

173 FERC ¶ 61,070  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and James P. Danly.

FirstLight CT Housatonic LLC

Project No. 2576-187

ORDER MODIFYING AND APPROVING NON-PROJECT USE  
OF PROJECT LANDS AND WATERS

(Issued October 15, 2020)

1. On November 26, 2019, and supplemented on March 16, 2020, FirstLight CT Housatonic LLC (FirstLight), licensee for the Housatonic River Hydroelectric Project No. 2576 (Housatonic River Project), filed an application for non-project use authorization to permit the Candlewood Isle Association Inc. to install additional docks and boat slips at its existing facilities on Candlewood Isle on Candlewood Lake in New Fairfield, Connecticut.
2. As discussed below, we approve FirstLight's request, with modifications.

**I. Background**

3. On June 23, 2004, the Commission issued a new 40-year license (License Order) to Northeast Generation Services Company for the continued operation and maintenance of the Housatonic River Project.<sup>1</sup> The Housatonic River Project, located on the

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<sup>1</sup> *Northeast Generation Services Co.*, 107 FERC ¶ 61,305 (2004) (License Order). Subsequent orders have amended the license to reflect licensee name changes and approved a transfer of the license. *Northeast Generation Services Co.*, 118 FERC ¶ 62,080 (2007) (changing licensee's name to NE Hydro Generating Company); *NE Hydro Generating Co.*, 119 FERC ¶ 62,035 (2007) (changing licensee's name to FirstLight Hydro Generating Company); *FirstLight Hydro Generating Co.*, 168 FERC ¶ 62,016 (2019) (transferring license from FirstLight Hydro Generating Company to affiliate FirstLight CT Housatonic LLC).

Housatonic River in Fairfield, New Haven, and Litchfield Counties, Connecticut, consists of five developments.<sup>2</sup>

4. The 5,600-acre Candlewood Lake serves as the upper reservoir of the Rocky River Pumped Storage Development. Candlewood Isle, located in the center of Candlewood Lake, contains 364 residences. All the property owners on Candlewood Isle comprise the Candlewood Isle Association, a Connecticut corporation which owns property on the island, including an existing clubhouse, marina, and tennis courts.

5. In order to manage reservoir shorelines and riverfront lands within the project boundary, Article 407 of the License Order required FirstLight to develop a Shoreline Management Plan (SMP). Commission staff approved the initial version of the SMP in 2013 (2013 SMP Order)<sup>3</sup> and approved an updated version in 2019 (2019 SMP Order).<sup>4</sup> In the SMP, the shoreline around Candlewood Isle is designated as Developed Residential Lands, and community and residential docks, such as those proposed here, are allowed there.<sup>5</sup>

6. Due to concerns that boat overcrowding could adversely affect project resources, the 2013 SMP Order required FirstLight to develop a plan to address this issue.<sup>6</sup> In 2014, Commission staff approved the resultant Boat Overcrowding Plan,<sup>7</sup> which includes provisions for mitigating or preventing boat overcrowding on Candlewood Lake.<sup>8</sup> As

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<sup>2</sup> The developments are Falls Village, Bulls Bridge, Rocky River, Shepaug, and Stevenson.

<sup>3</sup> *FirstLight Hydro Generating Co.*, 142 FERC ¶ 62,256 (2013).

<sup>4</sup> *FirstLight Hydro Generating Co.*, 168 FERC ¶ 62,082 (2019).

<sup>5</sup> *See id.* at P 29 (accepting, among other updates, an updated Shoreline Land Designations filed by FirstLight as part of its submission of the 2019 Revised Shoreline Management Plan).

<sup>6</sup> *FirstLight Hydro Generating Co.*, 142 FERC ¶ 62,256 at P 25.

<sup>7</sup> *FirstLight Hydro Generating Co.*, 149 FERC ¶ 62,123 (2014) (Boat Overcrowding Plan Order). The Boat Overcrowding Plan describes the lake and its current recreational usage; analyzes the various problems and user conflicts that arise from overcrowding; identifies the causes of boat overcrowding; and includes provisions for mitigating or preventing boat overcrowding on Candlewood Lake in the future.

<sup>8</sup> *See id.* P 3.

relevant here, the plan limits the construction of new private docks to those parcels where deeded rights to a dock exist.

## **II. Proposed New Non-Project Use**

7. FirstLight's application states that the Candlewood Isle Association has requested to be permitted to install additional docks and boat slips on licensee-owned land on Candlewood Isle. The association currently owns docks at two locations on Candlewood Isle: (1) a marina on the northern tip of the island near the clubhouse, which includes 19 moorings and three docks that accommodate 40 watercraft (Clubhouse Location); and (2) two docks located at the tennis courts—adjacent to the causeway—that accommodate 12 watercraft (Tennis Courts Location). It proposes to remove the 19 existing moorings at the Clubhouse Location, allowing it to extend each of the three existing docks to accommodate an additional 20 watercraft, and to add four additional docks at the Tennis Courts Location to accommodate an additional 72 watercraft at that site. In total, the proposed facilities would accommodate 144 watercraft, which would be a net increase of 73 docking locations.<sup>9</sup>

8. FirstLight states that the Candlewood Isle Association's proposal would help to meet high demand for boat slips and would not adversely affect project resources, public safety, wetlands, sensitive species or critical habitats, or cultural resources. FirstLight further asserts that the proposal is consistent with the SMP and the Boat Overcrowding Plan.

9. FirstLight requested comments on a draft of its application from the Connecticut State Historic Preservation Officer (Connecticut SHPO), Connecticut Department of Energy and Environmental Protection (Connecticut DEEP), and U.S. Fish and Wildlife Service (FWS) on July 8, 2019.<sup>10</sup> The Connecticut SHPO responded that it did not object to the proposal, and it concurred that no historic properties would be affected by the proposal.<sup>11</sup> Connecticut DEEP recommended the elimination of some of the proposed slip locations at the Tennis Courts Location in order to avoid navigational hazards.<sup>12</sup> FWS did not comment.

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<sup>9</sup> The proposal would also include the installation of several “Slow No Wake” buoys in the vicinity of the Clubhouse Location. Application at 3.

<sup>10</sup> Application at Attachment I.

<sup>11</sup> Application at 17.

<sup>12</sup> See Application at 15. In its January 24, 2020 additional information response, FirstLight stated that the Candlewood Isle Association reduced the total number of slips

10. Connecticut DEEP provided additional comments in a letter dated August 6, 2019,<sup>13</sup> stating that its Boating Division had reviewed the proposal to increase watercraft capacity at the Clubhouse Location and concluded that the proposed additional docks did not pose any navigational concerns. Regarding the Tennis Courts Location, the Boating Division noted that the additional docks, as proposed, would likely cause navigational conflicts and congestion between the docks and a danger buoy located in the middle of the waterway, specifically at the two southernmost docks. Accordingly, the Boating Division recommended that these two docks be removed from the proposal. More generally, Connecticut DEEP noted that the buoys shown in the plans must be authorized through its regulatory marker permitting process prior to dock installation. According to FirstLight, the Candlewood Isle Association responded to Connecticut DEEP's comments by reducing the number of slips proposed for the Tennis Courts Location and modifying the proposed slip locations in order to widen the navigational channel.<sup>14</sup>

### **III. Public Notice, Interventions, and Comments**

11. On January 30, 2020, the Commission issued public notice of the application, establishing March 2, 2020 as the deadline for filing comments, motions to intervene, and protests. Coves End Association of New Fairfield, Connecticut<sup>15</sup> and the Candlewood

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proposed for the Tennis Courts Location to widen the navigational channel between the sandbar and docks to accommodate Connecticut DEEP's recommendations. FirstLight January 24, 2020 Response to Staff's December 12, 2019 Additional Information Request at 6.

<sup>13</sup> This letter was filed with the Commission on February 26, 2020, under the name Robert J Hannon, ESQ.

<sup>14</sup> FirstLight January 24, 2020 Response to Staff's December 12, 2019 Additional Information Request at 6.

<sup>15</sup> The Coves End Association's members own six properties located directly across the cove from the Tennis Courts Location. Coves End Association's Motion to Intervene at 2.

Lake Authority<sup>16</sup> filed timely motions to intervene.<sup>17</sup> Connecticut DEEP also filed a notice of intervention.<sup>18</sup>

12. In its motion to intervene, the Coves End Association expressed opposition to the proposal to add docks at the Tennis Courts Location, arguing that it will negatively impact the environment in the area, is contrary to the license, and will adversely affect its members' safe use and enjoyment of the cove. Khristine Hall filed additional comments on behalf of the Coves End Association on January 13, 2020, voicing many of the same concerns raised in the Coves End Association's motion to intervene and raising questions regarding overcrowding and increased boat traffic on the lake.

13. The Candlewood Lake Authority filed comments on January 7, 2020, expressing concern about boat overcrowding on the lake and asserting the need for updated data and maps to more fully understand the current state of traffic on the lake and how the proposed docks would impact navigation. It commented again, on March 2, 2020, questioning whether the Candlewood Isle Association had the necessary property rights to construct the proposed docks.<sup>19</sup>

14. Over 80 individuals—primarily Candlewood Isle residents and nearby landowners—filed comments regarding the proposal. Candlewood Isle residents supported the proposal, while other nearby landowners expressed concern about the proposed increase in watercraft capacity at the Tennis Courts Location, boater safety and overcrowding, water and noise pollution, impacts to wildlife, individual property rights, and the appropriateness of the Tennis Courts Location, as opposed to an alternative site.

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<sup>16</sup> The Candlewood Lake Authority is a quasi-governmental entity authorized by the State of Connecticut that provides lake, shoreline, and watershed management to foster the preservation and enhancement of recreational, economic, scenic, public safety and environmental values of Candlewood Lake.

<sup>17</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2020).

<sup>18</sup> Under Rule 214(a) of the Commission's Rules of Practice and Procedure, Connecticut DEEP became a party to the proceeding upon the timely filing of its notice of intervention. 18 C.F.R. § 385.214(a).

<sup>19</sup> The Candlewood Lake Authority supported the proposal to replace the 19 moorings at the Clubhouse Location with boat slips.

## IV. Discussion

15. Commission staff has reviewed the application pursuant to the Federal Power Act's comprehensive development/public interest standard,<sup>20</sup> the License Order,<sup>21</sup> and public and agency comments on the proposed non-project use. Specifically, Commission staff has considered the proposal's compliance with the SMP's vegetated buffer zone requirements, consistency with the Boat Overcrowding Plan, effects on the project's environmental resources, and location constraints, and as discussed below, concludes that the proposed non-project use would not cause significant environmental impacts or interfere with licensed project purposes.

### A. The Vegetated Buffer Zone

16. Under the SMP, a permittee may be required to install a vegetated buffer zone when requesting to change the size, location, and configuration of an existing use or installation of a new authorized use.<sup>22</sup> This requirement may be waived at FirstLight's discretion if establishing a buffer zone is not reasonably practicable or would violate applicable law.<sup>23</sup> FirstLight's application includes a vegetated buffer installation plan at the Tennis Courts Location, but FirstLight proposes to waive the buffer installation at the Clubhouse Location. With regard to the Clubhouse Location, FirstLight explains that a

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<sup>20</sup> Pursuant to Part I of the Federal Power Act, the Commission is required to license projects that best result in the comprehensive development of a waterway. To determine this, it is necessary for the Commission to determine to what extent proposals relate to project effects or project purposes. *Policy Statement on Hydropower Licensing Settlements*, 116 FERC ¶ 61,270, at 62,087 (2006).

<sup>21</sup> The License Order includes Article 413, allowing FirstLight to grant permission for the use and occupancy of project lands and water for minor activities, without prior Commission approval, as long as such uses are consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project. License Order, 107 FERC ¶ 61,305, at 62,439. Paragraph (b)(2) of Article 413 specifically allows FirstLight to permit "non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single family type dwellings." *Id.* Because the proposed increase in watercraft capacity on Candlewood Isle would result in facilities that could accommodate more than 10 watercraft, it is outside the scope of license Article 413 and requires Commission approval.

<sup>22</sup> FirstLight's March 27, 2019 Revised Shoreline Management Plan, at 24-25.

<sup>23</sup> *Id.* at 25.

buffer installation is not reasonably practicable due to several existing uses that have been in place for decades and because the small amount of open space nearby is already landscaped with trees. Further, FirstLight states that the SMP does not require buffer installation at the Clubhouse Location because the preservation and establishment of vegetated buffer zones is only required on lands owned in fee by FirstLight, which is not the case at the Clubhouse Location.<sup>24</sup> Finally, FirstLight asserts that the buffer requirement is inapplicable at the Clubhouse Location because the SMP does not require vegetated riparian buffer as a condition of an authorization for non-project uses, and because requiring a buffer zone at that location would be contrary to the deeded rights of the landowners.<sup>25</sup> In its August 6, 2019 comments, Connecticut DEEP concurred with FirstLight's proposal not to require a buffer at the Clubhouse Location.<sup>26</sup> No other commenter addressed this issue. We find FirstLight's reasons for waiving the buffer requirement at the Clubhouse Location to be reasonable and consistent with the SMP.

## **B. Consistency with the Boat Overcrowding Plan**

17. The Coves End Association, the Candlewood Lake Authority, and other commenters raised concerns regarding the proposal's consistency with the Boat Overcrowding Plan, questioning whether the Boat Overcrowding Plan prohibits construction of additional docks and whether the proposed dock expansion will contravene the purpose of the plan by leading to increased boat traffic in the area.

### **1. Deeded Rights to Construct Docks**

18. The Boat Overcrowding Plan includes a provision to limit construction of new private docks to those parcels where deeded rights to a dock exist.<sup>27</sup> FirstLight states that its request is consistent with the Boat Overcrowding Plan because, among other things,

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<sup>24</sup> FirstLight January 24, 2020 Response to Staff's December 12, 2019 Additional Information Request at 3. Although FirstLight possesses the necessary flowage rights at the Clubhouse Location, FirstLight does not own those lands in fee. *Id. See also* FirstLight's March 27, 2019 Revised Shoreline Management Plan, at 24-25 (explaining when and where vegetated buffer zones may be required).

<sup>25</sup> FirstLight January 24, 2020 Response to Staff's December 12, 2019 Additional Information Request at 3-4.

<sup>26</sup> Connecticut DEEP August 6, 2019 Comments at 1.

<sup>27</sup> Boat Overcrowding Plan Order, 149 FERC ¶ 62,123 at P 6.

the Candlewood Isle Association holds deeded rights to construct the proposed boat docks.

19. In its March 2, 2020 comments, the Coves End Association disputed FirstLight's assertion that Candlewood Isle Association possesses deeded rights to a dock at the Tennis Courts Location.<sup>28</sup> In its filings on January 24 and March 16, 2020, FirstLight stated that the Candlewood Isle Association holds the property rights needed to place docks on the shore of Candlewood Lake, and provides supporting evidence, including a summary of the chain of title, copies of the relevant deeds, and other documentation that the Candlewood Isle Association is the owner of the property in question. The record therefore reflects that the proposed non-project use is consistent with the requirements of the Boat Overcrowding Plan.

## **2. Increased Boat Traffic and Safety**

20. In its November 26, 2019 filing, FirstLight relied on its most recent boating density study conducted in 2014 to conclude that the additional boat docking locations would not cause density-related problems.<sup>29</sup> FirstLight also states that it will be updating its boating density study in 2020 with additional flyover data. Several commenters, including the Candlewood Lake Authority,<sup>30</sup> take issue with FirstLight's reliance on the

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<sup>28</sup> The Coves End Association does not object to the proposal at the Clubhouse Location.

<sup>29</sup> Article 408 of the License Order required FirstLight to develop a Recreation Plan. License Order, 107 FERC ¶ 61,305 at 62,438 (Article 408). Commission staff approved the Recreation Plan on September 20, 2006. *Northeast Generation Services*, 116 FERC ¶ 62,218 (2006). The project's Recreation Plan requires the licensee to prepare a brief summary report every six years that documents findings and progress made implementing the plan and documents activities performed in the recreational use monitoring program approved under the plan. The licensee is to amend the plan if changes are needed and agreed to among the stakeholders. Northeast Generation Services Company's June 22, 2005 Recreation Plan, at 28. Section 3.2.2 also requires the licensee to conduct a total of six aerial watercraft counts and photo documentation on Candlewood Lake from May through Labor Day every six years to record the location and type of each watercraft on the water to analyze watercraft density in high-use zones. *Id.* at 27.

<sup>30</sup> See Marie Stonecipher January 3, 2020 Comments at 1; the Candlewood Lake Authority January 7, 2020 Comments at 3; Jeff and Hillary Baker January 7, 2020 Comments at 1; Thomas LaMonte January 8, 2020 Comments at 1; and Mr. and Mrs. Jason Jakacic January 22, 2020 Comments at 1.

2014 boating density study to conclude that the lake is not overcrowded, arguing that FirstLight should use the upcoming boating density numbers instead of the 2014 data. The commenters do not, however, provide any evidence to suggest that the 2014 study is no longer valid. Further, the proposed actions are consistent with current Commission requirements, set forth in the approved Boat Overcrowding Plan.

21. Commenters also raise concerns about the validity of the 2014 study, arguing that FirstLight should not have ignored stationary boats in assessing carrying capacity. In approving FirstLight's most recent Recreation Plan Summary Report, Commission staff addressed similar arguments related to disagreement with the licensee's methods for collecting and reporting data for boating density and determined that the study was conducted properly.<sup>31</sup> No party sought rehearing of that order, which thus became final and cannot be collaterally attacked here.

22. We also note that to mitigate potential impacts due to the increase of 20 docks at the Clubhouse Location, the Candlewood Isle Association is proposing to eliminate the 19 existing mooring locations to allow for an increase in usable area for boating<sup>32</sup> and will install safety buoys at the Clubhouse Location.<sup>33</sup>

23. Residents of the nearby communities of Candlewood Knolls and Coves End commented in opposition to the Candlewood Isle Association's proposed installation of additional docks and boat slips at the Tennis Courts Location,<sup>34</sup> based on the narrow cove entrance, presence of a sandbar nearby, and the volume of new boats that would be in the cove.

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<sup>31</sup> See *FirstLight Hydro Generating Co.*, 158 FERC ¶ 62,066 at PP 7-11.

<sup>32</sup> Application at 3.

<sup>33</sup> See *id.*

<sup>34</sup> See Marie Stonecipher January 3, 2020 Comments at 1; Mary Jane Brakl January 6, 2020 Comments at 1; Renee and Richard Heller January 6, 2020 Comments at 1-2; Jeff and Hillary Baker January 7, 2020 Comments at 1; David Clegg January 7, 2020 Comments at 1-2; Thomas LaMonte January 8, 2020 Comments at 1; Stanley and Carole Friedman January 8, 2020 Comments at 1; David McHugh January 10, 2020 Comments at 1; Karl Anderson January 10, 2020 Comments at 1; the Coves End Association January 13, 2020 Comments at 1; Roberta Anderson January 13, 2020 Comments at 1; Wayne and Maureen Roberts January 15, 2020 Comments at 1; Mr. and Mrs. Jason Jakacic January 22, 2020 Comments at 1-2; and Linda Fandel January 22, 2020 Comments at 1.

24. FirstLight responds that a commercial marina existed at the Tennis Court Location without incident for nearly 70 years, until it closed in 2013.<sup>35</sup> Commenters living on Candlewood Isle assert that the old marina was a full-service marina that provided gasoline dispensing services and boat maintenance services, and that many residents docked their boats there. They contend that the proposed installation would result in facilities with fewer boat slips and no maintenance or gasoline services, and thus would not cause any navigational or safety concerns.

25. We have reviewed the Candlewood Isle Association's proposal and the public comments regarding boating activity and safety in the cove where the proposed installation of additional docks and boat slips would occur. We have also reviewed FirstLight's consultation efforts with Connecticut DEEP (namely, adjusting the proposed layout to accommodate navigational concerns), the agency that has jurisdiction over boating safety on the lake. Given the decades-long existence of a larger commercial marina at this location and the lack of any identified safety incidents during its operation; the location of the proposed docks at the back of the cove, so that the proposed docks do not appear likely to affect navigation; the proposed navigational buoys; and Connecticut DEEP's lack of opposition to the proposal, we concur with FirstLight that the Candlewood Isle Association's proposal would not pose a risk to public safety.

### **C. Environmental Impacts**

26. While our regulations provide that the approval of proposals to authorize use of project lands or waters for purposes including boat docks are categorically excluded from the need to prepare an environmental document,<sup>36</sup> we have nonetheless examined environmental issues related to the actions proposed here.

27. The Coves End Association states that general impacts on environmental resources in the area where the proposed installation of additional docks and boat slips would occur.<sup>37</sup> Some commenters also note the presence of birds, frogs, turtles, and fish in the area, stating that the area has seen an increase in such wildlife since the removal of the commercial marina and expressing concerns regarding the potential environmental impacts of the proposal.<sup>38</sup> Additionally, the Coves End Association speculates that the

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<sup>35</sup> Application at 3.

<sup>36</sup> See 18 C.F.R. § 380.4(a)(19) (2020).

<sup>37</sup> See the Coves End Association January 13, 2020 Comments at 1, 5-6.

<sup>38</sup> See Mary Jane Brakl January 6, 2020 Comments at 1; Renee and Richard Heller January 6, 2020 Comments at 1-2; Jeff and Hillary Baker January 7, 2020 Comments at 1; David Clegg January 7, 2020 Comments at 1; Thomas LaMonte January 8, 2020

increase in boat docking locations would adversely affect water quality due to gas spills and the confined space in the cove.<sup>39</sup> In response, FirstLight states that it reviewed available information for endangered, threatened, or other sensitive species of special concern near the proposed expansion area and found that none exist at this location. Further, FirstLight notes that the vegetated buffer installation (i.e., removal of invasive species and planting of native vegetation) at the Tennis Courts Location would provide benefits to wildlife habitat in the area.

28. A commercial marina historically occupied this location for decades, and the area already experiences substantial human activity due to the presence of tennis courts and vehicle traffic along the Candlewood Isle causeway. Although some wildlife may be displaced during the short-term while the buffer is installed, we concur with FirstLight that the vegetated buffer installation, which would replace invasive plants and declining trees with a native vegetated buffer, would result in long-term benefits to any wildlife species inhabiting the Tennis Courts Location. Additionally, we note that the shoreline surrounding the Tennis Courts Location and immediately towards the south consists of a vegetated buffer and any temporarily-displaced wildlife would have habitat to occupy. Therefore, we do not anticipate that the installation of additional docks and boat slips would adversely affect wildlife.

29. On March 30, 2020, Commission staff accessed the FWS' Information Planning and Consultation (IPaC) tool to assess any effects on threatened or endangered species. The IPaC tool showed that no critical habitats exist at this location, but that the northern long-eared bat *may* exist at this location. Under the Endangered Species Act (ESA), FWS finalized a section 4(d) rule for the northern long-eared bat in January 2016.<sup>40</sup> The ESA section 4(d) rule focuses on minimizing the effects of disturbances on known northern long-eared bat hibernacula and the effects of tree removal on roosting northern long-eared bats, including maternity colonies, located within the zone associated with the

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Comments at 1-2; Stanley and Carole Friedman January 8, 2020 Comments at 1-2; David McHugh January 10, 2020 Comments at 1; Karl Anderson January 10, 2020 Comments at 1; Roberta Anderson January 13, 2020 Comments at 1; John Murphy January 15, 2020 Comments at 1; Wayne and Maureen Roberts January 15, 2020 Comments at 1; Mr. and Mrs. Jason Jakacic January 22, 2020 Comments at 1-2; and Linda Fandel January 22, 2020 Comments at 1.

<sup>39</sup> Coves End Association January 13, 2020 Comments at 7.

<sup>40</sup> FWS, 2016. Endangered and Threatened Wildlife and Plants; 4(d) Rule for the Northern Long-Eared Bat. 81 Fed. Reg. 1900-1922 (January 14, 2016). Section 4(d) of the ESA directs FWS to issue regulations deemed “necessary and advisable to provide for the conservation of [threatened] species.” 16 U.S.C. § 1533(d).

spread of white-nose syndrome. In the programmatic biological opinion for the section 4(d) rule,<sup>41</sup> FWS found that incidental take of the northern long-eared bat is not prohibited unless the action: (1) affects a northern long-eared bat hibernaculum or could alter the entrance or the environment of a hibernaculum; (2) includes the removal of a known, occupied maternity roost tree or any trees within 150 feet of a known, occupied maternity roost tree during the pup season (June 1 - July 31); or (3) includes the removal of any trees within 0.25 mile of a northern long-eared bat hibernaculum at any time of year. FWS recommends avoiding tree removal during this species' active season (April 1 to October 31) to minimize effects to pups at roosts not yet identified.<sup>42</sup>

30. It is unknown whether hibernacula, maternity roost sites, or suitable habitat for summer roosting and foraging activities are present in the vicinity of the proposed docks. Because the Candlewood Isle Association's proposal includes some limited tree and vegetation clearing as part of the proposed vegetated buffer installation, any such vegetation clearing must be conducted outside of the bat's active period of April 1 to October 31 to avoid disturbing roosting northern long-eared bats. This measure will ensure that approving FirstLight's permitting of the Candlewood Isle Association's proposal is not likely to adversely affect the northern long-eared bat and will not cause prohibited incidental take.<sup>43</sup> Accordingly, ordering paragraph (B) requires FirstLight to permit tree removal activities only between November 1 and March 31.

31. In sum, we conclude that the proposed action does not raise substantial environmental concerns.

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<sup>41</sup> FWS, 2016. *Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-eared Bat and Activities Excepted from Take Prohibitions*. U.S. Fish and Wildlife Service, Midwest Regional Office.

[Https://www.fws.gov/midwest/endangered/mammals/nleb/pdf/BOnlebFinal4d.pdf](https://www.fws.gov/midwest/endangered/mammals/nleb/pdf/BOnlebFinal4d.pdf).

<sup>42</sup> *Id.*

<sup>43</sup> In a letter dated June 24, 2020, Commission staff requested concurrence from the FWS on its determination that the proposed action may affect, but is not likely to adversely affect, the northern long-eared bat. In a letter filed September 14, 2020, the FWS concurred with Commission staff's determination.

#### **D. Location Constraints**

32. Several commenters raised concerns regarding the siting of the proposed installation of additional docks and boat slips at the Tennis Courts Location.<sup>44</sup> In particular, the commenters questioned whether the site has sufficient parking to support the proposal, and whether any alternative sites were considered. The proposed location is near the Candlewood Isle Association's existing tennis courts and parking area, an area that had previously been occupied by a commercial marina for nearly 70 years. The association would be responsible for allocating parking spaces to its members. While we would examine parking issues with respect to a public recreation area, the facilities here would be private; thus, parking constraints are not a matter for us to consider. Given that the Tennis Courts Location is an area previously occupied by boat slips, is located nearby existing community infrastructure (i.e., parking and other recreation activities), would require less environmental disturbance than other locations (e.g., if new parking areas or road infrastructure needed to be built), and is located in an area off the main channel and in a modified orientation so as not to affect navigation, we find no reason to require the docks to be located elsewhere.<sup>45</sup>

#### **V. Conclusion**

33. As discussed above, constructing and operating the proposed additional docks and boat slips would not interfere with project purposes, and we therefore approve FirstLight's application. To allow Commission staff to monitor the future status of the proposed facilities, FirstLight must file with the Commission documentation, including photographs, showing the completed facilities approved by this order.

34. To ensure consistency with project purposes, including public recreation, resource protection, and public access, FirstLight must include the following standard conditions in any permit(s) issued for the proposed expansion: (1) the permittee's use of the project lands and waters covered by the permit must not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (2) the permittee must take all reasonable precautions to ensure that the construction, operation, and maintenance of the permitted facilities and improvements will occur in a manner that protects the

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<sup>44</sup> See Renee and Richard Heller January 6, 2020 Comments at 1-2; Jeff and Hillary Baker January 7, 2020 Comments at 1; David Clegg January 7, 2020 Comments at 1-2; and the Coves End Association January 13, 2020 Comments at 5, 7.

<sup>45</sup> We also note that because we are not required to prepare an environmental document, there is no need for us to examine alternatives here and that the commenters did not suggest alternative locations, but only asked whether any were considered.

scenic, recreational, and other environmental values of the project; and (3) the permittee must not unduly restrict public access to project waters.

35. A Historical Properties Management Plan (HPMP), which contains a discovery provision, was approved on June 9, 2005. Although no cultural resources have been previously identified in the vicinity of the proposed expansion, the potential does exist for the discovery of cultural resources during the proposed construction, operation, and/or maintenance activities. If a previously undiscovered cultural resource site is identified during construction, operation, and/or maintenance of the facilities, FirstLight is reminded that all work should immediately cease at the site and the provisions as set forth in Section 4.8 (Procedures to Address Unanticipated Discoveries) of the HPMP should be followed. Ordering paragraph (E) below requires FirstLight to include a condition providing for these procedures in any permit issued to Candlewood Isle Association.

The Commission orders:

(A) FirstLight CT Housatonic LLC's application, filed on November 26, 2019, and supplemented on March 16, 2020, requesting Commission approval of the Candlewood Isle Association's proposed installation of additional docks and boat slips at the Housatonic River Hydroelectric Project No. 2576, as modified by paragraphs (B) through (E) below, is approved.

(B) To protect the federally listed northern long-eared bat through its active season (April 1 to October 31), FirstLight CT Housatonic LLC must include in any permit issued pursuant to this order a condition that tree removal activities must be limited to the period between November 1 and March 31.

(C) FirstLight CT Housatonic LLC must include the following conditions in any permit issued pursuant to this order:

(1) the permittee's use of the lands covered by the permit must not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use;

(2) the permittee must take all reasonable precautions to ensure that the construction, operation, and maintenance of the structures and facilities covered by the permit will occur in a manner that protects the scenic, recreational, and other environmental values of the projects; and

(3) the permittee must not unduly restrict public access to project waters.

(D) Within two years from the date of this order, FirstLight CT Housatonic LLC must file with the Commission a construction completion report, including

photographs, showing the completed non-project use as approved in this order. If the non-project use is partially completed or construction has not begun, FirstLight CT Housatonic LLC must file an extension of time request to file the construction completion report. The request must propose a schedule for filing the construction completion report based on expected completion of the non-project use and include a description of the key factors that were considered in the development of the schedule.

(E) FirstLight CT Housatonic LLC must include the following condition in any permit it issues for the non-project use approved in ordering paragraph (A) above: If a previously undiscovered cultural resource site is discovered during construction, operation, and/or maintenance of facilities authorized by a permit issued pursuant to this order, the permittee must immediately cease all work at the site, and immediately contact FirstLight CT Housatonic LLC. FirstLight CT Housatonic LLC must then follow the provisions to protect historic properties as set forth within the unanticipated discovery section of the Historic Properties Management Plan.

(F) This order constitutes final agency action. Any party to this proceeding may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l, and the Commission's regulations at 18 C.F.R. § 385.713 (2020). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.