



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Chesapeake Bay Ecological Services Field Office
177 Admiral Cochrane Drive
Annapolis, MD 21401-7307
Phone: (410) 573-4599 Fax: (410) 266-9127

In Reply Refer To:

February 22, 2024

Project Code: 2024-0053090

Project Name: T202007303 Replacement of BR 3-437 on Lighthouse Rd

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed, and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through IPaC by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2) (c)). For projects other than major construction activities, the Service suggests that a biological

evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at: <https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts, see [Migratory Bird Permit | What We Do | U.S. Fish & Wildlife Service \(fws.gov\)](#).

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures, see <https://www.fws.gov/library/collections/threats-birds>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/partner/council-conservation-migratory-birds>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Chesapeake Bay Ecological Services Field Office

177 Admiral Cochrane Drive

Annapolis, MD 21401-7307

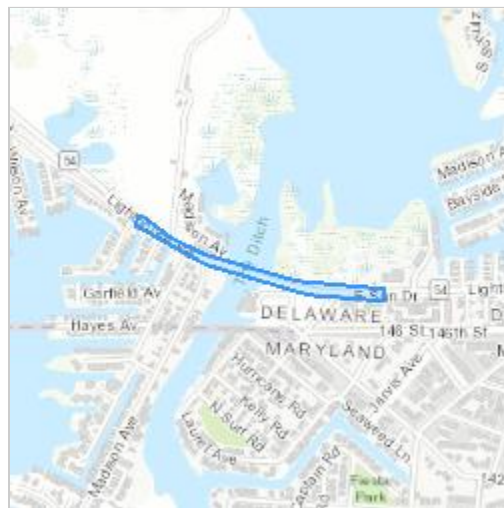
(410) 573-4599

PROJECT SUMMARY

Project Code: 2024-0053090
Project Name: T202007303 Replacement of BR 3-437 on Lighthouse Rd
Project Type: Bridge - Replacement
Project Description: The replacement of bridge BR 3-437 over Little Assawoman Bay in Sussex County, DE. The project extends along SR 54 from the intersection of Bennett Avenue over Little Assawoman Bay to a point just beyond the signalized intersection at Dukes Road.

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@38.45290185,-75.06537027761587,14z>



Counties: Sussex County, Delaware

ENDANGERED SPECIES ACT SPECIES

There is a total of 2 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Note that 1 of these species should be considered only under certain conditions.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

BIRDS

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. This species only needs to be considered under the following conditions: <ul style="list-style-type: none"> ▪ Potential habitat for Black Rail exists in this area. Species profile: https://ecos.fws.gov/ecp/species/10477	Threatened

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

IPAC USER CONTACT INFORMATION

Agency: Delaware Department of Transportation

Name: Wendy March

Address: 800 Bay Road

City: Dover

State: DE

Zip: 19901

Email: wendy.march@delaware.gov

Phone: 3027602129

LEAD AGENCY CONTACT INFORMATION

Lead Agency: Federal Highway Administration

Nein, Craig

From: CBFO Project Review, FW5 <cbfoprojectreview@fws.gov>
Sent: Thursday, March 28, 2024 10:37 AM
To: Pavona, Jamie L.
Subject: Re: [EXTERNAL] DelDOT Priority Status: Normal [T202007303 Replacement of BR 3-437 on SR54 Lighthouse Road]

Hello Jamie,

Thank you for sending this project for review. Given the proximity of this project to development and minimal disturbance to potential habitat, this project is **not likely to adversely affect** Eastern black rail. The Monarch Butterfly is a candidate species and no Section 7 consultation is required at this time. No further Section 7 consultation is required for this project unless project plans change. Please let me know if you have any questions.

Raquel Wetzell
US Fish and Wildlife Service
Chesapeake Bay Field Office
177 Admiral Cochrane Dr.
Annapolis, MD 21401

From: Pavona, Jamie L. <JLPavona@mccormicktaylor.com>
Sent: Monday, February 26, 2024 5:04 PM
To: EnvReview, DNREC (MailBox Resources) <DNREC_EnvReview@delaware.gov>; CBFO Project Review, FW5 <cbfoprojectreview@fws.gov>
Cc: March, Wendy A. (DelDOT) <Wendy.March@delaware.gov>; Smith, Anna (DelDOT) <Anna.Smith@delaware.gov>
Subject: [EXTERNAL] DelDOT Priority Status: Normal [T202007303 Replacement of BR 3-437 on SR54 Lighthouse Road]

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Good afternoon,

This e-mail provides a brief description of an upcoming DelDOT project. DelDOT is requesting your review and response concerning the presence of rare, threatened, or endangered species within the project area for the project described below. Additionally, please forward any information you have regarding State Natural Heritage Sites, Delaware National Estuarine Research Reserves, and Fisheries within the project area.

DelDOT Priority Status: Normal; [T202007303 Replacement of BR 3-437 on SR54 Lighthouse Road (Sussex County, Delaware)]: The purpose of this project is to replace Bridge 3-437 over Little Assawoman Bay in Fenwick Island, DE. The project extends along SR 54 from the intersection of Bennett Avenue over Little Assawoman Bay to a point just beyond the signalized intersection at Dukes Road. Additional improvements include reconfiguring the intersection of Bennett Avenue and Lighthouse Road just west of the bridge. Bennett Avenue will be realigned and traffic signal/turn lanes as well as pedestrian crosswalks will be added. Pedestrian crosswalks are also proposed at:

- The intersection of Lighthouse Road & Dukes Avenue
- The intersection of Lighthouse Road & Old Lighthouse Road

The existing bridge has an out-to-out width of 39'-6" with two (2) 12-foot travel lanes, two (2) 2-foot shoulders, and 4'-6" sidewalks on both sides of the bridge. The proposed bridge will have an out-to-out width of 58'-8" with two (2) 12-foot travel lanes, one (1) 11'-2" median/center lane that could be used for evacuation, two (2) 5-foot shoulders/bike lanes, and 5'-9" sidewalks on either side of the bridge. The sidewalks will also be extended on all four corners of the bridge. The existing bridge has 10 piers, and the proposed bridge will have 5 piers with increased span lengths which will increase the navigation channel width. Temporary closures of the waterway will be required during parts of construction. Proposed work will be completed in stages and from trestles on alignment. Barges will be utilized for laydown and manlifts. The existing and proposed bridge dimensions are attached, as well as anticipated impacts to property owners.

IPaC: There were hits for monarch butterfly (*Danaus plexippus*) and eastern black rail (*Laterallus jamaicensis*). The **not likely to adversely affect** concurrence letter for eastern black rail is attached.

EFH: The Essential Fish Habitat Mapper was reviewed and there are several species potentially located within the project area. The proposed project is located within a tidal waterbody and DelDOT will consult with NOAA Fisheries to evaluate project effects to EFH.

ESA Section 7: The NOAA Fisheries Greater Atlantic Region ESA Section 7 Mapper was reviewed and there are ESA-listed species under NOAA jurisdiction potentially present within the project area. DelDOT will consult with NOAA Fisheries to evaluate project effects to ESA-listed species.

Barriers: The Aquatic Barrier Prioritization Map was reviewed and there are no downstream barriers that would prevent fish from entering the project area. DelDOT will assume the NWP G-5(b) time of year restriction applies.

If you have any questions or require additional information to complete your review, please do not hesitate to contact me via email or at the number below. Thank you for your assistance; we look forward to working with your agency to successfully complete this project.

Thanks,
Jamie

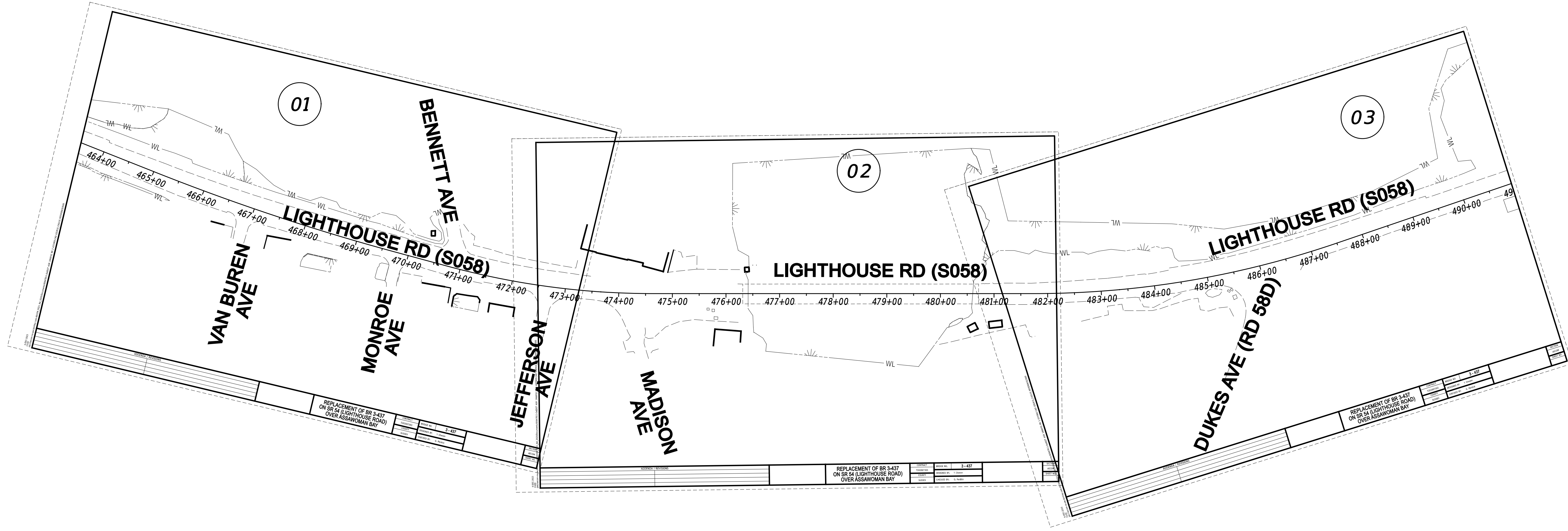
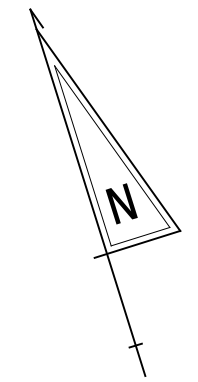
Jamie L. Pavona (she/her)
Environmental Scientist II
O 215.592.4200 | D 215.309.6469
jlavona@mccormicktaylor.com

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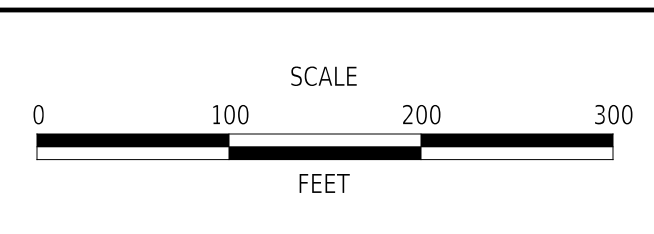
APPENDIX D DESIGN PLANS

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ADDENDA / REVISIONS



**REPLACEMENT OF BR 3-437
 ON SR 54 (LIGHTHOUSE ROAD)
 OVER ASSAWOMAN BAY**

CONTRACT	BRIDGE NO.	3 - 437
T202007303	DESIGNED BY:	Y. Ghanem
COUNTY	CHECKED BY:	G. Perdick
SUSSEX		

INDEX OF SHEETS	SECTION
	AECOM
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