

## **Appendix J**

### **Natural Resources**

---

**Appendix J-1**  
**General Ecology and Wildlife Resources Supplemental**  
**Methodology and Regulatory Framework**

## Appendix J-1

### General Ecology and Wildlife Resources Supplemental Methodology and Regulatory Framework

This appendix describes the supplemental methodology and regulatory framework used in the general ecology and wildlife resources assessment as described in **Section 6-4-8** of the DDR/DEIS.

#### METHODOLOGY

##### *STUDY AREA*

A number of study areas are considered in this appendix to account for the greatest distance of potential effects to general ecology and wildlife resources. The study areas are as follows:

- The study area for the evaluation of impacts to terrestrial resources and wetlands generally comprises up to 100-feet (ft) around the limits of disturbance of each of the four study areas.
- The study area for Federally- and State-listed Threatened, Endangered, special concern species and significant ecological communities follows the guidance outlined in New York State Department of Transportation's (NYSDOT) *The Environmental Manual* (TEM) Endangered and Threatened Species, Section 4.4.9.3 (August 2011). Unless otherwise specified in the list below, the screening area for Federally- and State-listed species and significant ecological communities is a 1.5 mile radius around each of the four study areas (i.e., Central Study Area, I-481 South Study Area, I-481 East Study Area, and I-481 North Study Area). The New York Natural Heritage Program's (NYNHP) "Notes for Data Users" also provides species-specific screening distances for the following species/habitats:
  - Indiana bat (*Myotis sodalis*) (2.5 mile radius [hibernacula or roost tree]);
  - Northern long-eared bat (*Myotis septentrionalis*) (5-mile radius [hibernacula] and 1.5-mile radius [roost tree, non-winter locations]);
  - Bog turtle (*Glyptemys mublenbergii*) (1 mile radius);
  - Blanding's turtle (*Emydoidea blandingii*) (0.8 mile radius);
  - Timber rattlesnake (*Crotalus horridus*) (1.5 mile radius); and
  - Aquatic species (up to 2 miles downstream).
- In addition, Appendix G to Section 4.4.9.3.11 "Endangered and Threatened Species" of the TEM is the Federal Highway Administration's (FHWA) New York Division: "Environmental Procedures Endangered Species Act, Section 7: Process for Compliance and Consultation" Guidance (June 2020). This Guidance lists U.S. Fish and Wildlife Service (USFWS)/ FHWA procedures for listed species and includes the following areas of concern for listed species:
  - Federal radius: Northern long-eared bat (within 0.5 miles of a hibernaculum or 150 feet from a roost tree).
  - Federal radius: Indiana bat (within 0.5 miles of a hibernaculum or 0.25 miles from a roost tree).

## General Ecology and Wildlife Resources Supplemental Methodology and Regulatory Framework

---

- The study areas for each species/habitat listed above were established around each of the four study areas.

### *DATA SOURCES*

Existing conditions for ecological resources within the Project Area are summarized from a number of data sources, including:

- Existing information identified in literature and obtained from governmental and nongovernmental sources, including the USFWS National Wetland Inventory (NWI) maps; New York State Department of Environmental Conservation (NYSDEC) freshwater wetlands maps; NYSDEC Environmental Resource Mapper; NYSDEC 2000-2005 New York State Breeding Bird Atlas; NYSDEC Herp Atlas Project; and National Audubon Society 2010 Christmas Bird Count.
- “Ecological Communities of New York State (Edinger et al. 2014)” for use in characterizing terrestrial ecological communities within the Project Area.
- Responses (dated July 1, 2016, August 14, 2017) to requests (dated June 1, 2016 and July 25, 2017) from the NYNHP for information on rare, Threatened, or Endangered, candidate, or proposed species in the vicinity of the project site.
- Results from NYNHP database searches for Threatened and Endangered species conducted by NYSDOT (dated July 21, 2017, January 11, 2018, September 14, 2018, October 25, 2019, June 10, 2020, March 26, 2021, May 11, 2021<sup>1</sup>, and February 3, 2022).
- Project specific information provided through USFWS’s on-line platform, Information for Planning and Consultation (IPaC) System using the four study areas, as shown in the USFWS Species List(s) in **Appendix J-4** (dated February 2, 2022).

### *SITE RECONNAISSANCE*

Site reconnaissance investigations were conducted by plant ecologists on June 29 and 30, 2016; July 8, 2016; August 1, 2016; September 16, 2016; August 28, 2017; September 13, 2019; June 24 and 25, 2020; and May 11, 2021 for ecological communities and vegetation. Wildlife surveys were conducted by a wildlife biologist in all four study areas on July 29, 2016. Following the 2016 wildlife surveys, design refinements were made, and the limits of disturbance were expanded. On July 13, 2017, a wildlife biologist conducted a wildlife reconnaissance survey in the expanded portions of the I-481 East and I-481 North Study Areas. In 2019, 2020, and 2021, additional refinements were made resulting in the expansion of the I-481 East and I-481 North Study Areas. Additional incidental wildlife observations were recorded during site reconnaissance investigations made on September 13, 2019 in the I-481/Route 5 Interchange and June 24 and 25, 2020 in the I-690/I-481 interchange in the I-481 East Study Area, and on June 25, 2020 and May 11, 2021 in the I-481 North Study Area.

---

<sup>1</sup> The NYNHP database review, dated May 11, 2021, was conducted for the area associated with proposed Noise Barrier 16A&B, only.

## General Ecology and Wildlife Resources Supplemental Methodology and Regulatory Framework

---

### *TARGETED STATE-LISTED PLANT SPECIES SURVEYS*

Targeted plant surveys were conducted on April 18, 19, and 20, 2017; June 27 and 28, 2017; July 13, 2017; August 28, 29, 30, and 31, 2017; September 1, 2017; and July 10, 11, 12, and 16, 2019.

### **REGULATORY FRAMEWORK**

The following Federal regulations pertain to the general ecology and wildlife resources of the Project Area.

- **Clean Water Act.** The objective of the Clean Water Act, also known as the Federal Water Pollution Control Act, is to restore and maintain the chemical, physical, and biological integrity of waters of the United States. Waters of the United States include streams, rivers, and wetlands that meet the specified requirements defined in 33 CFR 328.3. The Clean Water Act regulates point sources of water pollution (such as discharges of dredged or fill material into navigable waters and other waters of the United States) and non-point source pollution. As part of the Clean Water Act permitting processes, general conditions are outlined with respect to the protection of species regulated under Section 7 of the Endangered Species Act.

Under Section 401 of the Act, any applicant for a Federal permit or license for an activity that may result in a discharge to navigable waters must provide to the Federal agency issuing a permit a certificate that the discharge would comply with Sections 301, 302, 303, 306, 307, and 316 (b) of the Clean Water Act. In New York, this certificate is issued by the NYSDEC. This certificate outlines general conditions relating to the protection of state-regulated Threatened and Endangered species.

Section 404 of the Act requires authorization from the Secretary of the Army, acting through the United States Army Corps of Engineers (USACE), for the discharge of dredged or fill material into waters of the United States. Activities authorized under Section 404 must also comply with Section 401 of the Act. For this action, any authorization required would be issued from the USACE Buffalo District Office.

- **Executive Order 11990, “Protection of Wetlands.”** In accordance with Executive Order (EO) 11990, “Protection of Wetlands,” and United States Department of Transportation (USDOT) Order 5660.1a, “Preservation of the Nation’s Wetlands,” Federal agencies must avoid undertaking or providing assistance for new construction in wetlands unless there is no practical alternative to such construction and the proposed action includes all practicable measures to minimize harm to the wetland. For this action, the FHWA issues a “Finding” regarding the compliance of the action with EO 11990.
- **Executive Order 13112, “Invasive Species.”** In accordance with EO 13112, “Invasive Species,” Federal agencies must prevent, to the extent practicable and permitted by law, the introduction of invasive species, provide for their control, and minimize the economic, ecological, and human health impacts that invasive species cause.
- **Migratory Bird Treaty Act.** The Migratory Bird Treaty Act (MBTA) of 1918 was implemented for the protection of birds migrating between the U.S. and Canada.

## General Ecology and Wildlife Resources Supplemental Methodology and Regulatory Framework

---

Subsequent amendments implemented treaties between the U.S. and Mexico, the U.S. and Japan, and the U.S. and the former Soviet Union. The MBTA makes it unlawful to pursue, hunt, take, capture, kill, or sell birds listed therein. The statute applies equally to both live and dead birds, and grants full protection to any bird parts, including feathers, eggs and nests. The USFWS implements the MBTA.

- **Bald and Golden Eagle Protection Act (16 USC §§ 668-668c).** The Bald and Golden Eagle Protection Act of 1940 prohibits anyone without a permit issued by the Secretary of the Interior, acting through the USFWS, from “taking” bald or golden eagles, including their parts, nests, or eggs. The Act defines “take” as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb.”
- **Endangered Species Act of 1973 (16 USC §§ 1531 to 1544).** The Endangered Species Act of 1973 (ESA) recognizes that Endangered species of wildlife and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the nation and its people. The ESA prohibits the importation, exportation, taking, possession, and other activities involving illegally taken species covered under the Act, and interstate or foreign commercial activities. The ESA also provides for the protection of critical habitats on which Endangered or Threatened species depend for survival. Section 7 of the ESA requires Federal agencies to ensure that any action authorized, funded or carried out by them is not likely to jeopardize the continued existence of listed species or modify their critical habitat.

The following state regulations pertain to the general ecology and wildlife resources of the Project Area.

- **Critical Environmental Areas (CEAs), Environmental Conservation Law (ECL).** CEAs are areas in the state which have been designated by a local or state agency to recognize a specific geographical area. Under 6 New York Codes, Rules and Regulations (NYCRR) 617.14(g) of the State Environmental Quality Review Act (SEQRA) regulations, CEAs have one or more of the following characteristics: (1) is a benefit or threat to human health; (2) contains an exceptional or unique natural setting; (3) has exceptional or unique social, historic, archaeological, recreational or educational values; or (4) has an inherent ecological, geological or hydrological sensitivity to change that may be adversely affected by any physical disturbance.
- **Freshwater Wetlands Act, ECL Article 24.** The NYSDEC is responsible for implementing New York State’s Freshwater Wetland Regulatory program, which is intended to prevent despoliation and destruction of freshwater wetlands in accordance with the environmental protection regulations of the state. Adjacent areas within 100 feet of mapped NYSDEC freshwater wetlands are also regulated. NYSDEC and NYSDOT signed a Memorandum of Understanding (MOU) regarding ECL Articles 15 and 24. The MOU streamlines the use of existing Freshwater Wetlands Programmatic Permits and allows for in-field authorization and issuance for two of the Programmatic Permits.
- **Prohibited and Regulated Invasive Species** (ECL, Sections 1-0101, 3-0301, 9-0105, 9-1303, 11-0507, 11-0509, 11-0511, 71-0703, 71-0925; Agriculture and Markets Law,

## General Ecology and Wildlife Resources Supplemental Methodology and Regulatory Framework

---

Section 167[3-a]). Establish procedures to identify and classify invasive species and to establish a permit system to restrict the sale, purchase, possession, propagation, introduction, importation, and transport of invasive species in the state, as part of the statewide invasive species management program, as required by ECL Sections 9-1709 and 71-0703.

- **Removal of Trees and Protect Plants.** NYSDEC, through the NYNHP, maintains a list of plant species that are listed as Endangered, Threatened, rare, or exploitably vulnerable. Section 9-1503 of the ECL states, “[n]o person shall, in any area designated by such list or lists, knowingly pick, pluck, sever, remove, damage by the application of herbicides or defoliants or carry away, without the consent of the owner thereof, any protected plant.”
- **Endangered and Threatened Species of Fish and Wildlife; Species of Special Concern** (ECL, Sections 11-0535[1]-[2], 11-0536[2], [4], Implementing Regulations 6 NYCRR Part 182). The Endangered and Threatened Species of Fish and Wildlife, Species of Special Concern Regulations prohibit the taking, import, transport, possession, or selling of any Endangered or Threatened species of fish or wildlife, or any hide, or other part of these species as listed in 6 NYCRR §182.6.