

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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John Petrilla
BPAM NEPA
U.S. Customs and Border Protection
24000 Avila Road, Suite 5020
Laguna Niguel, CA 92677

Subject: Draft Environmental Assessment for the Proposed New Wellesley Island
Border Patrol Station, Orleans, New York, U.S. Customs and Border
Protection, U.S. Border Patrol, Buffalo Sector, New York

Dear Mr. Petrilla:

Thank you for the opportunity to review the draft Environmental Assessment ("EA") and draft Finding of No Significant Impact (FONSI) for the proposed Border Patrol Station in the Town of Orleans, Jefferson County, New York.

The project includes permanent taking of 0.1 acres of freshwater wetland at the site. The wetlands at the site are mapped as state-regulated Freshwater Wetlands under Environmental Conservation Law Article 24. Hardening of surfaces and activities in proximity to a wetland will have continuing adverse effects. Consequently, New York State regulates activities within a 100-foot buffer area around state-regulated wetlands. The draft EA does not appear to show how the overall project footprint will affect the 100-foot adjacent area of the wetlands at the site.

This project includes disturbance of the bed and banks of the St. Lawrence River and associated wetlands that are inundated at mean high-water. Therefore, the project will have to meet permit issuance standards under Article 15 of the Environmental Conservation Law as well as a Water Quality Certification under section 401 of the Clean Water Act.

Blind Bay provides critical habitat for biodiversity and muskellunge spawning habitat. Muskellunge is a Species of Greatest Conservation Need (SGCN), and the St. Lawrence River population is the focus of several years of restoration efforts, particularly since it suffered significant declines due to disease, pressure from invasive species, and habitat loss. Decades of monitoring in Blind Bay by SUNY College of Environmental Science and Forestry demonstrated it is one of, if not the most important sites of population recovery in the system and the quality of the habitat continues to support muskellunge production. Additionally, in 1993 embayments in the vicinity of

Blind Bay were included in the NYS Department of State's designation of Significant Coastal Habitat (St. Lawrence River Shoreline Bays). Since then, research has demonstrated muskellunge use of Blind Bay; therefore, the future addition of this area to the St. Lawrence River Shoreline Bays is warranted. More importantly, sampling at this location confirmed the presence of other SGCN (i.e., American eel [high priority], blackchin shiner, blacknose shiner and bridle shiner; all vulnerable to critically imperiled, and pugnose shiner). Pugnose shiner is regulated as an endangered species in New York State with a S1S2 imperiled or critically imperiled ranking.

The binational Great Lakes Water Quality Agreement ("Agreement"), effective September 7, 2012, between the United States and Canada, includes a series of programmatic principles in Annex 7 - "Habitat and Species" that commit the U.S. government as Party to the agreement to "programs and other measures [that] will also contribute to recovery of populations of species at risk, restoration of degraded native habitat and species, and a net gain in habitat." The destruction of wetlands habitat and incidental taking of the species identified above would be contrary to the United States government's commitment to the Agreement.

The EA appears to ignore aquatic invasive species which are a significant concern in the St. Lawrence River. Section 4.3 refers to use of native species for revegetation, using erosion control materials free of non-native plant seeds, and prevention of colonization of the site by invasive species through vegetative management. This all implies a focus on terrestrial invasive species. However, in addition to displacing native species, the boat ramp and dock and associated activities are likely to attract and provide habitat for aquatic invasive species. This would compound adverse effects of loss of habitat that sustains native species.

Similarly, section 4.4 of the EA appears to address rare, threatened, and endangered species in terms of terrestrial species while the species of concern at this site are aquatic. The proposed environmental awareness training and best management practices would not appear to be relevant or effective in protecting member species.

Destruction of occupied habitat of rare and endangered species is considered a taking of the species under 6 NYCRR Part 182. As with permitting for excavation and fill in the wetland, destruction of habitat for rare or endangered species requires a demonstration that avoidance was not possible. The EA addresses only two options: no action or the project as proposed. A more robust alternative analysis would generally be necessary to demonstrate that avoidance was not possible. If such a demonstration were made, any permit application would have to propose mitigation or compensation measures that would be undertaken to provide a net conservation benefit for the affected species.

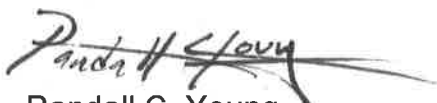
Any proposal for mitigation is only acceptable if the lost functions and benefits are increased and/or enhanced such that the species in question is better off because of the mitigation. Successful mitigation of habitat for the species in question would be extremely difficult to assure. The EA does not provide information indicating mitigation for specific project impacts will be taken or if it would be possible. Considering the possibility of failure of mitigation and that an endangered species is present, the potential for permanent and significant environmental impact is high.

The EA also does not address the effects from continuing use of docks, which will likely negatively impact the ecology of this site. The scope of any mitigation proposal should take this into account.

Based on the information presented, including the permanent taking of habitat for rare and endangered species and SGCN, the draft Environmental Assessment does not support a Finding of No Significant Impact.

Thank you again for the opportunity to review the Draft Environmental Assessment and draft Finding of No Significant Impact. The Department supports the mission of the United States Customs and Border Patrol; however, the proposed project appears likely to cause a significant environmental impact. If you would like to discuss these matters with the Department's staff, please contact me.

Sincerely,



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Regional Director
NYSDEC Region 6

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