

# STATE OF MAINE

## MEMORANDUM

July 7, 2010

To: David Gardner, ENV/Maine Department of Transportation

From: Kirk F. Mohney, Deputy State Historic Preservation Officer *KFM*

Subject: PIN 17643.04; purchase and maintenance, Montreal, Maine and Atlantic Railway (MMA), Penobscot and Aroostook counties; MHPC #0199-10

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In response to your recent request, I have reviewed the information received June 16, 2010 to continue consultation on the above referenced undertaking pursuant to the Maine Programmatic Agreement and Section 106 of the National Historic Preservation Act of 1966, as amended.

Based on the information submitted, as well as the provision of Stipulation 2.B. of the PA that exempts from SHPO, FHWA and FTA review the replacement of "Rail: track structure, ballasts, ties," I concur with the MDOT's finding that there will be no historic properties [archaeological or architectural] affected by the proposed undertaking. However, the Commission notes that the MDOT did not conduct architectural surveys in the area of potential effect or evaluate the National Register eligibility of the railway and its constituent elements, because it concluded that the "undertaking has no potential to cause effect to any properties...." Although it is unclear whether the MDOT considered the MMA Railway itself as being potentially eligible, we assume that future Section 106 undertakings involving the Railway that are not exempt from review under the PA will address the National Register status of this resource pursuant to Stipulation 4.B.

Please contact Robin Stancampiano of our office if we can be of further assistance in this matter.



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Maine Field Office – Ecological Services  
17 Godfrey Drive, Suite #2  
Orono, ME 04473  
(207) 866-3344 Fax: (207) 866-3351



FWS/Region 5/ES/MEFO

Kathleen Legere  
HNTB Corporation  
31 St. James Avenue  
Suite 300  
Boston, MA 02116

**HNTB  
BOSTON**

JUL 02 2010

**RECEIVED**

June 29, 2010

Dear Ms. Legere:

Thank you for your letter dated June 18, 2010, requesting information or recommendations from the U.S. Fish and Wildlife Service (Service). This letter provides the Service's response pursuant to Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531-1543), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, 54 Stat. 250), and the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661-667d).

**Project Name/Location:** MEDOT Montreal, Maine, Atlantic Railway repairs

**Log Number:** 53411-2010-SL-0281

### **Federally Listed Species**

#### Atlantic Salmon

This project occurs within the range of the Gulf of Maine Distinct Population Segment (GOM DPS) of Atlantic salmon (*Salmo salar*) in Maine, a federally-endangered species under the joint jurisdiction of the Service and the National Marine Fisheries Service (NMFS) (74 FR 29344; June 19, 2009). The Atlantic salmon GOM DPS encompasses all naturally spawned and conservation hatchery populations of anadromous Atlantic salmon whose freshwater range occurs in the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River and wherever these fish occur in the estuarine and marine environment. Also included in the GOM DPS are all associated conservation hatchery populations used to supplement these natural populations. Excluded are landlocked Atlantic salmon and those salmon raised in commercial hatcheries for aquaculture.

The proposed project site also occurs within HUC-10 watersheds (East Branch Penobscot River (3), Penobscot river at Mattawamkeag, and East & West branch Mattawamkeag River) that have been designated as critical habitat for Atlantic salmon by NMFS (74 FR 39907; August 10,

2009). Critical habitat is designated to include all perennial rivers, streams, and estuaries and lakes connected to the marine environment within the designated watershed.

For Atlantic salmon and its critical habitat, NMFS and the Service share consultation responsibilities under Section 7 of the ESA. The Service generally handles projects in the freshwater component of the salmon's habitat and NMFS handles projects in the marine and estuarine environment (generally below the head of tide).

### Canada lynx

This project also occurs within the range of the Canada lynx (*Lynx canadensis*). Canada lynx occur throughout northern Maine and could occur within your project area. Canada lynx in Maine prefer to use regenerating spruce-fir habitats having high stem densities. These regenerating stands support high populations of snowshoe hare (*Lepus americanus*), the primary food of the Canada lynx. Highest hare densities are generally present about 12 to 30 years after clearcutting or heavy partial harvesting. Forest practices that diminish habitat quality for snowshoe hares may have an adverse affect on Canada lynx. We have developed *Canada lynx habitat management guidelines for Maine*. Please email ([mark\\_mccollough@fws.gov](mailto:mark_mccollough@fws.gov)) or call (207 827-5938 x.12) if you are interested in obtaining a copy.

Based on the information currently available to us, no other federally-listed species under the jurisdiction of the Service are known to occur in the project area.

Please note that under Section 7 of the ESA, it is the federal action agency's responsibility to determine if a project may affect a federally listed species. For example, if the project receives federal funding or needs a federal permit, those actions may provide a "nexus" for Section 7 consultation under the ESA<sup>1</sup>. If the federal action agency determines that a project would have "no effect" on a listed species or critical habitat, they do not need to seek the concurrence of the Service and there is no need for Section 7 consultation. If the federal agency determines that a project "may affect" a listed species or its critical habitat, then consultation pursuant to Section 7 of the ESA should be initiated. Please note, however, that there is no provision under Section 7 for consultation after a project has already been completed.

### **Other Protected Species**

Occasional, transient bald eagles may occur in the general project area. The bald eagle was removed from the federal threatened list on August 9, 2007 and is now protected from take under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. "Take" means to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. The term "disturb" under the Bald and Golden Eagle Protection Act was recently defined within a final rule published in the Federal Register on June 5, 2007 (72 FR 31332). "Disturb" means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle; 2) a decrease in its productivity, by

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<sup>1</sup> Section 7 consultation, however, is only necessary when a federal agency takes a *discretionary* action (e.g., an agency has a choice of whether or not to fund or permit a particular project).

substantially interfering with normal breeding, feeding, or sheltering behavior; or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

Further information on bald eagle delisting and their protection can be found at <http://www.fws.gov/migratorybirds/baldeagle.htm>.

Please consult with our new national bald eagle guidelines, which can found at <http://www.fws.gov/migratorybirds/issues/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>. These Guidelines are voluntary and were prepared to help landowners, land managers and others meet the intent of the Eagle Act and avoid disturbing bald eagles. If you believe this project will result in taking or disturbing bald or golden eagles, please contact our office for further guidance. We encourage early and frequent consultations to avoid take of eagles.

We have not reviewed this project for state-threatened and endangered wildlife, wildlife species of special concern, and significant wildlife habitats protected under the Maine Natural Resources Protection Act. We recommend that you contact the Maine Department of Inland Fisheries and Wildlife:

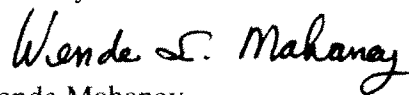
Steve Timpano  
Maine Department of Inland Fisheries and Wildlife  
284 State St.  
State House Station 41  
Augusta, ME 04333-0041  
Phone: 207 287-5258

We also recommend that you contact the Maine Natural Areas Program for additional information on state-threatened and endangered plant species, plant species of special concern, and rare natural communities:

Lisa St. Hilaire  
Maine Natural Areas Program  
Department of Conservation  
93 State House Station  
Augusta, ME 04333  
Phone: 207 287-8046

If you have any questions please call Mark McCollough, endangered species biologist, at (207) 866-3344 x115.

Sincerely,



Wende Mahaney  
Acting Field Supervisor

Enclosure

# MEDOT Montreal, Maine, Atlantic Railway repairs

Project Site

## Legend

- Canada Lynx Critical Habitat
- Canada Lynx Section 7 review
- ATS Critical\_Habitat\_by\_HUC10

ATS GOM\_DPS\_by\_HUC10

CriticalHabitat

- YES
- no

0 10 20 30 40 Miles



Data from USFWS, MDIFW & MNAP.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
55 Great Republic Drive  
Gloucester, MA 01930-2290

## **RESPONSE TO INFORMATION REQUEST**

This standard form is provided in response to your request for information regarding the presence and distribution of essential fish habitat (EFH) and fishery resources in the vicinity of your proposed action.

### **Essential Fish Habitat**

A complete list of species and life stages for which EFH has been designated can be found on the National Marine Fisheries Service (NMFS) Habitat Conservation Division website at: <http://www.nero.noaa.ro/doc/webintro.html>. The website also contains information on descriptions of EFH for each species, guidance on the EFH consultation process including EFH assessments, and information relevant to other NMFS mandates.

The Magnuson-Stevens Fisheries Conservation and Management Act (MSA) and the Fish and Wildlife Coordination Act (FWCA) require federal agencies to consult with the NMFS on their proposed activities. Insofar as a project involves EFH, this process is guided by the requirements of our EFH regulations at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in this consultation procedure.

The required contents of an EFH assessment include: 1) a description of the action; 2) an analysis of the potential adverse effects of the action on EFH and the managed species; 3) the federal agency's conclusion regarding the effects of the action on EFH; and 4) proposed mitigation, if applicable. Other information that should be contained in the EFH assessment, if appropriate, includes: 1) the results of on-site inspections to evaluate the habitat and site-specific effects; 2) the views of recognized experts on the habitat or the species that may be affected; 3) a review of pertinent literature and related information; and 4) an analysis of alternatives to the action that could avoid or minimize the adverse effects on EFH. Upon submittal of an EFH assessment by the federal action agency, the NMFS will provide conservation recommendations for the proposed project, as necessary.

### **Protected Species**

Information regarding the Endangered Species Act or Marine Mammal Protection Act will be provided under separate cover from the NMFS Protected Resources Division. Questions regarding Endangered Species Act Section 7 consultations should be directed to Julie Crocker, [Julie.Crocker@noaa.gov](mailto:Julie.Crocker@noaa.gov), 978-281-9300 x 6530.

### **Additional Information**

Should you require additional information regarding EFH or FWCA consultations, please contact Lou Chiarella, New England Field Office Supervisor for Habitat Conservation, [Lou.Chiarella@noaa.gov](mailto:Lou.Chiarella@noaa.gov), 978-281-9277.





STATE OF MAINE  
DEPARTMENT OF CONSERVATION  
93 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0093

JOHN ELIAS BALDACCI  
GOVERNOR

ELIZA TOWNSEND  
COMMISSIONER

July 19, 2010

Kathleen Legere  
HNTB Corporation  
31 St. James Avenue  
Suite 300  
Boston, MA 02116

Re: Rare and exemplary botanical features in proximity to: Montreal, Maine & Atlantic Railway Ltd.,  
Proposed Rail Maintenance and Improvements in Penobscot and Aroostook Counties, Maine

Dear Ms. Legere:

I have searched the Natural Areas Program's Biological and Conservation Data System files in response to your request of June 18, 2010 for information on the presence of rare or unique botanical features documented within the right-of-way of the approximately 235 mile Madawaska Subdivision and four connected branch lines in Penobscot and Aroostook Counties, Maine, as provided by you in electronic format. Rare and unique botanical features include the habitat of rare, threatened, or endangered plant species and unique or exemplary natural communities. Our review involves examining maps, manual and computerized records, other sources of information such as scientific articles or published references, and the personal knowledge of staff or cooperating experts.

Our official response covers only botanical features. For authoritative information and official response for zoological features you must make a similar request to the Maine Department of Inland Fisheries and Wildlife, 284 State Street, Augusta, Maine 04333.

According to our information, there is **1 exemplary ecosystem, 6 rare or exemplary natural communities** and **33 populations of rare plant species** within the right-of-way area surrounding the railway. It should be noted that two of the rare plant occurrences, **Furbish's Lousewort** (*Pedicularis furbishiae*) and **Prairie White-fringed Orchid** (*Platanthera leucophaea*) are Federally listed species under the US Endangered Species Act.

The enclosed table provides information on the ecosystem, natural communities and rare plants in terms of global rarity rank, state rarity rank, and element occurrence rank (see attached explanation of ranks). The element occurrence rank is a system used to rank the overall quality (i.e. condition, landscape context and size) of a natural community or rare plant occurrence.

Our primary concerns are that 1) rail maintenance and improvements within the right-of-way does not physically impact the rare plant populations, and 2) that surfacing of the rail bed and maintenance to ditch clearings do not lead to changes in hydrology. Each of the natural communities and populations of rare plant species were evaluated based on these two types of potential impacts and the majority were considered to be of no likely impact. However, four sites were identified where impacts are more likely to occur, and should be avoided.

### **Little Crystal Fen, Crystal and Sherman**

The railway at Little Crystal Fen (see map) crosses an **Appalachian - Acadian Basin Swamp Ecosystem** which includes a **Circumneutral Fen natural community** and occurrences of **Swamp Birch** (*Betula pumila*), **Sparse-flowered Sedge** (*Carex tenuiflora*), **Swamp Fly-honeysuckle** (*Lonicera oblongifolia*), **Marsh Valerian** (*Valeriana uliginosa*), **Livid Sedge** (*Carex livida* var. *radicaulis*), **Showy Lady's-slipper** (*Cypripedium reginae*), **Prairie White-fringed Orchid** (*Platanthera leucophaea*), **Northern Bog Sedge** (*Carex gynocrates*) and **New England Northern Reed Grass** (*Calamagrostis stricta* ssp. *Inexpansa*). The concern at Little Crystal Fen is in regards to both the potential for physical impacts to the rare plant populations during maintenance and improvement activities and for potential changes in hydrology at the small culvert under the line that drains the fen. Physical impacts to the rare plant populations should be avoidable if salvage operations are conducted in such a way as to not disturb any of the vegetation immediately adjacent to the rail bed. Avoiding impacts to hydrology at this site can be accomplished by giving The Nature Conservancy (the adjacent landowner on both sides of the line) the right to manage the culvert. As we understand it, The Nature Conservancy has worked cooperatively with the line owner on this issue in the past.

### **Aroostook River, Caribou**

The concern at the Aroostook River in Caribou (see map) is in regards to the potential for physical impacts to rare plant populations during maintenance and improvement activities. Rare plants at this site include **Seneca Snakeroot** (*Polygala senega*), **Wild Coffee** (*Triosteum aurantiacum*), **Anticosti Aster** (*Symphyotrichum anticostense*), **Alpine Milk-vetch** (*Astragalus alpinus* var. *brunetianus*), **Glaucous Rattlesnake Root** (*Prenanthes racemosa*) and **Wild Ginger** (*Asarum canadense*) which occur on the margin of the rail bed and in the immediately adjacent woods. Physical impacts to rare plant populations should be avoidable if maintenance and improvements are conducted in such a way as to not disturb any of the vegetation immediately adjacent to the rail bed.

### **Fish River Falls, Fort Kent**

The concern at Fish River Falls in Fort Kent (see map) is in regards to the potential for physical impacts to the **Rivershore Outcrop natural community** and associated rare plants as a result of maintenance and improvement activities. This natural community provides habitat for the following rare plants which occur between the margin of the rail bed, in the immediately adjacent woods and the banks and shore of the Fish River: **Hyssop-leaved Fleabane** (*Erigeron hyssopifolius*), **Clinton's Bulrush** (*Trichophorum clintonii*), **Gaspé Shadbush** (*Amelanchier sanguinea* var. *gaspensis*) and **Purple Clematis** (*Clematis occidentalis* var. *occidentalis*). Physical impacts to rare plant populations should be avoidable if maintenance and improvements are conducted in such a way as to not disturb any of the vegetation between the rail bed and the river.

### **St. John River, Frenchville**

The concern at the St. John River in Frenchville (see map) is in regards to the potential for physical impacts to a population of **Furbish's lousewort** (*Pedicularis furbishiae*), documented within the railway right-of-way. A site visit by the Maine Natural Areas Program or a qualified botanical consultant should be conducted prior to any ground disturbing activities to determine whether the plant still occurs at this site.

To ensure avoidance of physical impacts to rare plant populations at these sites, we strongly recommend that either the Maine Natural Areas Program or a qualified botanical consultant flag the sensitive areas prior to any maintenance or improvements. If a consultant is used to flag the sensitive areas at these sites, we strongly recommend that they are flagged during an appropriate time in the growing season when the rare plants can be identified.

This finding is available and appropriate for preparation and review of environmental assessments, but it is not a substitute for on-site surveys. Comprehensive field surveys do not exist for all natural areas in Maine, and in the absence of comprehensive field investigations, the Maine Natural Areas Program cannot provide a definitive statement on the presence or absence of unusual natural features along the entire railway.

The Natural Areas Program is continuously working to achieve a more comprehensive database of exemplary natural features in Maine. We would appreciate the contribution of any information obtained should you decide to do field work. The Natural Areas Program welcomes coordination with individuals or organizations proposing environmental alteration, or conducting environmental assessments. If, however, data provided by the Natural Areas Program are to be published in any form, the Program should be informed at the outset and credited as the source.

The Natural Areas Program has instituted a fee structure of \$75.00 an hour to recover the actual cost of processing your request for information. You will receive an invoice for \$300.00 for our services.

Thank you for using the Natural Areas Program in the environmental review process. If you would like more information on the natural communities or rare plants at this site, or would like to schedule a field visit to this area, please contact MNAP ecologist Don Cameron at 287-8041.

Sincerely,

Sarah Demers  
Environmental Review Coordinator  
Maine Natural Areas Program  
207-287-8670  
[sarah.demers@maine.gov](mailto:sarah.demers@maine.gov)

Enclosures

Rare plant and natural community fact sheets can be found at: <http://www.maine.gov/doc/nrimc/mnap/features/index.htm>

<b>Scientific Name</b>	<b>Common Name</b>	<b>Global Rank</b>	<b>State Rarity Rank</b>	<b>USESA Listed Species</b>
<i>Amelanchier sanguinea</i> var. <i>gaspensis</i>	Gaspe Shadbush	G5T4?	S2	
Appalachian - acadian basin swamp ecosystem	Appalachian - Acadian Basin Swamp Ecosystem	GNR	S4	
<i>Asarum canadense</i>	Wild Ginger	G5	S1S2	
<i>Astragalus alpinus</i> var. <i>brunetianus</i>	Alpine Milk-vetch	G5T3	S3	
<i>Betula pumila</i>	Swamp Birch	G5	S2S3	
Bluebell - balsam ragwort shoreline outcrop	Rivershore Outcrop	G3	S3	
Bluejoint meadow	Tall Grass Meadow	G4G5	S3	
<i>Calamagrostis stricta</i> ssp. <i>inexpansa</i>	New England Northern Reed Grass	G5T5	S1	
<i>Carex atratiformis</i>	Black Sedge	G5	S2S3	
<i>Carex garberi</i>	Garber's Sedge	G5	S2	
<i>Carex gynocrates</i>	Northern Bog Sedge	G5	S2	
<i>Carex tenuiflora</i>	Sparse-flowered Sedge	G5	S3	
Circumneutral riverside seep	Riverside Seep	G2	S2	
<i>Clematis occidentalis</i> var. <i>occidentalis</i>	Purple Clematis	G5T5	S3	
<i>Cypripedium reginae</i>	Showy Lady's-slipper	G4	S3	
<i>Dryopteris goldiana</i>	Goldie's Wood-fern	G4	S2	
<i>Erigeron hyssopifolius</i>	Hyssop-leaved Fleabane	G5	S2	
<i>Hedysarum alpinum</i> var. <i>americanum</i>	Alpine Sweet-broom	G5T5?	S3	
<i>Lonicera oblongifolia</i>	Swamp Fly-honeysuckle	G4	S3	
<i>Pedicularis furbishiae</i>	Furbish's Lousewort	G2	S2	Listed Endangered
<i>Phleum alpinum</i>	Mountain Timothy	G5	S2	
<i>Platanthera leucophaea</i>	Prairie White-fringed Orchid	G3	S1	Listed Threatened
<i>Polygala senega</i>	Seneca Snakeroot	G4G5	S1	
<i>Prenanthes racemosa</i>	Glaucous Rattlesnake Root	G5	S3	
<i>Primula mistassinica</i>	Mistassini Primrose	G5	S3	
Shrubby cinquefoil - sedge circumneutral fen	Circumneutral Fen	G2G3	S2	
<i>Symphotrichum antioense</i>	Anticosti Aster	G3	S1	
<i>Tanacetum bipinnatum</i> ssp. <i>huronense</i>	Huron Tansy	G5T4T5	S2S3	
<i>Thalictrum venulosum</i>	Boundary Meadow-rue	G5	S1	
<i>Trichophorum clintonii</i>	Clinton's Bulrush	G4	S3	
<i>Triosteum aurantiacum</i>	Wild Coffee	G5	S1	
<i>Valeriana uliginosa</i>	Marsh Valerian	G4Q	S2	
<i>Viola novae-angliae</i>	New England Violet	G4Q	S2	

