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July 27, 2020

Mrs. Victoria Rutson
Director, Office of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: **Docket No. AB-55 (Sub-No. 801X), CSX Transportation, Inc.—Abandonment Exemption—in Greenbrier and Fayette Counties, W. Va.**

Dear Mrs. Rutson:

Enclosed please find a letter from the U.S. Fish and Wildlife Service Dated July 21, 2020, stating that “Service does not anticipate this project is likely to adversely affect any federally listed species.”

This letter is being e-filed. Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,

/s/ *Melanie B. Yasbin*

Melanie B. Yasbin



United States Department of the Interior



FISH AND WILDLIFE SERVICE

West Virginia Field Office
6263 Appalachian Highway
Davis, West Virginia 26260

July 21, 2020

Ms. Melanie Yasbin
The Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, Maryland 21204

Re: CSX Transportation, Inc. Rail Line Abandonment, Greenbrier and Fayette Counties, West Virginia (FWS File Number 2020-I-0792)

Dear Ms. Yasbin:

This letter responds to your May 13, 2020, request for information regarding the potential occurrence of federally listed species and their designated critical habitats within the proximity of the CSX Transportation, Inc. Rail Line Abandonment project. The project is located near Rainelle along the border of Greenbrier and Fayette Counties, West Virginia.

CSX Transportation, Inc., represented by the Law Offices of Louis E. Gitomer, LLC, proposes to abandon approximately 6.39 miles of rail line that runs between mileposts CAF 20.61 and CAF 27.0. Abandonment will involve removal of the rail, cross-ties, and possibly the upper layer of ballast.

The comments below are provided pursuant to the Endangered Species Act (ESA; 87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). This project has been assigned FWS File Number 2020-I-0792 and all future correspondence should clearly reference this FWS File Number.

The U.S. Fish and Wildlife Service (Service) West Virginia Field Office (WVFO) has determined that two federally listed species may occur within the project area and may be affected by the construction of this project – the endangered Indiana bat (*Myotis sodalis*) and the threatened northern long-eared bat (*Myotis septentrionalis*).

Federally Listed Bats

The Indiana bat and northern long-eared bat may use the project area for foraging and roosting between April 1 and November 15. Indiana bat summer foraging habitats are generally defined as riparian, bottomland, upland forest, and old fields or pastures with scattered trees. Roosting and maternity habitat consists primarily of live or dead hardwood tree species which have exfoliating bark that provides space for bats to roost between the bark and the bole of the tree. Tree cavities, crevices, splits, or hollow portions of tree boles and limbs also provide roost sites.

In West Virginia, the Service considers all forested habitat containing trees greater than or equal to 5 inches in diameter at breast height to be potentially suitable as summer roosting and foraging habitat for the Indiana bat. Indiana bats feed on emerged aquatic and terrestrial flying insects. Moths, caddisflies, flies, mosquitoes, and midges are major prey items. Aquatic insects that have concentrated emergences or that form large mating aggregations above or near water appear to be preferred prey items. As a result, streams, wetlands, and associated riparian forests are often preferred foraging habitats for pregnant and lactating Indiana bats. 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. Increased erosion and sedimentation of streams reduces diversity and biomass of benthic insects, which are prey for both bat species.

Similar to the Indiana bat, northern long-eared bat foraging habitat includes forested hillsides and ridges, and small ponds or streams. Northern long-eared bat are typically associated with large tracts of mature, upland forests with more canopy cover than is preferred by Indiana bats. Northern long-eared bat seem to be flexible in selecting roosts. They choose roost trees based on suitability to retain bark or provide cavities or crevices, and this species is known to use a wider variety of roost types than the Indiana bat. Males and non-reproductive females may also roost in cooler places like caves and mines. Although rare, this bat has also been found roosting in structures like barns and sheds.

Indiana bats and northern long-eared bat use caves or mine portals for winter hibernation between November 15 and March 31. These species also use the hibernacula and the areas around them for fall-swarms and spring-staging activity (August 15 to November 14 and April 1 to May 14, respectively). Some males have been known to stay close to the hibernacula during the summer and may use the hibernacula as summer roosts. There may be other landscape features being used as hibernacula by northern long-eared bat during the winter that have yet to be documented.

The proposed project is partially within an Indiana bat summer use area.

In correspondence dated June 17, 2020, a representative for the Law Offices of Louis E. Gitomer, LLC stated that no tree removal will occur as part of the project. All of the work will occur within the pre-existing footprint of the rail line and will not impact any caves or portals. No bridges will be removed as part of the abandonment. No aquatic impacts are anticipated. Due to the minimal impacts to foraging habitat, hibernacula, and aquatic resources, the Service has determined that this project may affect, but is not likely to adversely affect federally listed bats.

The northern long-eared bat may occur within the range of the proposed project, and may be affected by the proposed construction and operation of this project. Any take of northern long-eared bat occurring in conjunction with these activities that complies with the conservation measures (as outlined in the 4(d) rule), as necessary, is exempted from ESA Section 9 prohibitions by the 4(d) rule and does not require site specific incidental take authorization. Note that the 4(d) rule does not exempt take that may occur as a result of adverse effects to hibernacula and that no conservation measures are required as part of the 4(d) rule unless the proposed project: 1) involves tree removal within 0.25 miles of known northern long-eared bat hibernacula; or 2) cuts or destroys known, occupied maternity roost trees or any other trees within a 150-foot radius around known, occupied maternity tree during the pup season (June 1 to July 31). This proposed project is not located within any of these radii around known hibernacula or roost trees and will not affect any known northern long-eared bat hibernacula, therefore any take of northern long-eared bat associated with this project is exempted under the 4(d) rule and no conservation measures are required.

Summary

Based on the information provided by the Law Offices of Louis E. Gitomer, LLC on behalf of the proponent, the Service does not anticipate this project is likely to adversely affect any federally listed species.

This letter provides technical assistance only and does not serve as a completed ESA Section 7 consultation document. If there is a Federal nexus for the project (e.g., Federal funding provided, Federal permits required to construct), no tree clearing or any project construction activities on any portion of the parcel should occur until consultation under Section 7 of the ESA, between the Service and the Federal action agency, is completed. Section 7 consultation is not complete until the Federal action agency submits a determination of effects to this office, the Service concurs with the Federal action agency's determination, and the Federal action agency agrees to limit tree clearing to under 17 acres as a mandatory condition for any permit decision rendered for this project. All measures should be implemented as proposed. If there is no Federal nexus associated with this project, then no further coordination with this office is required.

Should project plans change or amendments be proposed that we have not considered in your proposed action, or if additional information on listed and proposed species becomes available, or if new species become listed or critical habitat is designated, this determination may be reconsidered. If you have any questions regarding this letter, please contact Kristin Stockton on my team at (304) 679-1620, or at the letterhead address.

Sincerely,

Jennifer L. Norris

Jennifer L. Norris
Field Supervisor

cc:

Project

File

Reader File

ES:WVFO:KStockton:skd:7/21/2020

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