EI-1744
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CSX TRANSPORTATION

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Dave Geraci
Manager – Network Rationalization

November 9, 2005

Mr. David Stilwell
U.S. Department of the Interior
Fish and Wildlife Service
3817 Luker Road
Cortland, NY 13045

RE: CSXT Proposed Abandonment
Limerick IT, Watertown, NY
STB Docket AB-55 (Sub-No. 663X)

Dear Mr. Stilwell:

I have reviewed your letter dated November 3, 2005. In accordance with your letter I am responding to the two questions that determine whether the proposed project site may provide roosting or foraging habitat for the Indiana bat.

1. Are there forested (upland or wetland) habitats present within the entire proposed project area?

   As the most conservative form of action, CSXT will assume yes. We base this on your letter which stated "There is a potential for the Federally and State-Listed endangered Indiana bat (Myotis sodalis) to occur within the proposed project area, which is approximately 0.75 mile from known hibernacula in Jefferson County." Since CSXT obviously has no expertise in this area, we agree with your conclusion.

2. Does the proposed project involve any disturbance of forested (upland or wetland) habitat or any mine(s)/cave(s) that could serve as a hibernaculum?

   As stated in the Environmental Report provided by CSXT, "Upon receiving abandonment authority, removal of material will be accomplished by use of the right of way for access, along with existing public and private crossings, and no new access roads are contemplated."

   CSXT does not intend to disturb any forested area, mines or caves for the proposed project. CSXT's intention is the simple removal of rail, crossties and potentially the upper layer of ballast with as little effect on the environment as possible.

Based on this course of action, CSXT requests that the U.S. Department of the Interior – Fish and Wildlife Service find that the proposed action will have no impact or effect on the Indiana Bat.

Sincerely,

Attachment
Copy: Ms. Christa Dean, STB – SEA, 1925 K Street, Suite 534, Washington, DC 20423-0001
Mr. Lou Gitomer, Ball Janik, LLP, 1455 F Street, NW, Suite 225, Washington, DC, 20005
Mr. Archie Arthur, CSXT, 500 Water Street – J430, Jacksonville, FL 32202

United States Department of the Interior

FISH AND WILDLIFE SERVICE
3817 Luker Road
Cortland, NY 13045

November 3, 2005

Mr. Dave Geraci
Manager-Network Rationalization
CSX Transportation
500 Water Street-J200
Jacksonville, FL 32202

Dear Mr. Geraci:

This responds to your September 6, 2005, letter requesting information on the presence of endangered or threatened species in the vicinity of the proposed abandonment of a 1.1-mile portion of a CSX rail line (Limerick Industrial Track, Milepost 1.5-2.6+/-) near Watertown, Jefferson County, New York.

There is potential for the Federally- and State-listed endangered Indiana bat (*Myotis sodalis*) to occur within the proposed project area, which is approximately 0.75 mile from known hibernacula in Jefferson County. Please see the enclosed fact sheet on Indiana bats for further information.

Except for the potential for Indiana bat and occasional transient individuals, no other Federally-listed or proposed endangered or threatened species under our jurisdiction are known to exist in the project impact area. In addition, no habitat in the project area is currently designated or proposed "critical habitat" in accordance with provisions of the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). Should project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered. The most recent compilation of Federally-listed and proposed endangered and threatened species in New York* is available for your information. If the proposed project is not completed within one year from the date of this letter, we recommend that you contact us to ensure that listed species presence/absence information for the proposed project is current.

The above comments pertaining to endangered species under our jurisdiction are provided as technical assistance pursuant to the ESA. This response does not preclude additional U.S. Fish and Wildlife Service (Service) comments under other legislation.

As stated above, the Indiana bat is listed as endangered by the State of New York. Additional information regarding the proposed project should be coordinated with both this office and with the New York State Department of Environmental Conservation (NYSDEC). The NYSDEC contact for the Endangered Species Program is Mr. Peter Nye, Endangered Species Unit, 625 Broadway, Albany, NY 12233 (telephone: [518] 402-8859).

For additional information on fish and wildlife resources or State-listed species, we suggest you contact the appropriate NYSDEC regional office(s)* and the New York Natural Heritage Program Information Services.*

Thank you for your time. If you require additional information please contact Mark Clough or Michael Stoll at (607) 753-9334. Future correspondence with us on this project should reference project file 52612.

Sincerely,

David A. Stilwell

David A. Stilwell
Field Supervisor

*Additional information referred to above may be found on our website at: http://nyfo.fws.gov/es/section7.htm

Enclosure

cc: NYSDEC, Watertown, NY (Env. Permits)
NYSDEC, Albany, NY (Endangered Species; Attn: P. Nye)
NYSDEC, Albany, NY (Natural Heritage)

Indiana Bat Project Review Fact Sheet
New York Field Office
August 2005

The following fact sheet is intended to provide information to assist with the review of projects which occur within the likely range of the Indiana bat (*Myotis sodalis*) within the State of New York. The Indiana bat is Federally- and State-listed as an endangered species. You have received this Fact Sheet because the U.S. Fish and Wildlife Service (Service) has determined that a proposed project which you are associated with is located in an area which we believe has the potential for Indiana bat presence. Additional information on the proposed project (*e.g.*, size, level of impact, habitat) will help us to further examine the likelihood of Indiana bat presence within the proposed project area and potential for Indiana bats to be adversely impacted by the proposed project.

The Indiana bat is known to winter in six counties in New York State. While the Service has learned a great deal about the wintering population with standardized biennial counts organized by the New York State Department of Environmental Conservation (NYSDEC) Endangered Species Unit, we are continuing to study Indiana bat migratory patterns and summer habitat use within the State.

In the Northeast, multiple State and Federal agencies are investigating Indiana bat movements; the most recent studies of bats from hibernacula in Essex and Ulster Counties, New York, provide additional information. In the spring of 2002 through 2005, the NYSDEC successfully tracked female Indiana bats from their hibernacula in Essex, Ulster, and Jefferson Counties to their spring roosts, distances up to approximately 40 miles, however they are capable of flying distances much greater than that.

The Indiana bat typically hibernates in caves/mines in the winter and roosts under bark or in tree crevices in the spring, summer and fall. Suitable potential summer roosting habitat is characterized by trees (dead, dying, or alive) or snags, greater than or equal to 5 inches diameter breast height (d.b.h.) with exfoliating or defoliating bark, or containing cracks or crevices that could potentially be used by Indiana bats as a roost. However, maternity colonies generally use trees greater than or equal to 9 inches d.b.h. Overall, structure appears to be more important than a particular tree species or habitat type. Females appear to be more habitat specific than males presumably because of the warmer temperature requirements associated with gestation and the rearing of young. As a result, they are generally found at lower elevations than males may be found. Roosts are warmed by direct exposure to solar radiation, thus trees exposed to extended periods of direct sunlight are preferred over those in shaded areas. As larger trees afford a greater thermal mass for heat retention, they appear to be preferred over smaller trees. Additional information on potentially suitable summer habitat can be found on our website at http://nyfo.fws.gov/es/ibatdraft99.pdf.

Streams, associated floodplain forests, and impounded water bodies (ponds, wetlands, reservoirs, etc.) provide preferred foraging habitat for Indiana bats, some of which may fly up to 2-5 miles from upland roosts. Indiana bats also forage within the canopy of upland forests, over clearings with early successional vegetation (*e.g.*, old fields), along the borders of croplands, along wooded fencerows, and over farm ponds in pastures (U.S. Fish and Wildlife Service 1999). While Indiana bats appear to forage in a wide variety of habitats, they seem to tend to stay fairly close to tree cover.

To determine whether the proposed project site may provide roosting or foraging habitat for the Indiana bat, please read through the following questions:

1. Are there forested (upland or wetland) habitats present within the entire proposed project area?
- If no, no further coordination regarding the Indiana bat is necessary at this time.
- If yes, proceed to Step 2.

2. Does the proposed project involve any disturbance of forested (upland or wetland) habitat or any mine(s)/cave(s) that could serve as a hibernaculum?
- If no, no further coordination regarding the Indiana bat is necessary at this time.
- If yes, the project site should be evaluated and described by a qualified person as to the presence, amount, and distribution of suitable summer roosting/maternity and foraging habitat and any information on caves/mines should be provided.

The type of information that would be helpful to include in any evaluation are:
- a detailed project description,
- a map (and summary table) of the proposed project area with coarse habitat cover types (*e.g.*, emergent wetland, open field) in acres
- a summary table of the proposed amount of disturbance to each habitat type
- an overlay of new construction on the habitat map
- a description of the forested habitat onsite, including the type of forest (*e.g.*, oak-hickory), approximate stand age, and presence of dead or live trees with split branches or trunks or exfoliating bark
- photographs representative of all cover types on the site and encompassing views of the entire site
- a topographic map with the project area identified

Staff from our office may be available to assist with an initial site visit to determine whether additional detailed habitat analyses or surveys for Indiana bats will continue to be recommended, however, due to current workload, it may be months before a site visit is possible.

Should potential habitat be present and proposed for disturbance, the Service (and/or applicant or involved Federal agency) will need to determine the likelihood of Indiana bat presence (see discussion of mistnetting below) and evaluate the potential impacts of the proposed project on the Indiana bat.

We do have some recommendations to minimize the likelihood of adverse impacts that we can provide at this early stage should you wish to incorporate them into your project. Our standard recommendation to avoid any potential for directly killing Indiana bats is to conduct clearing of potential roost trees from October 1 through March 30 (when >5 miles from an hibernaculum); when <5 miles from an hibernaculum we recommend conducting clearing from November 15 to March 30. In many cases, where habitat is of low quality/quantity, seasonal cutting may be sufficient to avoid impacts to the species. Also, there may be cases when we believe the likelihood of impacts is low regardless of when tree removal occurs. Please note that the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) does not prohibit the clearing of trees and the Service's primary goal is not the protection of every tree. However, the ESA does prohibit the "take" (to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct) of Federally-listed species,

such as the Indiana bat, and our recommendations are intended to help applicants and Federal agencies avoid or minimize the risk of "taking" an Indiana bat.

In addition to having concerns about direct impacts to Indiana bats, we are also concerned about the cumulative loss of habitat for the species. Therefore, we recommend protecting potential Indiana bat habitat within proposed projects to the greatest extent possible. In some cases, especially in areas where significant quantity/quality of Indiana bat habitat is present and proposed to be impacted, mist net or other surveys may be warranted to determine if bats are present onsite. Due to the limited time frame when bat surveys can be completed (see http://nyfo.fws.gov/es/ibatdraft99.pdf for recommended protocols), it is strongly recommended that the applicant contact the Service as early as possible in the project planning to determine if surveys or additional avoidance and/or minimization measures will be necessary to avoid project delays. If netting is conducted at a site, we encourage the attachment of radio transmitters on any captured Indiana bats to help understand how the proposed project site is being used by Indiana bats.

The project's environmental documents should identify project activities that might result in adverse impacts to the Indiana bat or their habitat. Information on any potential impacts and the results of any recommended habitat analyses or surveys for the Indiana bat should be provided to this office and they will be used to evaluate potential impacts to the Indiana bat or their habitat, and to determine the need for further coordination or consultation pursuant to the ESA.

References:

U.S. Fish and Wildlife Service. 1999. Agency Draft Indiana Bat (*Myotis sodalis*) Revised Recovery Plan. Fort Snelling, MN: U.S. Department of the Interior, Fish and Wildlife Service, Region 3. 53 p.