

Compliance & Permitting

Threatened and Endangered Species: You think you are covered? Think Again!

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In January 2015, CSX Transportation, Inc. (CSXT), in collaboration with the Federal Railroad Administration (FRA) and Virginia Department of Rail and Public Transportation (VDRPT), began construction of an 11.4 mile additional main line track in Prince William and Stafford Counties, VA. Situated approximately 40 miles south of Washington, D.C., construction of this additional main line will improve railroad service and increase passenger efficiency between Fredericksburg, VA and Washington, D.C.

Prior to commencement of construction, this project went through a full range of environmental reviews and permit approvals. As part of the environmental review and approval process, the project received concurrence from the U.S. Fish and Wildlife (USFWS) with a special condition to conduct Bald Eagle monitoring. However, the USFWS listed the Northern Long-Eared Bat as a threatened species under the Endangered Species Act on April 2, 2015. Additionally, the USFWS implemented a time-of-year restriction (TOYR) for when tree clearing may take place within a project area. Following listing of this species, the project team consulted with the USFWS, who confirmed that a tree cutting TOYR would be enforced until September 15, 2015 unless it was demonstrated that this species did not occur at the project location. Due to the project construction schedule and fact that four small areas of potential habitat trees remained to be cut, CSXT elected to move forward with performing surveys to determine if the Northern Long-Eared Bat indeed occurred in these areas.

In early July 2015, an acoustic survey was performed at the four potential habitat areas (A, B, C, and D) using acoustic recording devices to monitor echolocation calls of bats in these areas. Following analysis of these recordings obtained from the acoustic devices, it was determined that federally listed bat species were likely not present at Survey Areas C and D. However, potential calls from the federally listed Northern Long-Eared Bat were recorded at Survey Areas A and B. Following submittal of acoustic survey results to the USFWS, the agency agreed that tree cutting may proceed at Survey Areas C and D, but required mist net surveys of Survey Areas A and B if CSXT desired to cut trees prior to September 15, 2015.

Due to existing relationships and federal permits, the project team accelerated the mist net process and in mid-July 2015, CSXT proceeded with conducting a mist net at Survey Areas A and B. During the mist net survey a total of 74 bats were collect and no endangered species were captured. Therefore, with expedited coordination with USFWS. CSXT was allowed to cut trees at Survey Areas A and B prior to September 15, 2015. In conclusion, one must be aware of new threatened/endangered species' listings during project construction. Project teams should be prepared to respond to evolving regulations and avoid adversely affecting endangered species or delaying construction schedules.