



ARKANSAS DEPARTMENT OF TRANSPORTATION



ARDOT.gov | IDriveArkansas.com | Lorie H. Tudor, P.E., Director

10324 Interstate 30 | P.O. Box 2261 | Little Rock, AR 72203-2261 | Phone: 501.569.2000

INTEROFFICE MEMORANDUM

April 4, 2023

TO: Master Files

FROM:  John Fleming, Division Head, Environmental Division 

SUBJECT: Job 080648
FAP NHPP-40-2(83)
Hwy. 64 – Hwy. 331 (S)
Route I-40, Sections 21 & 22
Johnson & Pope Counties
Tier 1 Categorical Exclusion

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.

The purpose of this project is to rehabilitate the existing pavement of an approximately 20-mile section of I-40 between Russellville and Lamar, AR. The job will include 2" mill and 2" overlay of the existing pavement including the ramps, polymer overlay of 12 bridges, special clearing of the vegetation within the highway right of way, and the repair of one slide within the job limits. The slide repair is located along the east bound lanes of I-40 near Lamar in Johnson County. An approximately 400' long remediation zone using timber piling is recommended in this area. The pipe underdrain and outlet protector in the median within the zone of repair would be completely excavated and backfilled with low-permeability cohesive soil.

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 lists obtained through the U.S. Fish and Wildlife Service's (USFWS) Information for Planning and Consultation identified the following species as potentially

occurring within the project area: 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*), Missouri bladderpod (*Physaria filiformis*), and Monarch Butterfly (*Danaus plexippus*). The official species list is attached.

It has been determined that the project will have “no effect” on Eastern Black Rail, Piping Plover, Red Knot, and Gray Bat due to the limited scope of the action, lack of suitable habitat, and distance to known species locations.

Additionally, upon requesting individual concurrence from the USFWS, it was determined that the project “may affect but is not likely to adversely affect” the Missouri bladderpod, Indiana Bat, and Northern Long-eared Bat due to a pup season clearing restriction for all special tree clearing and distance to known species locations. The USFWS concurred with the determination on January 4, 2023.

This project will not have a discharge of dredged or fill material into waters of the United States; therefore, a Section 404 permit will not be required.

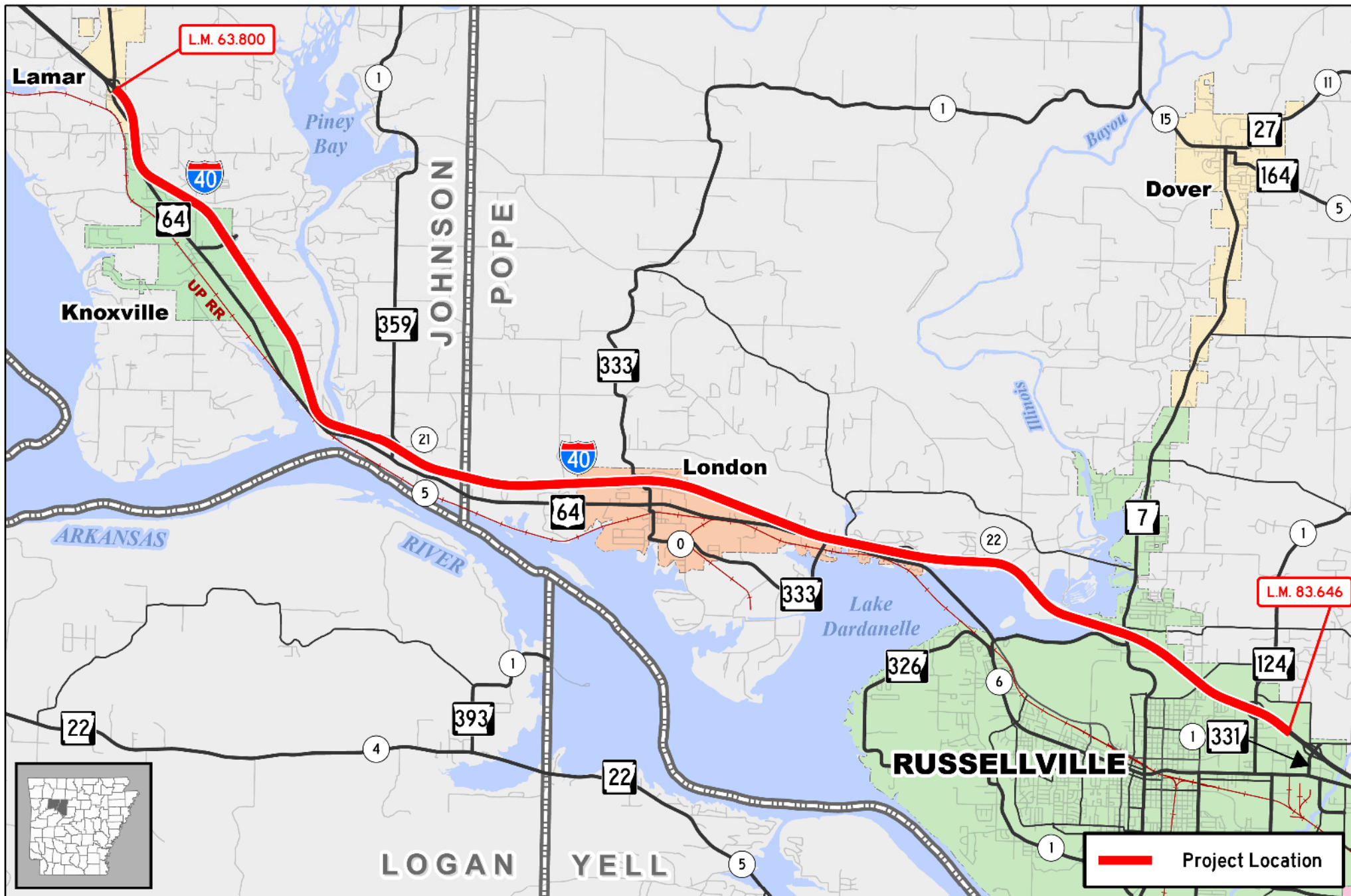
The City of London and Pope County participates in the National Flood Insurance Program. The project lies within a Zone A Special Flood Hazard Area. The final project design will be reviewed to confirm that the design is adequate and that the potential risk to life and property are minimized. Adjacent properties should not be impacted nor have a greater flood risk than existed before construction of the project. None of the encroachments will constitute a substantial floodplain encroachment or a risk to property or life.

JF:KR:sw

Attachments:

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

c: Program Management
Right of Way
Roadway Design
District 8
FHWA





ARKANSAS DEPARTMENT OF TRANSPORTATION

ArDOT.gov | IDriveArkansas.com | Lorie H. Tudor, P.E., Director

10324 Interstate 30 | P.O. Box 2261 | Little Rock, AR 72203-2261 | Phone: 501.569.2000

INTEROFFICE MEMORANDUM

March 30, 2023

TO: Environmental Job File

FROM: Jason Kennedy, Cultural Resources

A handwritten signature in black ink, appearing to read 'J. Kennedy', is placed below the 'FROM' line.

SUBJECT: Cultural Resources Clearance
Job 080648
Hwy. 64 – Hwy. 331 (S)
Route I-40, Sections 21 & 22
Johnson and Pope Counties

This job proposes 19.85 miles of 2" Mill & 2" Overlay, Special Clearing, and Slide repair as well as polymer overlay on six bridges along Interstate 40 between Lamar in Johnson County and Russellville in Pope County. No new right-of-way (ROW) will be acquired. All work will occur within the existing roadway.

A records check of the Arkansas Archeological Survey's database showed four archeological sites (3PP24, 3PP37, 3PP1232, and 3PP1236) on or adjacent to the proposed project area. 3PP24 and 3PP1236 are both General Land Office (GLO) fields and 3PP1232 is a missionary mill which are recorded based on historical records and are mapped as within the Interstate ROW. 3PP24 is a GLO field and prehistoric site of Early Archaic to Woodland affiliation shown adjacent to Interstate 40. 3PP37 is a prehistoric camp site of Archaic affiliation shown within the Interstate 40 ROW; this site was destroyed during Interstate construction. None of these sites, if still present, would remain intact within the Interstate corridor. Based on records check of Arkansas Historic Preservation Program's database for National Register of Historic Places (NRHP) properties, no previously recorded historic structures are located on or adjacent to the proposed project area.

Nineteenth through twentieth century maps were examined. The 1838 and 1840 GLO plat maps of Townships 9 North, Range 22 West and Townships 8 North, Ranges 20, 21 and 22 West show a field and a missionary mill that intersect Interstate 40. The 1936 Johnson County and Pope County maps shows development including scatterings of small communities and structures that would have been near or intersected the project area. None of these structures, if still extant, will be affected by the rehabilitation along the course of Interstate 40.

Bridges A3313, B3313, A3314, B3314, A3316, B3316, A3778, B3778, and M3037 are 45 years of age or older and are within the project area. They are found not eligible for inclusion in the NRHP under the Advisory Council on Historic Preservation's Section 106 exemption regarding effects to the Interstate Highway System (filed on the Federal Register as 69 FR 77979-77981 and authority of 16 U.S.C. 470v; 36 CFR 800.14(c) on March 7, 2005).

The existing topography, aerial imagery, previous infrastructure, and 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 be within the existing ROW, and the scope of the project occurs within previously disturbed areas. Therefore, this project is exempt from additional Section 106 review under Appendix C, Activity 1 of the 2021 Programmatic Agreement.



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Arkansas Ecological Service Field Office
110 South Amity Road, Suite 300
Conway, Arkansas 72032



January 3, 2022

Mr. John Fleming
c/o Nick Dial
Arkansas Department of Transportation
10324 Interstate 30
Little Rock, Arkansas 72209

Consultation Code: 2022-0077187

Dear Mr. Fleming:

The U.S. Fish and Wildlife Service (Service) has reviewed your request, assessment, and determinations for Arkansas Department of Transportation (ARDOT) Job 080648 - Hwy. 64 - Hwy. 331 (S), where ARDOT proposes pavement maintenance and preservation on a 20 mile section of Interstate 40 between Lamar and Russellville, Johnson and Pope Counties, Arkansas. We received your request on December 30, 2022.

On July 5, 2022, the U.S. District Court of the Northern District Court of California vacated the 2019 regulations implementing section 7 of the Endangered Species Act (ESA). On September 21, 2022, the Ninth Circuit Court of Appeals granted a request to stay the U.S. District Court of Northern California's July 5, 2022, order that vacated the 2019 ESA regulations. As a result, the 2019 regulations are again in effect, and the Service has relied upon the 2019 regulations in issuing our written concurrence on the action agency's "may affect, not likely to adversely affect" determination. However, because the outcome of the legal challenges to the 2019 ESA regulations is still unknown, we considered whether our substantive analyses and conclusions would have been different if the pre-2019 regulations were applied in this informal consultation. Our analysis included the prior definition of "effects of the action." We considered all the "direct and indirect effects" and the "interrelated and interdependent activities" when determining the "effects of the action." We then considered whether any "effects of the action" that overlap with applicable ranges of listed species would be wholly beneficial, insignificant, or discountable to the species. As a result, we determined the substantive analysis and conclusions would have been the same, irrespective of which regulations applied.

ARDOT made the following assessment and determination:

ARDOT proposes pavement maintenance and preservation on a 20 mile section of Interstate 40 between Lamar and Russellville, Arkansas. This will involve a 2" mill & overlay and a polymer overlay on 12 bridges. The proposed project will also involve special clearing of trees within the right of way.

The official species lists obtained through the U.S. Fish and Wildlife Service's (USFWS) Information for Planning and Consultation identified the following species as potentially occurring within the project area: Indiana Bat (*Myotis sodalis*), Gray Bat (*Myotis grisescens*), Northern Long-eared Bat (*Myotis septentrionalis*), Eastern Black Rail

(*Laterallus jamaicensis* ssp. *Charadrius melodus jamaicensis*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), Alligator Snapping Turtle (*Macrochelys temminckii*), Missouri Bladderpod (*Physaria filiformis*), and Monarch Butterfly (*Danaus plexippus*).

The AFO Arkansas Multi-Species Determination Key was evaluated for this project. It was determined that the project will have “no effect” on Eastern Black Rail, Piping Plover, and Red Knot due to the limited scope of the action, lack of suitable habitat, and distance to known species locations.

However, it was determined that the project may affect, but is not likely to adversely affect, Gray Bat and Missouri Bladderpod.

ARDOT contests the NLAA determination for Gray Bat because there are no documented caves in the area that the proposed work will be taking place. Additionally, the closest element occurrence record for Gray Bat is 3.7 miles from the project area. ARDOT proposes a ‘no effect’ determination for this species.

The project was determined to be outside of the scope of the FHWA, FRA, FTA Programmatic Consultation for Transportation Projects Affecting Northern Long-eared Bat or Indiana Bat because the maximum acreage cleared for any given project is approximately 20 acres of suitable habitat (generally per 5-mile section of road). The qualification interview is attached.

The special tree clearing included in the project area is entirely within ARDOT right of way along an urban interstate. The nearest element occurrence record for Northern Long-eared Bat is 7 miles from the project area, and the closest record for Indiana Bat is 32.5 miles away from the project area. A pup season clearing restriction for all tree clearing in the project area will be implemented to reduce impacts on the species. Due to the pup season restrictions on tree clearing, limited habitat suitability due to the proximity to an urban interstate, and distance to occurrence records, ARDOT proposes NLAA determinations for Indiana and Northern Long-eared Bats.

As stated in the Consistency Letter, the Service concurs with the “no effect” and “not likely to adversely affect” determination(s) for the listed species identified. The Service concurs with the supplemental justifications and contested determinations for Gray Bat and Missouri Bladderpod. No further consultation for this project is required for these species.

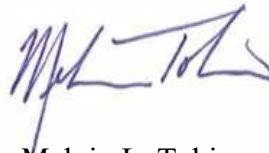
The verification letter confirms you may rely on effect determinations provided in the Arkansas Determination Key for project review and guidance for federally listed species to satisfy agency consultation requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat. 884, as amended 16 U.S.C. 1531 et seq.; ESA)."

The Monarch Butterfly is a candidate species, and as such, is not federally protected under the ESA. However, the Service 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.

Furthermore, due to the location of the area being affected occurring adjacent to and on existing right of way, roadway, median, and bridges, little to no suitable habitat within the footprint of the action, ongoing constant noise and disturbance, the distance to known species locations, the lack of caves and other karst features in the project area, outside of pup season clearing restriction, and the implementation of BMPs, the Service concurs with your determination of “may affect, but is not likely to adversely affect” the Indiana Bat and Northern Long-eared Bat. This concurrence concludes your ESA Section 7 responsibilities for this action.

For further assistance or if you have any questions, please contact Lindsey Lewis at (501) 513-4489 or lindsey_lewis@fws.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. L. Tobin', with a stylized flourish at the end.

Melvin L. Tobin
Field Supervisor

cc: Project File
Read File

Filename: C:\Users\lilewis\Documents\PROJECTS\FY2023\ARDOT\ARDOT Job 080648 - Hwy. 64 - Hwy. 331\20230103_Ltr_Concurrence_ARDOT 080648_LCL.docx



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Arkansas Ecological Services Field Office
110 South Amity Suite 300
Conway, AR 72032-8975
Phone: (501) 513-4470 Fax: (501) 513-4480



In Reply Refer To:

December 30, 2022

Project Code: 2022-0077187

Project Name: 080648 - Hwy. 64 - Hwy. 331 (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

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Arkansas Ecological Services Field Office

110 South Amity Suite 300

Conway, AR 72032-8975

(501) 513-4470

Project Summary

Project Code: 2022-0077187

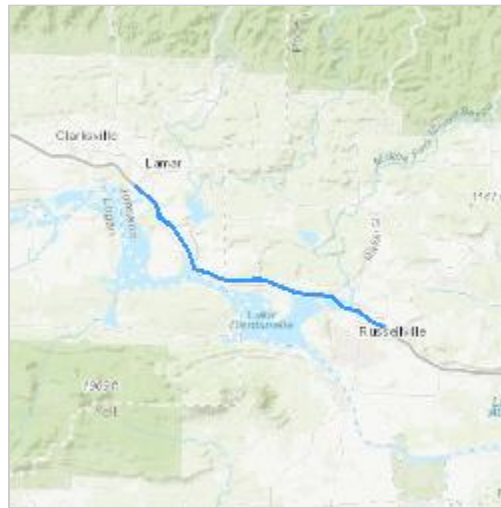
Project Name: 080648 - Hwy. 64 - Hwy. 331 (S)

Project Type: Road/Hwy - Maintenance/Modification

Project Description: Pavement preservation and special clearing.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@35.3597656,-93.33928413106234,14z>



Counties: Johnson and Pope counties, Arkansas

Endangered Species Act Species

There is a total of 9 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.

-
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

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

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: Nicholas Dial
Address: 10324 I-30
City: Little Rock
State: AR
Zip: 72209
Email: nicholas.dial@ardot.gov
Phone: 5015692617

ARDOT ENVIRONMENTAL VERIFICATION CHECKLIST FOR CONSIDERATION OF POTENTIAL IMPACTS

ARDOT Job 080648 FAP NHPP-40-2(83)
Job Title Hwy. 64 – Hwy. 331 (S)

Environmental Resource	None	Minimal	Major	Comments
Air Quality	X			No MSAT analysis required
Cultural Resources	X			CR clearance attached
Economic	X			No impacts anticipated
Endangered Species		X		NLAA (See Attached)
Environmental Justice/Title VI	X			No impacted populations
Fish and Wildlife		X		Temporary During Construction
Floodplains		X		Zone A SFHA's within the project limits
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			None in project area
Land Use	X			No new ROW
Migratory Birds	X			No impacts anticipated
Navigation/Coast Guard	X			None in project area
Noise Levels	X			No impacts anticipated
Prime Farmland	X			No impacts anticipated
Protected Waters	X			None in project area
Public Recreation Lands	X			No impacts anticipated
Public Water Supply/WHPA	X			No impacts anticipated
Relocatees	X			No relocations
Section 4(f)/6(f)	X			No impacts anticipated
Social	X			No impacts anticipated
Underground Storage Tanks	X			None in project area
Visual	X			No impacts anticipated
Streams	X			No impacts anticipated
Water Quality	X			No impacts anticipated
Wetlands	X			None in project area
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? N
 Short-term Activity Authorization Required? N
 Section 404 Permit Required? N Type N/A

Remarks:

Pup Season Clearing Restriction SP

Signature of Evaluator Kathryn Rose Date 3/16/2023