



July 18, 2017

Ms. Pamela Shellenberger
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
Pennsylvania Field Office
110 Radnor Road, Suite 101
State College, PA 16801

Dear Ms. Shellenberger:

On July 14, 2017, PennEast submitted a Biological Assessment to the FWS and requested that the Service develop a Biological Opinion as to whether authorizing the proposed pipeline project is likely to jeopardize the continued existence of any federally listed species. PennEast's Biological Assessment concluded that the project "may affect and is likely to adversely affect the northern long-eared bat, Indiana bat, bog turtle, and northeastern bulrush." Additionally, it concluded that the project "may affect, but is not likely to adversely affect dwarf wedgemussels" and that there would be "no effect on the rusty patched bumble bee." The Delaware Riverkeeper Network offers the following comments for the Service to consider while developing a Biological Opinion:

Northern long-eared bat and Indiana bat

At the admission of PennEast and by their own recommendation in their Biological Assessment, there is the potential for adverse impacts to these two bat species. In its Final EIS, PennEast states that,

"Construction of the Project would disturb a total of approximately 601 acres of forested habitats, which could potentially support these bat species."

"Young bats or those that are unable to fly could be killed if tree clearing activities occur while the trees are occupied by bats. In addition, bats are sensitive to disturbance and may abandon disturbed roosts trees if the trees are occupied at the time of construction. If this occurs, then the disturbance and subsequent abandonment could have energetic repercussions on affected bats, potentially decreasing the likelihood of successful reproduction and survival."

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“The Project also has the potential to impact listed bat species during operation. Noise, visual, and ground-vibration disturbance would occur during certain operation and maintenance-related activities (e.g., during routine inspections of the line). Potential disturbance to listed bat species could occur during ongoing maintenance activities, and disturbances to bats can result in individuals fleeing the area, thereby using up critical limited energy reserves, which can potentially result in mortality.”

“Because all potentially suitable habitats for the Indiana bat and northern long-eared bat have not been surveyed to-date, it is possible that unidentified habitats for these bat species occur along the Project’s proposed disturbance footprint.... In addition, the Project would have long-term impacts on forested habitats that are used as foraging or roosting habitats by listed bats.”

Bog turtle

Only 80% of bog turtle surveys have been completed in PA and 31% in NJ at the time the Final EIS was submitted. Additionally, the proposed pipeline has been re-routed several times to avoid potential bog turtle habitat. This includes the deviation at MP 49.3 near the Blue Mountain Ski Resort in Carbon County, PA. Although the purpose of this deviation is to avoid the wetland area, it still comes within 250 feet of it at its closest point. A similar deviation was made at MP 73.5 in Northampton County, PA to avoid the large wetland complex where Phase 3 trapping surveys were conducted. In this case, the edge of the right-of-way in the deviation still clips the edge of the wetland complex. Furthermore, these deviations would not alleviate groundwater contamination concerns because they are still too close to the wetlands. Any contamination to groundwater would impact a larger area and particularly any nearby spring-fed emergent wetlands that bog turtles prefer. With the amount of unsurveyed wetlands and by PennEast’s own statements, it’s clear that adverse impacts to bog turtles are likely. In its Final EIS, PennEast states that,

“Construction of the Project within wetland habitats has the potential to impact bog turtles. If present during construction, bog turtles could be directly injured or killed by construction equipment, or disturbed due to the presence of humans and machines in the area. In addition, construction and operation of the Project could alter wetland habitats that support this species. As discussed in detail within Sections 4.4 and 4.5, construction of the Project has the potential to alter wetland hydrology, increase the risk of invasive plant establishment/spread, and can fragment habitats.”

“Although no bog turtles have been found during Project-specific surveys, the Project would cross through and impact potential bog turtle habitat (including habitats in unsurveyed areas), and bog turtles could be present in unsurveyed areas.”

Northeastern bulrush

As with the other species, there is a great degree of uncertainty about the presence of northeastern bulrush within the project corridor and PennEast statements reflect this in addition to their conclusion in their Biological Assessment. Regarding northeastern bulrush, PennEast states in their Final EIS that,

“Not all potential habitat for this species has been surveyed to date, and the unsurveyed wetlands along the Project’s disturbance footprint may support this species. As a result, the Project has the potential to impact this listed species. If this species cannot be avoided by the Project, then potential impacts could include direct removal of individual northeastern bulrush plants during trenching or clearing, crushing of plants by equipment, or alternations to their wetland habitats (e.g., altered wetland hydrology and increased risk of invasive plant establishment/spread).”

Dwarf wedgemussel

In its Biological Assessment, PennEast concludes that the project “may affect, but is not likely to adversely affect” dwarf wedgemussels. This conclusion is puzzling when specific dwarf wedgemussel surveys have not been conducted. According to the Final EIS,

“No Project-specific surveys for the dwarf wedgemussel have been conducted (beyond a general habitat assessments conducted for freshwater mussels; see table 4.6-1); however, the dwarf wedgemussel is known to occur in the Delaware River.”

“Individual mussels could be crushed by construction equipment and killed during the proposed conventional open-cut crossing method that may be used at the upstream tributaries to the Delaware River. In addition, construction of the Project could impact this species if activities increase the sedimentation levels found in occupied waterbodies. Increased sedimentation could impact this mussel through burial of eggs or mortality of their food supplies. These effects would impact species living both at the point where sedimentation increased and at points farther downstream.”

Based on these statements, it’s more likely that the project would affect and adversely affect this species. Unless surveys were conducted between the time the Final EIS was submitted and the present time, it’s difficult to understand how any other conclusion can be reached.

Rusty patched bumble bee

PennEast concludes that there would be “no effect” on the rusty patched bumble bee in its Biological Assessment. However, the Final EIS states that,

“No Project-specific surveys for the rusty patched bumble bee have been conducted or are planned by PennEast; however, data from the FWS indicates that this species can occur in all four Pennsylvania counties crossed by the Project.”

“If present during construction, rusty patched bumblebee colonies could be destroyed, and direct mortality of bees could occur during vegetation clearing and right-of-way and road construction. In addition, impacts could occur due to the loss of suitable habitat or as a result of habitat fragmentation.”

Once again, it’s difficult to understand how PennEast can be so certain that there would be no effect if surveys have not been conducted. Based on PennEast’s statements on the direct mortality of bees and habitat loss, it seems that the project would likely adversely affect the species as is the case with the rest of the species in the Biological Assessment. In conclusion, the Delaware Riverkeeper Network

urges the FWS to take these comments and PennEast's own admissions into consideration when forming a Biological Opinion and recognize that this project would be a huge threat to all of these protected species. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Maya K. van Rossum". The signature is written in a cursive style with a long horizontal line extending to the right.

Maya K. van Rossum
the Delaware Riverkeeper