



ARKANSAS DEPARTMENT OF TRANSPORTATION

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INTEROFFICE MEMORANDUM

February 15, 2023

TO: Master Files

FROM:  John Fleming, Division Head, Environmental Division 

SUBJECT: Job 050466
FAP ER-0032(41)
Hwy. 167 Slide Repair (Independence Co.) (S)
Route 167, Section 18
Independence County
Tier 1 Categorical Exclusion

The project proposes to repair a slide on Highway 167 in Independence County by placing riprap over a 0.9 acre section of existing right of way.

The project will not involve relocations, prime farmlands, wetlands, underground storage tanks, hazardous materials, any environmental justice issues, or cultural resources. This project has been determined to generate minimal air quality impacts for Clean Air Act criteria pollutants and has not been linked with any special mobile source air toxics concerns. The cultural resources clearance is attached.

The official species list obtained from the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation (IPaC) identified the following species as potentially occurring within the project boundaries: gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), alligator snapping turtle (*Macrochelys temminckii*), Ozark hellbender (*Cryptobranchus alleganiensis bishopi*), Monarch butterfly (*Danaus plexippus*), Missouri bladderpod (*Physaria filiformis*), and pondberry (*Lindera melissifolia*). See the attached USFWS species list.

Utilizing the Determination Keys in IPaC, it has been determined that the project will have “no effect” on Indiana bat, northern long-eared bat, Eastern Black Rail, Piping Plover, Red Knot, alligator snapping turtle, Missouri bladderpod, and pondberry and “may affect but is not likely to adversely affect” the gray bat and Ozark Hellbender. USFWS sent their concurrence with these determinations in a letter that is attached.

The Monarch butterfly is a candidate species, and as such, is not federally protected under the ESA. However, the USFWS recommends agencies implement conservation measures for candidate species in action areas, as these are species that may warrant future protection under the Act. ARDOT will plant native wildflowers after construction as a conservation measure. ARDOT has determined that this action will not jeopardize the continued existence of the Monarch butterfly. A Section 404 permit will not be required for this project.

After appropriate environmental review, it has been determined that the subject job is a Tier 1 Categorical Exclusion as described by the ARDOT/FHWA Programmatic Agreement on Categorical Exclusion Documentation and Processing. A public hearing will not be offered for this project.

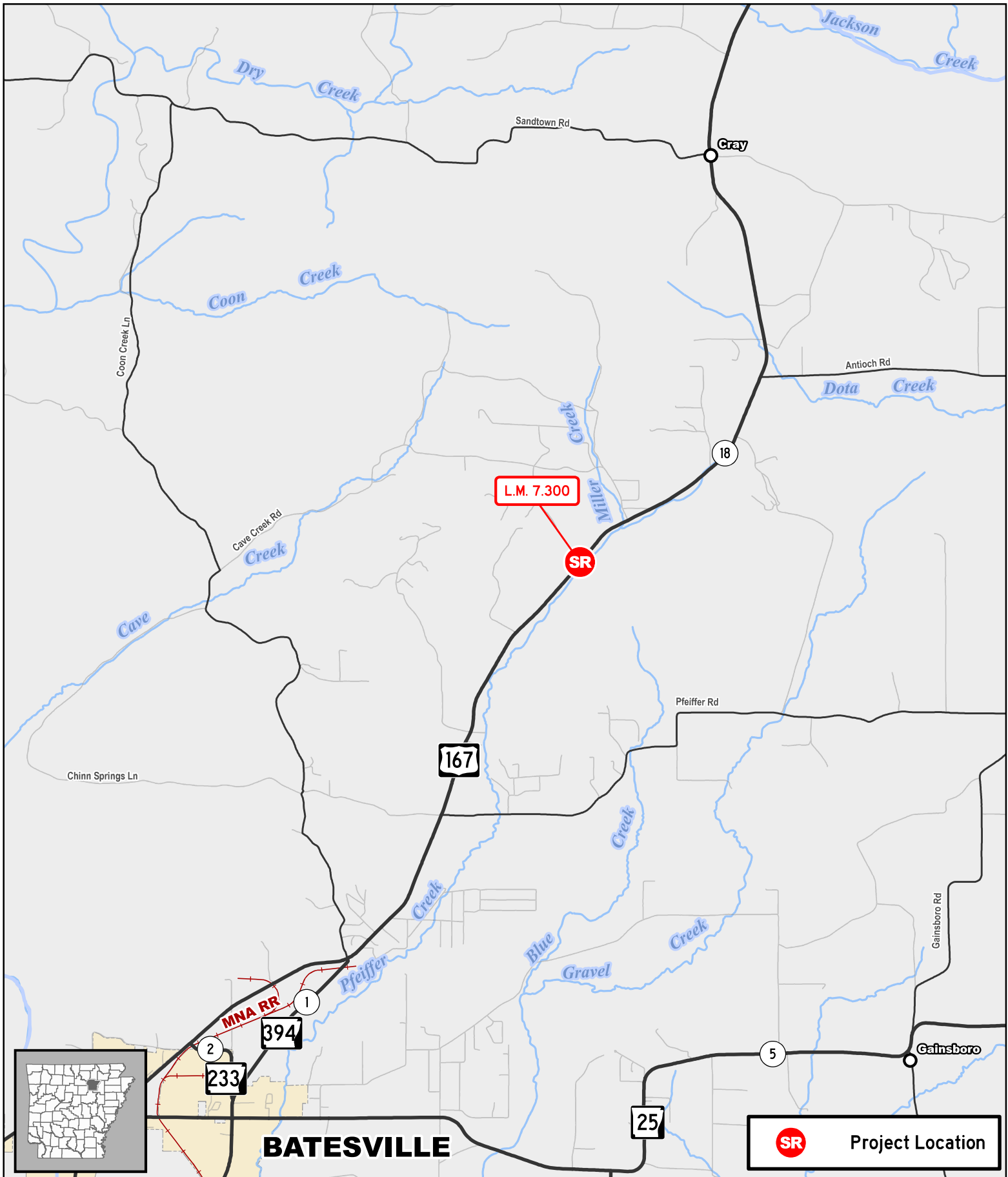
JF:DH:sw

Attachments:

- Location Map
- Cultural Resources Clearance
- USFWS Concurrence
- USFWS Species List
- Environmental Study Checklist

c: Program Management

- Materials
- Right of Way
- District 5
- FHWA



Job 050466

Hwy. 167 Slide Repair (Independence Co.) (S)

Hwy. 167, Sec. 18

Independence County





INTEROFFICE MEMORANDUM

January 30, 2023

TO: Environmental Job File

FROM: Shelby Linck, Cultural Resources Section

SUBJECT: Cultural Resources Clearance
Job 050466
Hwy. 167 Slide Repair (Independence Co.) (S)
Highway 167, Section 18
Independence County

This job proposes to complete slide repair with the placement of riprap for 425 feet in length on the west side of Highway 167. No new right-of-way (ROW) will be acquired. All work will occur within the existing ROW.

A records check at the Arkansas Archeological Survey shows two nearby sites (3IN1503 and 3IN1262) to the proposed project location. Site 3IN1503 was destroyed during the widening of Highway 167. Site 3IN1262 is the Goforth Cemetery that contains three roadside graves. This site is outside of the project area and has no potential to be affected. No other cemeteries were identified. No previously recorded historic structures were shown on either the Arkansas Historic Preservation Program's structure database or the ARS Viewer database.

Records check of historic maps and aerial imagery were not done based on the limited scope of the project. The highway infrastructure and known construction practices were examined to assess previous ground disturbance. This type of undertaking has no potential to cause effects to historic properties. All work will occur within the existing ROW, and the limited scope of the project occurs within previously disturbed areas. Therefore, this project requires no Section 106 review under Appendix C, Activity 32, of the 2021 Programmatic Agreement.

From: [Lewis, Lindsey](#)
To: [Schrum, Matthew C.](#)
Subject: Re: [EXTERNAL] 050446 - Hwy. 167 Slide Repair (Independence Co.) (S)
Date: Tuesday, February 7, 2023 6:47:12 AM

CAUTION: This email originated from outside of ARDOT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Matt,

As stated in the Consistency Letter, "The Service concurs with these "NLAA" and "No Effect" determination(s) for the listed species identified with exception to Missouri Bladderpod and Pondberry. No further consultation for this project is required for these species. The verification letter confirms you may rely on effect determinations provided in the Arkansas Determination Key for project review and guidance for federally listed species to satisfy agency consultation requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat. 884, as amended 16 U.S.C. 1531 et seq.; ESA)."

"The Service has received your concurrence verification letter and request to verify that the Proposed Action may rely on the concurrence provided in the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C 1531 et seq.). Based on the information you provided, you have determined that the Proposed Action will have no effect on the endangered Indiana Bat (*Myotis sodalis*) or the threatened Northern Long-eared Bat (*Myotis septentrionalis*). If the Proposed Action is not modified, no consultation is required for these two species. If the Proposed Action is modified, or new information reveals that it may affect the Indiana Bat and/or Northern Long-eared Bat in a manner or to an extent not considered in the PBO, further review to conclude the requirements of ESA Section 7(a)(2) may be required."

Please keep in mind that you must report any departures from the plans submitted; results of any surveys conducted; or any dead, injured, or sick listed bats that are found to this office. If this project is not completed within one year of this letter, you must update your determination and resubmit the required information.

The Monarch butterfly is a candidate species, and as such, is not federally protected under the ESA. However, The USFWS recommends agencies implement conservation measures for candidate species in action areas, as these are species by definition, that may warrant future protection under the Act. ARDOT will plant native wildflowers after construction as a conservation measure. The Service concurs with your non-jeopardy determination.

ARDOT proposes an NLAA determination for Alligator Snapping Turtle, due to the lack of river

and wetland habitat within the project area. ARDOT has determined that this action will not jeopardize the continued existence of the Alligator Snapping Turtle. The Service concurs with you non-jeopardy determination.

The Service has no additional comments or concerns regarding the re-initiation and agrees with the determinations, justifications provided, and concurrences made through the Arkansas Dkey, Indiana Bat and Northern Long-eared Bat (PBO) Dkey, and ArDOT's supplemental determinations of "no effect" for Missouri Bladderpod and Pondberry.

Thanks,

Lindsey Lewis
Biologist

US Fish & Wildlife Service
Arkansas Field Office
110 South Amity Rd., Suite 300
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NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

From: Schrum, Matthew C. <Matthew.Schrum@ardot.gov>
Sent: Friday, January 27, 2023 2:30 PM
To: Lewis, Lindsey <lindsey_lewis@fws.gov>
Subject: [EXTERNAL] 050446 - Hwy. 167 Slide Repair (Independence Co.) (S)

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

Lindsey,
ARDOT proposes to repair a landslide along an existing road cut on Hwy. 167 north of Pfeiffer in Independence County. See the attached designs pdf and kmz. The repair will require the excavation of the slope, and placement of riprap along the slope, with grouted riprap at the toe of the slope and in the roadside ditch. Work should stay within the existing ROW, and will not require clearing of any suitable bat habitat. There are no streams or wetlands within the project area. The expected late date is in May 2023.

The official species list obtained from the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation identified the following endangered and threatened species as potentially occurring within the project boundaries; the endangered gray bat (*Myotis grisescens*), the endangered Indiana bat (*Myotis sodalis*), the endangered northern long-eared bat (*Myotis septentrionalis*), the threatened Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), the threatened Piping Plover (*Charadrius melodus*), the threatened Red Knot (*Calidris canutus rufa*), the proposed threatened Alligator Snapping Turtle (*Macrochelys temminckii*), the endangered Ozark Hellbender (*Cryptobranchus alleganiensis bishopi*), the candidate Monarch butterfly (*Danaus plexippus*), the threatened Missouri bladderpod (*Physaria filiformis*), and the endangered pondberry (*Lindera melissifolia*). See the attached USFWS species list.

The "AFO Arkansas Multi-species Determination Key" and "FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indiana Bat" determination keys were evaluated for this project. See the attached MA and NE Consistency Letters.

"No effect" determinations were given for Indiana bat, northern long-eared bat, Eastern Black Rail, Piping Plover, and Red Knot.

"May affect, not likely to adversely affect" (NLAA) determinations were given for gray bat, Ozark hellbender, Missouri bladderpod, and pondberry.

ARDOT contests the NLAA determination for Missouri bladderpod, as there is no glade habitat within the project area. Additionally, the nearest occurrence record for this species is 17.2 miles north of the project area at Carpenter Rd. Dolomite Glade in Sharp County. We propose a "no effect" determination for this species.

ARDOT contests the NLAA determination for pondberry, as there is no wetland habitat within the project area. Additionally, the nearest occurrence record for this species is 17.5 miles southeast at Lamberson Cemetery near Tuckerman in Jackson County. We propose a "no effect" determination for this species.

ARDOT proposes a no effect determination for Alligator Snapping Turtle, due to the lack of river and wetland habitat within the project area. ARDOT has determined that this action will not jeopardize the continued existence of the Alligator Snapping Turtle.

The Monarch butterfly is a candidate species, and as such, is not federally protected under the ESA. However, The USFWS recommends agencies implement conservation measures for candidate species in action areas, as these are species by definition, that may warrant future protection under the Act. ARDOT will plant native wildflowers after construction as a conservation measure. ARDOT has determined that this action will not jeopardize the continued existence of the Monarch butterfly.

If you need additional project information, please let me know.

Matthew Schrum

Aquatic Biologist
Environmental Division
Arkansas DOT
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United States Department of the Interior

FISH AND WILDLIFE SERVICE
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Phone: (501) 513-4470 Fax: (501) 513-4480



In Reply Refer To:

January 27, 2023

Project Code: 2023-0038992

Project Name: 050466 - Hwy. 167 Slide Repair (Independence Co.) (S)

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 ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system 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:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.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 <https://www.fws.gov/birds/policies-and-regulations.php>.

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/birds/bird-enthusiasts/threats-to-birds.php>.

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/birds/policies-and-regulations/executive-orders/e0-13186.php>.

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

Endangered Species Act Species

There is a total of 11 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.

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.

Mammals

NAME	STATUS
Gray Bat <i>Myotis grisescens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6329	Endangered
Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5949	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Endangered

Birds

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10477	Threatened
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> There is proposed critical habitat for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

Reptiles

NAME	STATUS
Alligator Snapping Turtle <i>Macrochelys temminckii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/4658	Proposed Threatened

Amphibians

NAME	STATUS
Ozark Hellbender <i>Cryptobranchus alleganiensis bishopi</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/647	Endangered

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

Flowering Plants

NAME	STATUS
Missouri Bladderpod <i>Physaria filiformis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5361	Threatened
Pondberry <i>Lindera melissifolia</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1279	Endangered

Critical habitats

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

IPaC User Contact Information

Agency: Arkansas Department of Transportation
Name: Matthew Schrum
Address: 10324 I30
City: Little Rock
State: AR
Zip: 72209
Email: matthew.schrum@ardot.gov
Phone: 5015692083

Lead Agency Contact Information

Lead Agency: Federal Highway Administration

ARDOT ENVIRONMENTAL VERIFICATION CHECKLIST FOR CONSIDERATION OF POTENTIAL IMPACTS

ARDOT Job 050466 FAP ER-0032(41)

Job Title Hwy. 167 Slide Repair (Independence Co.) (S)

Environmental Resource	None	Minimal	Major	Comments
Air Quality	X			No impacts anticipated
Cultural Resources	X			None in project area
Economic	X			Will not be impacted by project
Endangered Species		X		NLAAs, see USFWS concurrence
Environmental Justice/Title VI	X			No protected populations in project area
Fish and Wildlife		X		Temporary during construction
Floodplains	X			None occur in project area
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			No sites in project area
Land Use	X			Will not be impacted by project
Migratory Birds	X			No bridge or culvert work
Navigation/Coast Guard	X			No navigable waterways involved
Noise Levels	X			No increases due to project
Prime Farmland	X			None in project area
Protected Waters	X			None occur in project area
Public Recreation Lands	X			None in project area
Public Water Supply/WHPA	X			No public water supplies in project area
Relocates	X			No relocations
Section 4(f)/6(f)	X			4f resources not present
Social	X			No impacts to the social environment
Underground Storage Tanks	X			No USTs in project area
Visual	X			No changes to visual environment
Streams	X			None in project area
Water Quality		X		Temporary during construction
Wetlands	X			None in project area
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? No

Short-term Activity Authorization Required? No

Section 404 Permit Required? No Type N/A

Remarks:

Signature of Evaluator *David E. Henry* Date 02/14/2023