 16, 2016). We have evaluated the project with respect to a potential for a likely adverse impact to NLEB under the new framework for a non-federal action per the final 4(d) rule. This evaluation revealed that the nearest NLEB habitat resource to the proposed activity is a hibernacula located in North Branford  $\pm$ 40 miles to the southwest of the proposed Fusion solar project in Sprague; there are currently no known NLEB maternity roost trees in Connecticut. As a result, the proposed Fusion Solar project would not likely result in an adverse effect or incidental take to NLEB.

Therefore, in light of the final 4(d) rule and per the findings of the attached document, as summarized above, we respectfully request the Department reevaluate the project with respect to NLEB.

Thank you for your consideration of this request and please feel free to contact me with any questions.

Thank you,  
Dean

Dean E. Gustafson  
Senior Environmental Scientist  
[cid:image004.jpg@01D09D27.E1152890]  
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