



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH & WILDLIFE
 RICHARDSON & ROBBINS BUILDING
 89 KINGS HIGHWAY
 DOVER, DELAWARE 19901

DIRECTOR'S OFFICE

PHONE
 (302) 739-9910

September 24, 2024

Alexa Fuad
 800 Bay Road
 P.O. Box 778
 Dover, DE 19903

Re: DelDOT 2024 Replacement of BR 3-437 SR54 Lighthouse Rd Fenwick T202007303

Dear Alexa:

Thank you for contacting the Species Conservation and Research Program (SCRP) about information on rare, threatened and endangered species, unique natural communities, and other significant natural resources as they relate to the above referenced project.

State Natural Heritage Site

A review of our database indicates that there are currently no records of state-rare or federally listed plants, animals or natural communities at this project site. As a result, at present, this project does not lie within a State Natural Heritage Site, nor does it lie within a Delaware National Estuarine Research Reserve which are two criteria used to identify “Designated Critical Resource Waters” in the Army Corp of Engineers (ACOE) Nationwide Permit General Condition No. 22. A copy of this letter shall be included in any permit application or preconstruction notification submitted to the Army Corps of Engineers for activities on this property.

A review of our database indicates that the following state-rare or federally listed plants, animals or natural communities occur adjacent to the project site:

Scientific Name	Common Name	Taxon	State Rank	State Status	SGCN Tier	Federal Status
<i>Haematopus palliatus</i>	American Oystercatcher	Birds	S1B	E	Tier 1	
<i>Rallus longirostris</i>	Clapper Rail	Birds	S5		Tier 1	
<i>Sterna forsteri</i>	Forster’s Tern	Birds	S1B	E	Tier 1	
<i>Ammodramus maritimus</i>	Seaside Sparrow	Birds	S4B		Tier 1	
<i>Tringa semipalmata</i>	Willet	Birds	S4B		Tier 1	

Migratory Bird Treaty Act

Bridge 3-437 has not been surveyed for the presence of nesting migratory birds, which are protected by Title 7, Delaware Code, Chapter 7, Sections 734 and 735. It is possible that one or more pairs of barn swallow (*Hirundo rustica*) and/or eastern phoebe (*Sayornis phoebe*) nest under the bridge(s). If work is proposed during the breeding season (**April 15th – August 1st**), a survey should be completed prior to the start of work to determine if nests are present. If a survey detects nesting activity, the following steps should be taken to avoid nest destruction and take, which is a violation of state law:

1. Perform construction activities from **August 1st to April 15th**.
2. If construction cannot be performed in this time period, a deterrent such as mesh netting should be used to block access to nesting sites on the underside of the bridge(s). The material would need to be in place no later than **April 15th**, the underside of the bridge(s) would need to be fully encapsulated, and the material should be left in place until construction begins.

If active nests are discovered during work, activities should be halted immediately and SCRP contacted for further guidance.

Colonial Waterbirds

The proposed project area supports nearby nesting colonial waterbirds (e.g. herons, egrets, gulls, terns) and state-listed endangered American oystercatchers (*Haematopus palliatus*). Disturbance from this project may interrupt vital nesting activities such as egg incubation and protection/feeding of chicks and the foraging and growth of young from surrounding colonies who utilize these marshes. In order to prevent disturbance to breeding activities, we recommend that no work occur at this site between **April 1st and September 15th**. If avoiding doing the proposed work during the time of year listed above is not practicable, please contact our Coastal Waterbird Biologist, Kat Christie (Katherine.Christie@delaware.gov 302-735-3612) to discuss ways that impacts to the nesting colony can be minimized.

Marsh Nesting Birds

We have records of the state-endangered American oystercatcher nesting within the marshes to the north and northwest of the project site. In addition, surveys conducted in the summer of 2023 at adjacent properties detected clapper rail, seaside sparrow, willet, and Forster's tern. As similar habitat is present within the project area, we would expect these species to be present during the breeding season. We request that work is not performed within adjacent wetlands from **April 1st to July 31st** to protect marsh nesting birds and their young. If avoiding doing the proposed work during the time of year listed above is not practicable, please contact our Coastal Waterbird Biologist, Kat Christie (Katherine.Christie@delaware.gov 302-735-3612) to discuss ways that impacts to the nesting marsh birds can be minimized.

Fisheries

Sampling conducted by our Division's fisheries staff revealed that Little Assawoman Bay supports a large number of juvenile migratory fish and is thus considered an important nursery area in the Inland Bays. Several species of particular commercial and recreational importance utilize the creek and could be impacted by this project. A primary species of concern for this

project is Summer Flounder (*Paralichthys dentatus*), which utilizes the creek as a nursery area. We request that demolition of the old structure and placement of the new structure **not** occur from **March 1st to September 30th** to allow time for young of the year to grow large enough to be less vulnerable to habitat-altering activities and then migrate out of the system. This window should minimize the number of young of the year flounder impacted by this bridge replacement.

We are continually updating our records on Delaware's rare, threatened and endangered species, unique natural communities and other significant natural resources. If the start of the project is delayed more than a year past the date of this letter, please contact us again for the latest information.

Please feel free to contact me with any questions or if you require additional information.

Sincerely,



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