



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930

September 23, 2024
via Electronic Mail

Laura Shick
Supervisory Environmental Protection Specialist
Environmental & Corridor Planning Division
Office of Railroad Policy & Development
U.S. Department of Transportation
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Essential Fish Habitat Consultation
Amtrak Sawtooth Bridges Replacement Project
Town of Kearny, Hudson County, New Jersey

Dear Ms. Shick:

We have reviewed the essential fish habitat (EFH) assessment and additional supplemental information provided to us for activities related to the reconstruction of Amtrak Bridges No. 7.80 and No. 7.96, collectively referred to as the Sawtooth Bridges, located in the Town of Kearny, Hudson County, New Jersey. The Federal Railroad Administration (FRA) is providing financial assistance to the National Railroad Passenger Corporation (Amtrak; non-federal representative) for the project and is the lead agency for the National Environmental Policy Act (NEPA) process and for the required consultations under the Magnuson Stevens Fishery Conservation and Management Act (MSA) and the Fish and Wildlife Coordination Act (FWCA).

The Sawtooth Bridges were constructed in 1908 and are along a critical segment of the Northeast Corridor (NEC) between Newark, NJ and New York, NY. The FRA originally signed a Finding of No Significant Impact (FONSI) on August 27, 2020, for the project but is currently performing a reevaluation of the Environmental Assessment (EA) to address Amtrak's proposed design modifications, which include the construction of temporary trestles in the Passaic River. Project disturbances are expected to be approximately 1.25 acres of temporary disturbance to shallow subtidal and intertidal areas due to shading from the trestles and approximately 0.01 acres of permanent disturbance to the substrate and 0.22 acres of vegetation including wetlands from construction and pile installation. FRA anticipates compensatory mitigation in the form of purchasing credits from an approved wetland mitigation bank. Project activities are anticipated to take between 10-12 years to complete.

Magnuson Stevens Fishery Conservation and Management Act

The MSA and the FWCA require federal agencies to consult with us on projects such as this, which may adversely affect EFH and/or result in modifications to a natural stream or body of water. In turn, we must provide recommendations to protect, conserve, and enhance EFH and other NOAA trust resources. These recommendations may include measures to avoid, minimize,



mitigate, or otherwise offset adverse effects on EFH and other NOAA trust resources resulting from actions or proposed actions authorized, funded, or undertaken by that agency. This process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in this consultation procedure. While our regulations also allow a federal agency such as the FRA to designate a non-federal representative such as Amtrak to conduct the EFH consultation, it is important to note that the FRA remains ultimately responsible for compliance with sections 305(b)(2) and 305(b)(4)(B) of the MSA.

The project area has been designated as EFH for a number of species including but not limited to Atlantic butterflyfish (*Peprilus triacanthus*), Atlantic herring (*Clupea harengus*), bluefish (*Pomatomus saltatrix*), red hake (*Urophycis chuss*), summer flounder (*Paralichthys dentatus*), windowpane flounder (*Scophthalmus aquosus*), winter flounder (*Pseudopleuronectes americanus*), and several species of skates. The Passaic River is also a migratory corridor for anadromous fishes such as alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*) (collectively, river herring) and American shad (*Alosa sapidissima*). Anadromous fishes such as these serve as prey for federally managed species. As a result, adverse effects to their migration and spawning is considered an adverse effect on EFH.

The proposed trestle will consist of two separate structures; including a low level "T" shaped trestle primarily used for loading and unloading of materials, and a longer, linear trestle for retaining wall construction. The low level "T" shaped trestle features a 40-foot wide deck at a height of 11.26 feet NGVD 1929, a 35-foot steel grated access ramp, and pile bents spaced every 40 to 45 feet, each bent consisting of three rows of 42-inch diameter steel pipe piles. The linear trestle features a 40-foot wide by approximately 80-foot long deck at a height of 29.25 feet NGVD 1929 with pile bents spaced every 50 feet, each bent consisting of two rows of 48-inch diameter steel pipe piles. Combined deck area for the trestle is approximately 1.74 acres, covering approximately 1.25 acres of the Passaic River (0.22 acres intertidal and 1.04 acres subtidal). Through construction and shading, approximately 0.01 acres of silt/mud substrate and 0.22 acres of vegetated areas will also be disturbed, including 0.02 acres of emergent wetlands and 0.13 acres of scrub shrub wetlands.

We appreciate that since the initial request for consultation provided to us in March 2024, the design has been reduced to minimize impacts to our resources. Specifically, trestle design decreased in coverage by approximately 0.45 acres over the Passaic River. The linear trestle was redesigned to be elongated with most coverage over uplands and raised over 13-feet to be 24.2-feet over mean high water. Trestle construction will also be sequenced so that the "T" trestle will not be installed until the western portion of the linear trestle is removed, limiting the total amount shading over the Passaic River for the duration of the project. We also appreciate that a number of best management practices (BMPs) will also be incorporated into the project that reduce turbidity and noise and the construction schedule will limit in water work between March 1 and June 30 to avoid migrating anadromous fish.

As indicated in the supplementary information dated September 10, 2024, FRA and Amtrak intend to provide compensatory mitigation for the unavoidable permanent loss of wetland vegetation through the purchase of credits from an approved wetland mitigation bank. While

formal bank credits have not yet been purchased, we expect that documentation of credit purchase will be provided to us prior to construction.

Essential Fish Habitat Conservation Recommendations

Pursuant to Section 305(b)(4)(A) of the MSA we request that you adopt the following EFH conservation recommendation to minimize or offset adverse impacts on EFH:

- Construction activities shall not start until compensatory mitigation is finalized either by demonstrating credits are available and providing proof of purchase or by having a final permittee-responsible mitigation plan with monitoring and adaptive management included.
 - If permittee responsible mitigation is selected, construction of the compensatory mitigation project shall be prior to or concurrent with the impacts to the aquatic environment and monitoring shall be for five years, providing annual reports to our office.

Please note that Section 305(b)(4)(B) of the MSA requires you to provide us with a detailed written response to these EFH conservation recommendations, including a description of measures adopted by you for avoiding, mitigating, or offsetting the impact of the project on EFH. In the case of a response that is inconsistent with our recommendations, Section 305(b)(4)(B) of the MSA also indicates that the FRA must explain the reasons for not following the recommendations. Included in such reasoning would be the scientific justification for any disagreements with us over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects pursuant to 50 CFR 600.920(k). This response must be provided within 30 days after receiving our EFH conservation recommendations and at least 10 days prior to final approval of this action. Please also note that further EFH consultation must be reinitiated pursuant to 50 CFR 600.920(j) if new information becomes available, or if the project is revised in such a manner that affects the basis for the above determination.

Conclusion

We look forward to your response to our EFH recommendations on this project. As always, please do not hesitate to contact Jessie Murray in our Highlands, NJ field office at (732) 872-3116 or by email (Jessie.Murray@noaa.gov) if you have any questions or need assistance.

Sincerely,

for

Louis A. Chiarella
Assistant Regional Administrator
for Habitat and Ecosystem Services

cc:

GARFO PRD – E. Carson-Supino

GARFO HESD – K. Greene

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Amtrak – A. Finn

USACE – S. Ryba

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NJDEP – M. Davis, K. Davis

MAFMC– C. Moore

NEFMC– C. O’Keefe

ASMFC– R. Beal