



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Chicago Ecological Services Field Office
1250 South Grove Avenue, Suite 103
Barrington, Illinois 60010
Phone: (847) 381-2253 Fax: (847) 381-2285

IN REPLY REFER TO:
FWS/AES-CIFO/2008-FA-0250

Phillis Johnson-Ball
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423
Environmental Filing
STB Finance Docket No. 35087

Surface Transportation Board February 8, 2008

CN-EJ&E TRAP-07

Log and Inventory

Draft Report

HDR File No.

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Cc: Original - 1/8/08

Dear Ms. Johnson-Ball:

HDR

This responds to your request for comments on the draft scope of study for the proposed Canadian National Railway Company (CN) acquisition of the Elgin, Joliet, and Eastern Railway Company (EJ&E). We provide general comments as they relate to Service trust resources that may be affected by the proposed acquisition and subsequent activities. We recommend that the draft Environmental Impact Statement (dEIS) fully the issues raised in this letter.

CN's proposed acquisition of EJ&E would shift rail traffic currently using CN's rail lines inside the EJ&E arc in Chicago to the EJ&E, generally to rail lines in the northern, western, and southern Chicago suburbs. Rail traffic on CN rail lines inside the EJ&E arc would generally decrease. Rail traffic outside of the EJ&E arc would increase, with 15-27 more trains on various segments of the EJ&E. CN also proposes to construct six new rail connections and approximately 19 miles of new siding/double tracking. Specific locations of proposed construction activities were not provided. CN notes three primary reasons for the proposed acquisition: improved rail operations in the Chicago area, availability to EJ&E's Kirk Yard in Gary, and improved service to companies dealing in steel, chemicals, and petrochemicals.

We reviewed the information provided with your request for comments on the draft scope of study. We checked our records for the presence of federally listed species and other Service trust resources that may be affected by the proposed project. Based on our review we have concerns about the proposed project and its effects on various trust resources. Our concerns are identified below.

Federally listed speciesHine's emerald dragonfly

The map obtained from STB's website highlights an EJ&E spur which runs north of Joliet, Illinois, through Lockport, Illinois as being part of the acquisition. We do not have specific information about what proposed activities would occur on this spur. However, we have concerns about impacts to the federally endangered Hine's emerald dragonfly (HED) which occurs in some areas adjacent to the spur.

The HED is currently only found in a few regions of the Midwestern United States. One of these regions includes the lower Des Plaines River Valley. Some of the wetlands within the lower Des Plaines River Valley are considered important habitat for the HED. These wetlands receive groundwater flows from adjacent upland areas. Some of these important wetlands are along the EJ&E railroad spur which runs along the east side of Route 53 through Lockport Prairie Nature Preserve (LPNP) and through private land occupied by HEDs.

Critical habitat has recently been designated by the Service and includes these wetlands (see enclosure – Critical Habitat Units 1 and 2). Critical habitat, under the Endangered Species Act (Act), identifies geographic areas that contain features essential for the conservation of a threatened or endangered species and that may require special management considerations or protection. Critical habitat receives protection under Section 7 of the Act through prohibition against adverse modification of critical habitat. We have been engaged with land, utility, and railroad owners (including attempts to engage CN) in order to protect this sensitive species.

We have also been working to bring together a diverse group of stakeholders to create a Habitat Conservation Plan (HCP) to conserve the dragonfly. HCPs are legally binding agreements between the Secretary of the Interior and a non-Federal entity that specifies conservation measures that will be implemented in exchange for a permit that would allow for the incidental take of a threatened or endangered species.

Both larvae and adults could be impacted by the proposed acquisition activities. Larvae live in rivulets and seepage areas within wetland systems for 3 to 5 years. Larvae then crawl out of the water and shed their skin a final time, emerging as flying adults. Adults can live at least 14 days and may live 4 to 6 weeks. During that time they use wetlands as well as a mixture of adjacent uplands. Potential adverse impacts to HED larvae and critical habitat include: increased sedimentation and hydraulic pumping of sediments into habitat caused by increased vibration of excess freight cars; contamination of surface water and groundwater from freight cars transporting chemicals; sedimentation and alteration of breeding habitat from railroad maintenance (including herbicide treatment of plants growing within the railroad right-of-way); and decreased water quality and loss of larvae. The potential impact to HED adults is the direct collision with freight cars.

Eastern prairie fringed orchid

A population of the federally threatened eastern prairie fringed orchid is found in West Chicago Prairie in DuPage County, just west of the EJ&E rail lines. This population is very small (fewer than six plants) and vulnerable to impacts. Potential impacts from acquisition activities include: increased sedimentation caused by increased vibration of excess freight cars; contamination of surface water and groundwater from freight cars transporting chemicals; and hydrological changes in wetlands caused by increased railroad activities. The combined effects of these impacts could lead to decreased water quality and increased competition from invasive plant species. In addition to the known population in West Chicago Prairie, unknown populations of the orchid may be present in suitable wetlands along the EJ&E rail line.

Leafy prairie clover

A population of the federally endangered leafy prairie clover is found in LPNP in Will County, east of the EJ&E rail lines. Potential impacts from acquisition activities include: contamination of surface water and groundwater from freight cars transporting chemicals and hydrological changes in wetlands caused by increased railroad activities. These impacts could lead to decreased water quality and increased competition from invasive plant species.

Lakeside daisy

A population of the federally threatened leafy prairie clover is found in LPNP in Will County, east of the EJ&E rail lines. Potential impacts from acquisition activities include contamination from freight cars transporting chemicals.

Piping plover

The map obtained from STB's website shows that the EJ&E rail line ends near the shoreline of Lake Michigan, in the City of Waukegan, Illinois. USGS topographic maps and aerial photography show that the EJ&E terminates at a rail yard adjacent to the Waukegan Beach Illinois Natural Areas Inventory (INAI) site. Piping plover could occur at the Waukegan Beach INAI site. Scattered nesting populations of this shorebird formerly occurred around the shoreline areas of much of the Great Lakes. Historical declines in the populations have been caused by shoreline habitat alteration, and disturbances caused by human activities. A few dozen breeding pairs are known to persist in the Great Lakes. The last documented nesting by plovers in Illinois was in 1973. Because of very low population size, this species is extremely vulnerable to human-caused or natural events.

The Service designated critical habitat for the Great Lakes population in 2001. Recognizing that recovery of this species would include nesting along the Lake Michigan shoreline in Illinois, the Illinois critical habitat unit is located along the Lake Michigan Shoreline in the northeastern part of Lake County. Approximately 10.2 kilometers of Lake Michigan shoreline habitat in northeastern Illinois were included in that designated unit. The unit extends from 17th Street in Illinois Beach State Park, southward to the northern Waukegan Beach breakwater, but excludes the public beach and campground in the state park. The Waukegan Beach INAI site is within the designated unit.

In recent years small groups of piping plovers have been somewhat regularly observed in northeastern Illinois along the Lake Michigan shoreline during spring and fall migration. Potential adverse impacts to piping plover include disturbance from rail road activities and contamination from freight cars transporting chemicals. Disturbance during spring migration could cause migrating plovers to continue moving northward rather than nesting in Illinois.

Section 7 of the Endangered Species Act of 1973, as amended, requires Federal agencies to use their authorities to further the conservation of listed species. Part of that responsibility includes the requirement to consult with the U.S. Fish and Wildlife Service on any Federal action (funding, authorization, or construction) if it is determined that the Federal action may directly or indirectly affect a listed species or designated critical habitat. Formal consultation is required when a Federal action may adversely affect a federally listed species or designated critical habitat. Because this project may result in several avenues for direct or indirect impacts affecting listed species, we recommend that the STB maintain close contact with our office throughout the development of the EIS. During this informal process we would hope to resolve all issues prior to entering formal consultation. While you are developing project plans you may not make any irretrievable or irreversible commitments of resources that would preclude alternatives that would avoid jeopardizing the continued existence of a federally listed species or avoid adversely modifying or destroying critical habitat.

Migratory birds

The Service is authorized to protect migratory birds under the Migratory Bird Treaty Act. Habitat for migratory birds, including wetlands, is located along the EJ&E arc on public (forest preserves, dedicated nature preserves, and INAI sites) and private land.

Numerous studies have identified the adverse impacts of anthropogenic noise on birds. Potential impacts of railroad noise on birds include: the inability of conspecifics to hear calls (e.g., mating, alarm, and location calls); a reduction in territorial defense; and a reduction in breeding behaviors. These impacts could result in reduced fitness, decreased reproductive success, and death.

Birds of special conservation attention could be found along the arc. For example, the arc crosses through Pratt's Wayne Woods owned by the Forest Preserve District of DuPage County. Several species found at Pratt's Wayne Woods are listed on the Service's Region 3 Fish and Wildlife Resource Conservation Priorities (RCP) list and the Service's Birds of Conservation Concern 2002 (BCC) list. Of these species, American bittern and black tern are on both lists. Least bittern, black-crowned night heron, king rail, and common moorhen are on the RCP list. All of these bird species are listed due to their rare or declining status and therefore, have a need for special conservation attention. Additionally, several waterfowl that likely use the Pratt's Wayne Woods wetland are listed on the RCP list for their recreational/economic value. These waterfowl species include Canada goose, blue-winged teal, northern pintail, mallard, and wood duck. For more information on the RCP and BCC lists, visit the following websites:

<http://www.fws.gov/midwest/News/documents/priority.pdf> and
<http://www.fws.gov/migratorybirds/reports/BCC02/BCC2002.pdf>.

Several wetland dependant birds, such as the king rail, and upland species have also been identified as focal species by the Service's "Focal Species Strategy for Migratory Birds." The strategy was initiated to provide explicit, strategic, and adaptive sets of conservation actions required to return species of concern to healthy and sustainable levels. For more information on the Focal Species Strategy, visit the following website: <http://www.fws.gov/migratorybirds/>.

Wildlife Habitat

In addition to Service trust resources, wildlife habitat is located along the entire EJ&E arc and is found on various forest preserves, dedicated nature preserves, and INAI sites. These areas support Service trust resources and provide high quality natural communities and suitable habitat for state listed species. The Illinois Department of Natural Resources should be contacted to determine the location of all nature preserves and INAI sites along the arc.

Numerous wetlands are located along the EJ&E arc. Some of these wetlands are high quality wetlands that have been identified (in Advanced Identified Wetland studies or other County studies) for their high biological and/or high functional values. Potential impacts to wetlands from acquisition activities include: loss of wetland acreage; decreased floristic quality; hydrological changes which could lead to lower biological and functional values; increased sedimentation; and contamination of surface water and groundwater from freight cars transporting chemicals.

The dEIS should address all potential impacts, including cumulative impacts, to the Federal trust resources and habitats listed above. The dEIS should also include information on how impacts would be avoided and specifically describe methods proposed to mitigate for unavoidable impacts. In addition we recommend that the dEIS include:

- a detailed map of the EJ&E arc indicating the exact locations of all proposed construction activities;
- a wetland delineation and floristic quality assessment for all wetlands along the entire EJ&E arc;
- a discussion of methods proposed to prevent invasive plant introductions, into the habitat of listed species, through railroad activities and maintenance;
- a discussion of measures proposed to prevent chemical spills and contingency plans to deal with spills if they occur;

Finally, we recommend that STB hold periodic stakeholders meetings to address environmental concerns of all stakeholders involved with EJ&E acquisition.

This letter provides comment under the authority of, and in accordance with, the provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*) and the Endangered Species Act of 1973, as amended (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

If you have any questions, please contact Mr. Shawn Cirton at 847/381-2253, ext. 236.

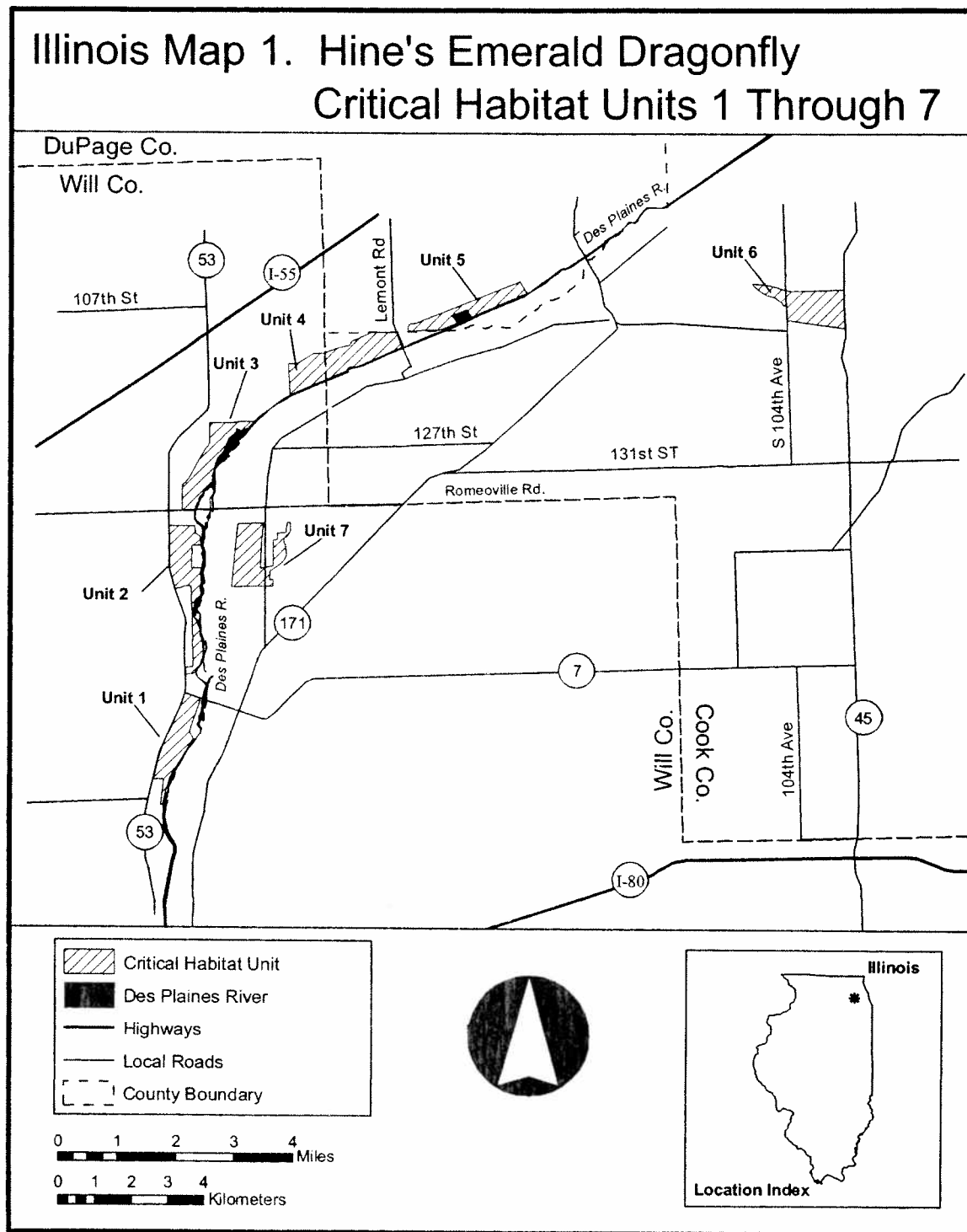
Sincerely,

A handwritten signature in black ink, appearing to read "Karl D. Rogner".

John D. Rogner
Field Supervisor

Active

Enclosure



(7) Michigan Unit 3, Mackinac County, Michigan.

(i) Michigan Unit 3: Mackinac County. Located on the east end of Bois Blanc Island. Bois Blanc Island has not adopted an addressing system using the

public land survey system. The unit is located in Government Lots 25 and 26 of the Cheboygan and McRae Bay 7.5' USGS topographic quadrangles. The unit extends from approximately Walker's Point south to Rosie Point on

the west side of Bob-Lo Drive. It extends from the road approximately 328 ft (100 m) to the west.

(ii) Note: Map of Michigan critical habitat Unit 3 (Michigan Map 1) follows: