

Appendix F: Ecology

F-8 USFWS Section 7 Endangered Species Act Consultation



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232
www.dot.ny.gov

JOAN McDONALD
COMMISSIONER

ANDREW M. CUOMO
GOVERNOR

May 25, 2012

John Burns
Major Projects Engineer
Federal Highway Administration
Leo W. O'Brien Federal Building
11A Clinton Avenue, Suite 719
Albany, NY 12207

Re: Request for Informal Consultation with United States Fish and Wildlife Service and Effects Determination for Federally Listed Species or Species Proposed for Listing

Dear Mr. Burns:

On behalf of the New York State Department of Transportation (NYSDOT) and the New York State Thruway Authority (NYSTA), we ask that FHWA request a review and discussion with the United States Fish and Wildlife Service (USFWS) New York Field Office regarding the potential for the Tappan Zee Hudson River Crossing Project to affect the federally endangered Indiana bat, bog turtle, and New England cottontail. Potential effects to these species were evaluated in the Draft Environmental Impact Statement for the project and the attached Section 7 Informal Consultation Documentation.

Under Section 7 of the Endangered Species Act (ESA), the FHWA as the Federal Sponsor is required to consult with the USFWS to determine whether any federally listed species or species proposed for listing as endangered or threatened, or their designated critical habitats, occur in the vicinity of the proposed project.

The effects determinations for these three species are as follows:

- Bog turtle (*Clemmys muhlenbergii*) – No effect
- New England cottontail (*Sylvilagus transitionalis*) – No effect
- Indiana bat (*Myotis sodalis*) – May affect, but not likely to adversely affect

J. Burns
May 25, 2012
Page | 2

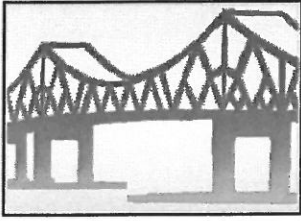
We appreciate your quick attention to this request. Please do not hesitate to contact me at (518) 457-4054 or dhitt@dot.state.ny.us should you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel P. Hitt". The signature is written in a cursive, flowing style.

Daniel P. Hitt, RLA
(Acting) Co-Director, Office of Environment

cc: M. Toni, FHWA
E. Novak, NYSTA
K. Edwards, NYSDOT
M. Anderson, NYSDOT
M. Roche, Arup
R. Conway, AKRF
D. Paget, SPR



Tappan Zee Hudson River Crossing Project

Rockland and Westchester Counties, New York

Section 7 Informal Consultation Documentation

Primary Agency and Contact:

Jonathan McDade, New York Division Administrator
Federal Highway Administration

In Coordination with:

New York State Department of Transportation
New York State Thruway Authority

May 2012

A. INTRODUCTION

The Federal Highway Administration (FHWA), as the federal lead agency, and the New York State Department of Transportation (NYSDOT) and the New York State Thruway Authority (NYSTA), as joint lead agencies are proposing the Tappan Zee Hudson River Crossing Project, which would result in the construction of a new bridge crossing, consisting of two structures (Replacement Bridge), over the Hudson River between Rockland and Westchester Counties (proposed project). The project site is located on the Hudson River (River Mile [RM] 27) in the Village of Tarrytown, Westchester County, NY and the Village of South Nyack, Rockland County, NY. The proposed project would address the structural, operational, mobility, safety, and security limitations and deficiencies of the existing Tappan Zee Bridge (TZB).

Under Section 7 of the Endangered Species Act (ESA), the FHWA as the Federal Sponsor is required to consult with the United States Fish and Wildlife Service (USFWS) to determine whether any federally listed species or species proposed for listing as endangered or threatened species, or their designated critical habitats, occur in the vicinity of a proposed project. Three species are listed on the USFWS database as occurring within Rockland and/or Westchester Counties, including bog turtle (*Clemmys muhlenbergii*), New England cottontail (*Sylvilagus transitionalis*), and Indiana bat (*Myotis sodalis*).

This document addresses the proposed action in compliance with Section 7 of the ESA of 1973, as amended. Section 7 of the ESA requires that, through consultation (or conferencing for proposed species) with the U.S. Fish and Wildlife Service (USFWS), federal actions do not jeopardize the continued existence of any threatened, endangered, or proposed species or result in the destruction or adverse modification of critical habitat.

B. BOG TURTLE

The bog turtle is a federally threatened and New York State endangered species, and appears on USFWS lists of endangered, threatened, candidate, and proposed species for Rockland and Westchester Counties. However, bog turtles have been extirpated from Rockland County (USFWS 2001) and their extant status in Westchester County is based on a few observations from the early 1990's (USFWS 2001, NYNHP 2011). Any bog turtle populations that are potentially persisting in Westchester County are expected to occur in its northeastern corner, near the Connecticut border (Klemens 1993, Miller and Klemens 2002, Gibbs et al. 2007), where some of the last appropriate habitat for the species in the county remains (Miller and Klemens 2002). This is also the only portion of Westchester County in which the bog turtle was documented during preparation of the 1990-1999 NYSDEC Herp Atlas.

Bog turtles are habitat specialists, requiring calcareous fens or wet meadows with cool, shallow, slow-moving water, deep and soft soils, and tussock-forming herbaceous vegetation (Gibbs et al. 2007). During the October 18, 2011 field survey, it was clear

that no habitat types within the study area are remotely suitable for the bog turtle (Mitchell et al. 2006). The NYNHP Environmental Resource Mapper also indicates no non-historical records of the bog turtle within 0.5 miles of the study area. Given the lack of suitable habitat in the study area and the questionable status of the species in Westchester County, occurrence of bog turtles in the study area is extremely improbable and the project will have no effect on the species or habitat on which it depends.

C. NEW ENGLAND COTTONTAIL

The New England cottontail is a species of Special Concern in New York State and a candidate for federal protection under the Endangered Species Act. The current distribution of the New England cottontail in New York is limited to areas east of the Hudson River in Columbia, Dutchess, Putnam, and Westchester Counties (Litvaitis et al. 2006, Tash and Litvaitis 2007).

New England cottontails are found in shrubland, thicket, and similar dense, early successional habitats. Although they will utilize small and isolated fragments of these habitats, including unmaintained and densely vegetated highway margins (Litvaitis et al. 2006, 2008), the field survey conducted on October 18, 2011 identified no densely vegetated margins or other such habitat in the study area that would be appropriate for the species. Additionally, most known populations of New England cottontails in Westchester County occur in the eastern side of the county (Novak 2011), distant from the study area. Therefore, the project will have no effect on this species based on lack of appropriate habitat in the study area.

D. INDIANA BAT

The Indiana bat is a temperate, insectivorous bat that is a New York State and federally listed endangered species. The Indiana bat's life cycle can be coarsely divided into two primary phases- hibernation and reproduction. Indiana bats emerge from the caves in which they hibernate (i.e., hibernacula) in early spring. Males disperse and remain solitary until mating season at the end of the summer. Pregnant females form maternity colonies in which to rear the young. Maternity roosts, roosting sites of post-lactating females, and roosting sites of solitary males are usually under loose bark or in the crevices of trees. Indiana bat roosting sites have been documented in numerous species of deciduous trees. Tree availability, diameter, altitude, bark characteristics, and sun exposure appear to be the most important factors in roost site selection (Kurta 2004, USFWS 2007). Roosts in New York (Britzke et al. 2006) and elsewhere (USFWS 2007) are typically in large trees with a diameter greater than 16 inches and a height taller than 52 feet, but roosts in smaller trees can occur (USFWS 2007). The trees are usually dead or nearly dead and decayed (Menzel et al. 2001, Kitchell 2008).

Indiana bats often roost near forest gaps or edges where trees receive direct sunlight for much of the day (Callahan et al. 1997, Menzel et al. 2001). Habitats used by Indiana bats during summer are varied and include riparian, bottomland/floodplain, and upland forests (Humphrey et al. 1977, Britzke et al. 2006, Watrous et al. 2006) often within

agricultural landscapes (Murray and Kurta 2004, Watrous et al. 2006, USFWS 2007). Maternity colonies are typically located in areas with abundant natural or artificial freshwater sources (Carter et al. 2002, Kurta et al. 2002, Watrous et al. 2006, USFWS 2007). Spring and autumn habitats of Indiana bats have not been well described, but appear to be largely similar to their summer habitat (Britzke et al. 2006, USFWS 2007).

During autumn, Indiana bats mate and deposit fat stores in preparation for winter hibernation. Hibernacula are typically in caves or abandoned mines where ambient temperatures remain above freezing (USFWS 2007). Only eight Indiana bat hibernacula are currently known in New York State, none of which are located within the study area or elsewhere in Rockland and Westchester Counties (NYSDEC Undated). The terrestrial ecological communities observed within the study area during the October 18, 2011 field survey, including mowed lawn, mowed lawn with trees, and successional forest, are not among those that support Indiana bats. Typical foraging habitats of the species, such as forested wetlands and forested stream and lake borders (Humphrey et al. 1977, Menzel et al. 2001, Murray and Kurta 2004), are lacking in the study area, as are large, dead or dying trees in forest gaps that would provide suitable roosting locations.

The Tappan Zee River Crossing Project is approximately 35 to 40 miles of a known hibernaculum in Ulster County, which is a distance Indiana bats may migrate from hibernacula to reach breeding grounds. A study in NY found that most reproductive female bats emerging from winter hibernacula migrate less than 40 miles to their maternity sites (Sanders et al. 2001 and Hicks 2004, as cited in USFWS 2007). Therefore, the study area appears to be within sufficient proximity to a known hibernaculum in Ulster County for individuals associated with this hibernaculum to possibly migrate to, and establish a breeding site within, the study area. However, the project area is heavily developed with residential and commercial land uses. Tree cover is sparse and limited to scattered clusters of trees in the residential neighborhoods and public rights-of-way on both sides of the bridge landings. The project site is not within a landscape of forested streams and wetlands, forest gaps, and agricultural fields that Indiana bats utilize for breeding and foraging (Humphrey et al. 1977, Menzel et al. 2001, Murray and Kurta 2004). Given these habitat limitations, occurrence of Indiana bats in the project area for roosting or foraging is improbable. Any tree removal within the project area, regardless of size, species, or other characteristics, would not be considered elimination of a potential Indiana bat roosting location given the unsuitability of the surrounding habitat for the species. Furthermore, no tree species in the study area are among those that are favored by Indiana bats for roosting (e.g., shagbark hickory).

In summary, there is a very low probability that Indiana bat would occur in the project area and there is little or no Indiana bat habitat that would be affected by the proposed project. Approximately 2.5 acres of successional forest habitat would be disturbed due to staging areas, access roads, etc., and some additional trees greater than four inches in diameter at breast height may be removed from landscaped areas. In addition, the FHWA is committed to removal of the trees during the winter hibernation season

(October 1 through March 31). For these reasons, a recommendation for a finding of, “may affect, but not likely to adversely affect” the Indiana bat has been provided by the FHWA to the USFWS for the project site. There would be no adverse impact on the continued existence of this species from the construction of the Replacement Bridge Alternative.

E. SUMMARY

For the purposes of consultation under Section 7(a)(2) of the Endangered Species Act, the project will have an insignificant or discountable effect on Indiana bat (federally and state listed), and no effect on bog turtle (federally listed) and New England cottontail (species of special concern in NY state, and candidate for federal listing) or their habitats.



U.S. Department
of Transportation
**Federal Highway
Administration**

New York Division

May 31, 2012

Leo W. O'Brien Federal Building
11A Clinton Avenue, Suite 719
Albany, NY 12207
518-431-4127
Fax: 518-431-4121
New York.FHWA@dot.gov

In Reply Refer To:
HDA-NY

Mr. David Stilwell
U.S. Fish and Wildlife
3817 Luker Road
Cortland, NY 13045

Subject: Tappan Zee Hudson River Crossing, Threatened and Endangered Species Determination

Dear Mr. Stilwell:

The Tappan Zee Hudson River Crossing project involves the replacement of the existing structure with a new span. As part of the construction project, it is necessary to remove approximately 2.5 acres of early successional forest. Tree cutting is proposed to take place between October 1 and March 31.

The New York Division of the Federal Highway Administration (FHWA) has reviewed the documentation dated May 25 regarding Endangered Species Act consultation for the referenced project. This office concurs with the New York State Department of Transportation (NYSDOT) determination that the project "May Affect, but Not Likely to Adversely Affect" the Indiana bat.

The New York Division of FHWA is requesting concurrence with this determination from the U.S. Fish and Wildlife. As you are aware, this project is on an expedited schedule because it is an identified High-Priority Infrastructure Project pursuant to President Obama's August 31st Memorandum on Efficient and Effective Permitting and Environmental Review. Therefore, we are requesting that the Informal Consultation process be completed by June 22 so that the documentation can be included in the NEPA documentation. For instance, if the initial review from your office indicates that additional information is required for you to concur on the determination, this office wishes to have your comments as soon as possible, to allow for a resubmission, your subsequent review, and the completion of Informal Consultation, before June 22.

Thank you in advance for working with the FHWA on this expedited schedule. If you have any questions or concerns, please contact Melissa Toni at 518-431-8867.

Sincerely,

/Original signed by/

Jonathan McDade
Division Administrator

Enclosures: May 15 Letter Dan Hitt to John Burns
May 2012 Informal Consultation Documentation

cc: Melissa Toni, FHWA
Dan Hitt, NYSDOT
Michael Anderson, NYSDOT
Elizabeth Novak, NYSTA
David Capobianco, NYSTA



United States Department of the Interior



FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045

June 20, 2012

Mr. Jonathan McDade
Division Administrator
New York Division
Federal Highway Administration
Leo W. O'Brien Federal Building
11A Clinton Avenue, Suite 719
Albany, NY 12207

Dear Mr. McDade:

This responds to U.S. Department of Transportation's Federal Highway Administration (FHWA) May 31, 2012, threatened and endangered species determination letter regarding the proposed Tappan Zee Bridge Hudson River Crossing, in the Village of Tarrytown, Westchester County, New York, and the Village of South Nyack, Rockland County, New York. The FHWA references in their May 31, 2012, correspondence the New York State Department of Transportation's (NYSDOT) May 25, 2012, threatened and endangered species determination for this project.

Pursuant to section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), the FHWA concurred with the NYSDOT's determination that the proposed project may affect, but is not likely to adversely affect, the federally-listed endangered Indiana bat (*Myotis sodalis*). Given the project location, linear nature, and the timing of tree removal (October 1 through March 31), we do not anticipate any measurable impacts to the Indiana bat. Therefore, we concur with your determination. The NYSDOT has also determined that the proposed project will result in no effects to the federally-listed threatened bog turtle (*Clemmys muhlenbergii*) and the federal candidate species for listing, the New England cottontail (*Sylvilagus transitionalis*), as no suitable habitat occurs in the area for these species.

Therefore, at this time, no further coordination or consultation under the ESA is required with the U.S. Fish and Wildlife Service (Service). 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 threatened and endangered species in New York is available for your information. Until the proposed

project is complete, we recommend that you check our website every 90 days from the date of this letter 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 pursuant to the ESA. This response does not preclude additional Service comments under other legislation.

The above-listed species are also listed by the state of New York. Any additional information regarding the proposed project and its potential to impact listed species should be coordinated with both this office and with the New York State Department of Environmental Conservation.

Thank you for your time. If you require additional information or assistance please contact Steve Sinkevich at (631) 286-0485.

Sincerely,

A handwritten signature in black ink that reads "David A. Stilwell". The signature is written in a cursive style with a large, sweeping "S" for the first letter of "Stilwell".

David A. Stilwell
Field Supervisor

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

cc: NYSDEC, Wildlife Diversity, Albany, NY (C. Herzog)
NYS DOT, Albany, NY (D. Hitt)