

**APPENDIX F**

**ADDITIONAL**

**AGENCY CORRESPONDENCE**





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
55 Great Republic Drive  
Gloucester, MA 01930-2276

SEP 24 2012

Gregory Murrill, Division Administrator  
Federal Highway Administration  
DelMar Division  
10 South Howard Street, Suite 2450  
Baltimore, MD 21201

Dear Mr. Murrill,

We would like to offer the following comments in response to your letter dated August 15, 2012, and other correspondence related to a consultation, pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended, regarding the Governor Harry W. Nice Memorial Bridge Improvement Project over the Potomac River in Maryland.

Coordination on the proposed project has been ongoing between NOAA's National Marine Fisheries Service (NMFS) and the US Federal Highway Administration (FHWA) since 2008. You would like to eventually initiate Section 7 consultation with us regarding the impacts of the proposed project on the federally-listed shortnose sturgeon (*Acipenser brevirostrum*) and the five distinct population segments (DPSs) of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) that may use the Potomac River. Section 7 consultation is necessary as certain aspects of the proposed project, specifically the construction activities (*i.e.*, dredging, pile driving, etc.) of a new bridge over the Potomac River, may affect shortnose and Atlantic sturgeon. Since 2008, discussions between FHWA and NMFS have been ongoing regarding how to proceed with this consultation as the bridge is not yet designed and, therefore, it is not currently possible to adequately analyze the effects of its construction on shortnose and Atlantic sturgeon in the Potomac River. The project proponent, the Maryland Transportation Authority (MDTA), has determined that a final design for the bridge will not be prepared for several years.

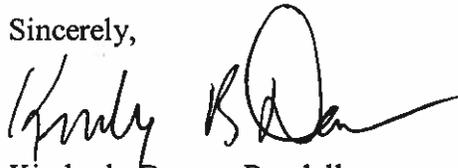
You have been working with the MDTA to address the potential impacts to sturgeon in their project scoping, and FHWA will be reviewing and approving the final design for the bridge when it is prepared. At that time, a final Biological Assessment shall be prepared for NMFS that will assess the impacts of the proposed bridge construction on listed species in the Potomac River. Once the bridge design is complete and a final BA prepared, we anticipate that we will have the information necessary to conduct a section 7 consultation.

We agree that this approach is the most practical way to move forward with the consultation on this project, and that your information and analysis in the draft Biological Assessment supports a path forward for the final design of the bridge improvement project that will minimize effects to listed species. We expect to receive periodic updates from the FHWA on the progress of the project and the development of the final bridge plans.



My staff looks forward to continuing to work cooperatively with your staff as this project moves forward. Should you have any questions regarding this correspondence, please contact Chris Vaccaro of my staff at (978)281-9167 or by e-mail ([Christine.Vaccaro@noaa.gov](mailto:Christine.Vaccaro@noaa.gov)).

Sincerely,



Kimberly Damon-Randall  
Acting Assistant Regional Administrator  
for Protected Resources

Ec: Vaccaro/FNER3  
Nichols/FNER4  
Jeanette Mar, FHWA  
Brian Yanchik, FHWA

File Code: Sec 7 FHWA Nice Bridge Project  
PCTS: T/NER/2008/00196

SEP 26 2012



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**DelMar Division**

August 10, 2012

10 South Howard Street, Suite 2450  
Baltimore, MD 21201  
(410) 962-4440  
(410) 962-4054  
<http://www.fhwa.dot.gov/demddiv/>

In Reply Refer To:  
HDA-MD  
VA 2006-1393

Ms. Christine Vaccaro  
U.S. Department of Commerce  
NOAA/NMFS  
Protected Resources Division  
55 Great Republic Drive  
Gloucester, MA 01930

Dear Ms. Vaccaro:

Pursuant to the requirements of Section 7 of the Endangered Species Act, this letter serves to continue informal consultation between the Federal Highway Administration (FHWA), the Maryland Transportation Authority (MDTA) and the National Marine Fisheries Service (NMFS) for the Governor Harry W. Nice Memorial (Nice) Bridge Improvement Project. Based on discussions between FHWA, MDTA and NMFS during the May 7, 2012 conference call, we are transmitting further revisions to the project's Biological Assessment (BA). These revisions incorporate the Performance Specifications you previously reviewed, the time-of-year restriction bar chart, and new documentation concerning the Chesapeake Bay distinct population segment of *Acipenser oxyrinchus oxyrinchus* (Atlantic sturgeon), which became listed as endangered effective April 6, 2012. As noted during the conference call, the intent of the Performance Specification is to ensure future decisions on the bridge type, foundation design, and construction methods that promote achievement of the underwater noise standards, thereby preventing impacts to the endangered sturgeon species from occurring. The revisions also emphasize MDTA's commitment to prohibiting in-water construction of bridge foundations during the sturgeon spring migration period unless there is full compliance with the following underwater noise standards:

- At least 40% of the Potomac River width will be maintained with sound levels less than 187 dB re  $1\mu\text{Pa}^2\text{-s}$ ; and
- At least 25% of the Potomac River width will be maintained with noise levels less than 150 dB re  $1\mu\text{Pa}$  RMS for at least 12 hours per day.

As suggested during the conference call, we cordially request you provide written confirmation that the MDTA's preliminary analysis and commitments presented in the revised BA are appropriate steps toward ensuring the project is moving in the right direction and not likely cause any significant impacts to either species of endangered sturgeon. As this project progresses through design, avoidance and minimization measures will continue to be evaluated. Further coordination will be undertaken with NMFS when the type of bridge structure has been

continued coordination with NMFS during design will preserve the flexibility to consider alternative construction methods to avoid impacts to the endangered shortnose and Atlantic sturgeon. We hope that we can move forward with our environmental document and that NMFS is in agreement with the appropriateness of all the coordination efforts taken to date and the analysis needed at this time to minimize and avoid project impacts to the shortnose and Atlantic sturgeon. We appreciate your expertise and guidance on this matter and look forward to receiving your response within 45 days of receipt of this letter.

If you have any questions please contact Ms. Jeanette Mar (Environmental Program Manager, FHWA) at 410-779-7152 or Mr. Glen Smith (Program Manager, MDTA) at 410-537-5665.

Sincerely yours,

*Jeanette Mar*

*for* Gregory Murrill  
Division Administrator



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**DelMar Division**

November 1, 2011

10 South Howard Street, Suite 2450  
Baltimore, MD 21201  
(410) 962-4440  
(410) 962-4054  
<http://www.fhwa.dot.gov/demddiv/>

In Reply Refer To:  
HDA-MD  
709

Mr. Don Halligan Director,  
Office of Planning and Capital Programming, MDOT  
7201 Corporate Center Drive  
P.O. Box 548  
Hanover, Maryland 21076

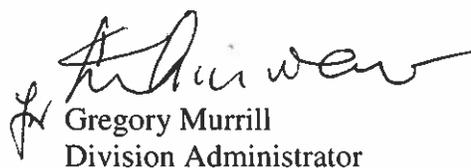
Dear Mr. Halligan:

We have completed our review of the State request (MDOT Control # 11-44) to modify the Fiscal Year (FY) 2011 Statewide Transportation Improvement Program (STIP) and FY 2011-2016 Transportation Improvement Program (TIP) for the National Capital Region Transportation Planning Board. Specifically, the STIP/TIP is being modified to transfer funds from the construction Phase into the Preliminary Engineering and Right-of-Way Phases for many Grouped Projects for FY 12. There is no change in total project cost for these Grouped Projects.

We accept this amendment and find that it was developed based on a continuing, cooperative, and comprehensive transportation planning process, in accordance with 23 U.S.C. 134, 23 U.S.C. 135 and 49.

If you have any questions, regarding this STIP/TIP amendment please contact Kwame Arhin at (410) 779.7158.

Sincerely yours,

  
Gregory Murrill  
Division Administrator

cc:  
Heather Murphy, SHA  
Mike Nixon, MDOT  
Mary Deitz, SHA



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**DelMar Division**

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Office of Planning and Capital Programming, MDOT  
7201 Corporate Center Drive  
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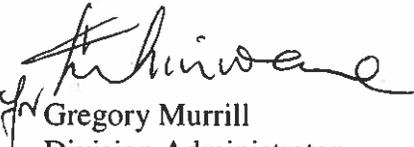
Dear Mr. Halligan:

We have completed our review of the State request (MDOT Control # 11-46) to modify the Fiscal Year (FY) 2011 Statewide Transportation Improvement Program (STIP) and FY 2011-2016 Transportation Improvement Program (TIP) for the National Capital Region Transportation Planning Board. Specifically, the STIP/TIP is being modified to transfer funds from FY 11 to FY 12 for the Governor Harry W. Nice Bridge Improvement Project.

We accept this amendment and find that it was developed based on a continuing, cooperative, and comprehensive transportation planning process, in accordance with 23 U.S.C. 134, 23 U.S.C. 135 and 49.

If you have any questions, regarding this STIP/TIP amendment please contact Kwame Arhin at (410) 779.7158.

Sincerely yours,

  
Gregory Murrill  
Division Administrator

cc:

Heather Murphy, SHA  
Mike Nixon, MDOT  
Mary Deitz, SHA  
Glen Smith, MdTA