

April 30, 2012

Eric Davis, Field Office Supervisor
U.S. Fish and Wildlife Service
927 N. Main Street, Building D
Pleasantville, NJ 08232

Dear Supervisor Davis:

I am writing on behalf of Public Employees for Environmental Responsibility (PEER) to bring important, and what we believe are disturbing, ongoing and proposed activities to your attention regarding threats to federally protected resources located in and around Bull's Island State Park. The Island is located in Delaware and Kingwood Townships (Hunterdon County), New Jersey, along the Delaware River, approximately 25 miles north of Trenton.

As you know, the Island provides documented habitat for and supports the presence of critically endangered Indiana Bat. We believe that the state actions on Bull's Island may constitute an unpermitted "take" in violation of the federal Endangered Species Act.

Similarly, Bull's Island provides habitat for Cerulean Warbler populations and for an estimated dozen other bird species protected under the Migratory Bird Treaty Act. We also understand that the Island is located on the edge of protected bald eagle foraging habitat.

In the course of a routine walk in the park in early March, I discovered three troubling activities underway:

- 1) Dredging of the D&R Canal, apparently in violation of USACE, NJDEP, and local Soil Conservation District permits;
- 2) Bulldozing of riparian vegetation and deposit of fill to a depth of 3-4 feet along 450 feet of the Delaware River;
- 3) Scores of trees were tagged, apparently for removal, and some large sycamores had recently been cut.

PEER referred these activities for enforcement action to the agencies with jurisdiction and regulatory oversight: the U.S. Army Corps of Engineers (USACE), the New Jersey Department of Environmental Protection (DEP), the Delaware & Raritan (D&R) Canal Commission, Hunterdon County Soil Conservation District, and the Delaware River Basin Commission.

In response, we understand that the USACE and DEP Land Use enforcement have halted the dredging operation and mandated restoration of the D&R Canal and Delaware riverfront.

More significantly, a subsequent public record request and file review at DEP revealed a state plan to clear-cut 5.22 acres, including the removal of 204 mature trees and all vegetation from the northern portion of the Island. We believe that the implementation of the clear-cut plan may be imminent, as a February 8 2012 memorandum to DEP Commissioner Martin advised:

"... we are proceeding with removal of all vegetative material in the upper section of Bull's Island" http://peer.org/docs/nj/4_17_12_DEP_clearcut_plans.pdf

During a follow-up field visit on April 24, I witnessed cutting of trees, apparently in violation of U.S. Fish & Wildlife Service (USFWS) forest management requirements designed to protect Indian Bat and the Conservation Action Plan for Cerulean Warbler.

This tree cutting activity and prior riparian destruction appear to violate several USFWS "Best Management Practices" to protect Indian bat, including:

- Seasonally restrict clearing of trees greater than 5 inches dbh from April 1 to September 30 within the geographic summer range of the Indiana bat. Extend the seasonal restriction to November 15 if within 10.0 miles of a hibernaculum.
- Minimize tree clearing, especially of highly suitable roost trees including snags (dead trees), shagbark hickories (*Carya ovata*), other trees with shaggy or exfoliating bark, and trees of any species over 26 inches dbh.
- Avoid impacts to known roosts during any time of year.
- Avoid or minimize impacts to known roosting/foraging areas any time of year.
- Permanently protect known roosting/foraging habitat.
- Avoid disturbance to riparian areas. Within areas of known fall foraging, summer maternity, and migration route habitats, preserve and restore wooded upland buffers at least 150-foot-wide on wetlands and open waters, and at least 300-foot-wide where possible and/or required by State regulation.
[<http://www.fws.gov/northeast/njfieldoffice/Endangered/Ibat.html>]

Moreover, the tree cutting appears to violate the conditions USFWS Forest management recommendations:

"2. Retain standing snags, except where they pose a serious human safety hazard due to their location near a building, yard, road or powerline. A live tree with less than 10% canopy should be considered a snag. Snags with no remaining bark and no visible cracks, splits, or hollows may be felled, as well as any snags leaning more than 45° from vertical. When possible, delay removal of hazard trees until

bats are hibernating (between November 15 and March 31).”
<http://www.fws.gov/northeast/njfieldoffice/pdf/IbatForest.pdf>

In addition to this ongoing current tree cutting activity, the DEP plan to clear-cut the Island would undoubtedly destroy habitat of federally protected resources.

This ongoing and planned destruction of habitat is particularly problematic for cerulean warbler, which is federally protected and is recognized as a “species of special concern” by DEP. According to the USFWS Cerulean Warbler management plan which finds:

“Limiting factors for Cerulean Warblers are not well understood. However, it is widely assumed that loss of habitat quantity and degradation of habitat quality on the non-breeding and breeding habitats are critical factors that have contributed to the observed declines.”

Based on that finding, the management plan recommends:

“Conservation Actions to Address Threats to Breeding Habitat and Information Gaps during the Breeding Period

Improve Cerulean Warbler breeding habitat in North America...

Develop and implement forest management recommendations for Cerulean Warblers that can be incorporated into management plans for public and private forestlands within the breeding range – including the monitoring of fitness parameters so that effects of management actions can be assessed...

Reduce forest fragmentation and prevent major forest loss on the breeding grounds.”

The proposed clear-cut would completely undermine these recommended management steps.

PEER urges your immediate investigation and review of this matter. We are concerned that the current and planned DEP actions on the Island are both imprudent and illegal. Further, we hope that you induce DEP to enter into consultation so that further violations can be avoided and so that habitat values for these protected species can be maximized.

Sincerely,

Bill Wolfe
Director
New Jersey PEER