

TIER 3 CATEGORICAL EXCLUSION

**ARDOT JOB NUMBER 040815
FAP NUMBER STPAC-ER-0024(40)
HWY. 23 FLOOD DAMAGE REPAIRS (FRANKLIN CO.)(S)
ROUTE 23, SECTION 7
FRANKLIN COUNTY**

Submitted Pursuant to 42 U.S.C. 4332(2)

By the

U.S. Department of Transportation

Federal Highway Administration

And the

Arkansas Department of Transportation

February 2020

2/24/2020

Date of Approval

RL Looney

Randal Looney
Environmental Coordinator
Federal Highway Administration

The Environmental Division reviewed the referenced project and has determined it falls within the definition of the Tier 3 Categorical Exclusion as defined by the ARDOT/FHWA Programmatic Agreement on the processing of Categorical Exclusions. The following information is included for your review and, if acceptable, approval as the environmental documentation for this project.

The purpose of this project is to repair and stabilize areas where flood damage has occurred at two locations on Highway 23 in Franklin County. A project location map is attached.

Section 1 is located between log mile 5.50 and 5.58. Work involves re-establishing an eroded channel bank upstream from the existing bridge by installing four rock vanes and reinforcing the stream bank with rip rap. These rock vanes will redirect the stream flow away from the bank. Section 1 will require a total of approximately 0.8 acre of Temporary Construction Easement (TCE).

Section 2 of the project is located between log mile 12.95 and 13.05. Work will include replacement of the existing pipe culvert under Highway 23 with a reinforced concrete culvert, realigning drainage west of the highway to flow properly, and reconstructing the inside shoulder in the curve to increase safety. Shoulder reconstruction will include increasing the shoulder width from 2' to 12' for a length of 150'. Section 2 will require a total of approximately 0.1 acre of TCE.

The project will not involve relocations, prime farmlands, wetlands, underground storage tanks, hazardous materials, 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 toxins. Based on the ARDOT noise policy, a noise analysis is not required for this project. The State Historic Preservation Officer's clearance is attached.

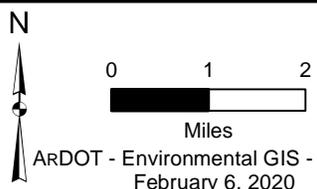
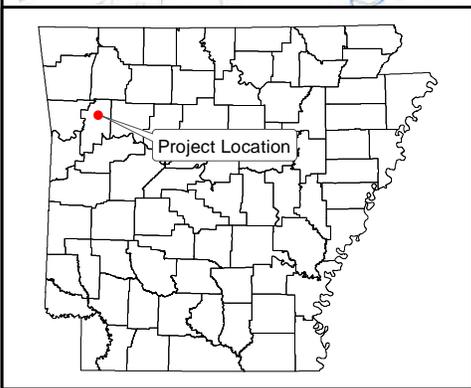
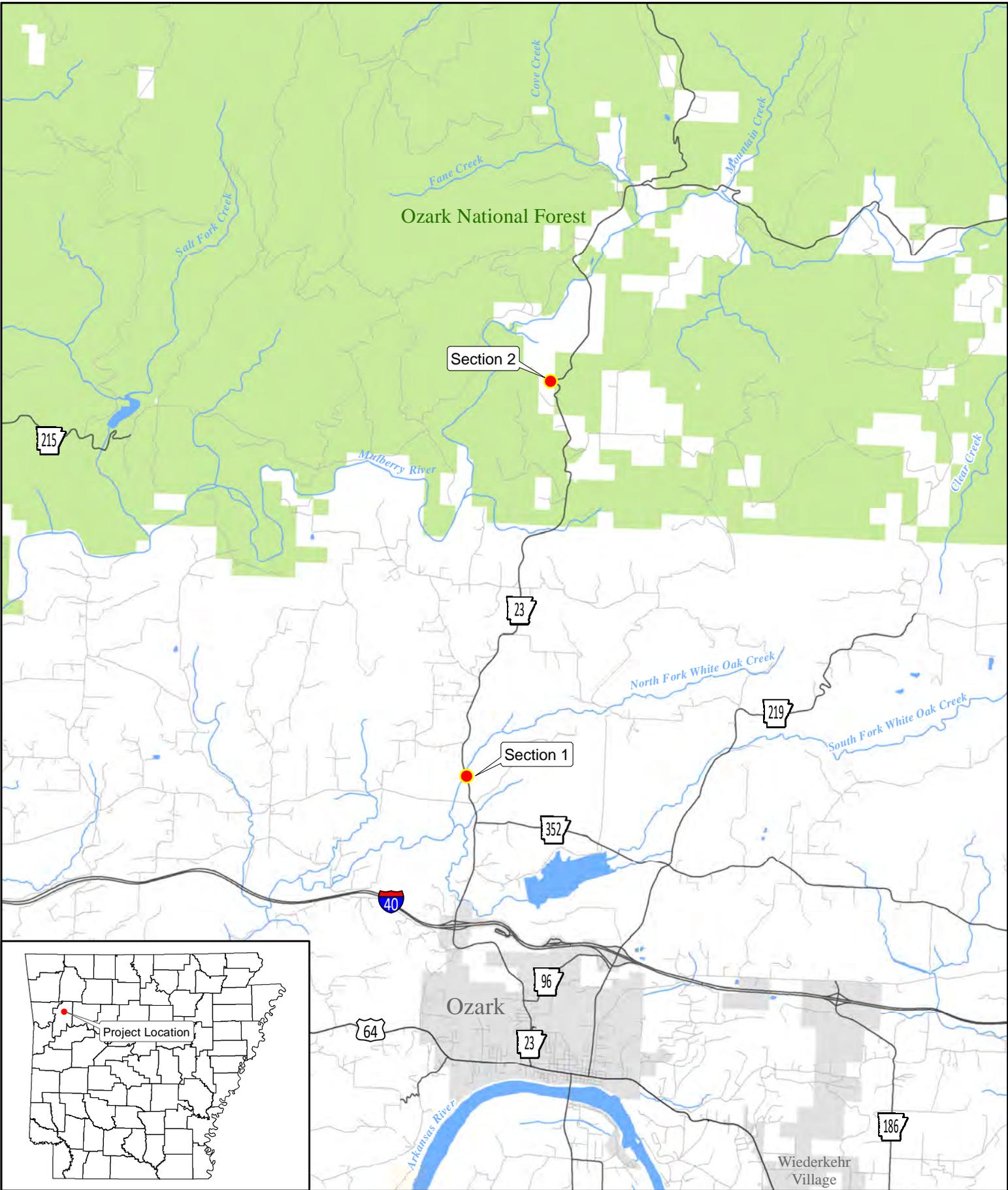
The official species lists obtained through the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation (IPaC) website lists the following species as federally listed species potentially occurring at both sites: gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), Indiana bat (*Myotis sodalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), Eastern Black Rail (*Laterallus jamaicensis ssp. Jamaicensis*), Red Knot (*Calidris canutus rufa*), American burying beetle (*Nicrophorus americanus*), Rattlesnake-master borer moth (*Papaipema eryngii*), Geocarpon (*Geocarpon minimum*) and Missouri bladderpod (*Physaria filiformis*). Due to the lack of suitable habitat and distance to known species occurrences, it has been determined that this project will have "no effect" on the insect, bird, and plant species. It has been determined that the project "may affect, but is not likely to adversely affect" (NLAA) the Ozark

Big-eared bat and gray bat; the USFWS concurred in two letters dated January 31, 2020. USFWS Concurrence Letters for each site are attached.

Section 1 is a bank stabilization project on North Fork White Oak Creek adjacent to Hwy 23. Utilizing the FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) determination key, within IPaC, it has been determined that the activities associated with Section 1 “may affect, and are likely to adversely affect” (LAA) the Indiana bat and the northern long-eared bat. The USFWS LAA Concurrence Letter dated January 24, 2020 is attached. To compensate for the clearing of 0.52 acres of suitable habitat, a deduction of \$1,465 will be made from the previously approved Indiana bat migration project. The Final 4(d) Rule applies to the proposed activities at Section 1 that have the potential to affect northern long-eared bats. The Final 4(d) Rule exempts any incidental take of northern long-eared bats from take prohibitions in the Endangered Species Act. The proposed bank stabilization activities at Section 1 will have a discharge of dredged or fill material into waters of the United States and impact approximately 200 linear feet of North Fork White Oak Creek; therefore, a Section 404 permit will be required. The project should be authorized by Nationwide Permit 13 for Bank Stabilization Projects.

Utilizing the FHWA, FRA, FTA PBO determination key, within IPaC, it has been determined that the proposed activities at Section 2 will NLAA the Indiana bat and northern long-eared bat. The USFWS NLAA Concurrence Letter dated January 24, 2020 is attached. The Final 4(d) Rule applies to the proposed activities at Section 1 that have the potential to affect northern long-eared bats. The Final 4(d) Rule exempts any incidental take of northern long-eared bats from take prohibitions in the Endangered Species Act. Proposed construction activities at Section 2 will have a discharge of dredged or fill material into waters of the United States associated with the slide repair and impact approximately 120 linear feet of an unnamed tributary to the Mulberry River; therefore, a Section 404 permit will be required. The project should be authorized by Nationwide Permit 14 for Linear Transportation Projects as defined in Federal Register 82(4): 1860-2008.

No other adverse environmental impacts were identified. The checklist used to verify consideration of potential environmental impacts is attached.



Job 040815
 Hwy. 23 Flood Damage Repairs
 Franklin County

 Project Location



ARKANSAS DEPARTMENT OF TRANSPORTATION

ArDOT.gov | IDriveArkansas.com | Scott E. Bennett, P.E., Director

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

Phone: 501.569.2000 | Voice/TTY 711 | Fax: 501.569.2400

105268.01
Flwa

January 24, 2020

Secretary Stacy Hurst
Arkansas Historic Preservation Program
1100 North Street
Little Rock, Arkansas 72201

AHPP
JAN 24 2020

RE: Job Number 040815
Hwy. 23 Flood Damage Repairs
(Franklin Co.) (S)
Route 23, Section 7
Franklin County

Dear Secretary Hurst:

A Project Identification Form (PIF) for the referenced project is enclosed. Please review for concurrence with the findings of my staff. If you have any questions or require additional information, please contact Jason Kennedy of my staff at (501) 569-2038.

Sincerely,

John Fleming
for John Fleming
Division Head
Environmental Division

JF:KB:JK:cb

Enclosure
PIF

Date 1.31.20
No known historic properties will be affected by this undertaking. This effect determination could change should new information come to light.
for Tom Mills
Arkansas State Historic Preservation Officer



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 31, 2020

Mr. John Fleming
c/o Mickey Matthews
Arkansas Department of Transportation
10324 Interstate 30
Little Rock, AR 72209

Consultation Code: 04ER1000-2020-R-0440

RE: 040815 Hwy. 23 Flood Damage Repairs – Site 1

Dear Mr. Fleming,

The U.S. Fish and Wildlife Service (Service) is responding to your request dated January 21, 2020 to verify that the proposed Arkansas Department of Transportation (ArDOT) Job Number 040815 - Highway 23 Flood Damage Repairs – Site 1, Franklin County, AR (the Project) may rely on the February 5, 2018, Programmatic Biological Opinion (BO) for federally funded or approved transportation projects that may affect the federally listed endangered Indiana Bat (*Myotis sodalis*) and/or federally listed threatened Northern Long-eared Bat (NLEB) (*Myotis septentrionalis*). We received your request and the associated LAA Consistency Letter on January 24, 2020.

ArDOT will be repairing flood damage on Highway 23. Two sites will be addressed. I have attached the IPAC lists for your convenience. The project should have no affect on the Piping Plover (*Charadrius melodus*) and Missouri bladderpod (*Physaria filiformis*), American burying beetle (*Nicrophorus americanus*), Rattlesnake-master Borer Moth (*Papaipema eryngii*) Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), and Red Knot (*Calidris canutus rufa*) due to limited scope of the project, lack of habitat, and distance to known populations.

ArDot determined the project may affect, but is not likely to adversely affect, the following species; gray bat (*Myotis grisescens*), Ozark big-eared bat (*Corynorhinus townsendii ingens*).

Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA) Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) determination key within IPaC provided a likely to adversely affect (LAA) concurrence letter. For the impacts to approximately 0.5 acre of suitable habitat ArDOT will be deducting \$1,465 from the approved Indiana Bat tracking research funding. The Arkansas Department of Transportation is requesting concurrence with these effects determinations. This action may rely on the revised February 5, 2018, Programmatic Biological Opinion (BO) for federally funded or approved transportation projects that may affect the Indiana Bat and/or Northern Long-eared Bat (NLEB). We received your request and the associated Project Submittal Form on January 24, 2019.

Mr. John Fleming

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This letter provides the Service's response as to whether the Project may rely on the BO to comply with Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) for its effects to the Indiana Bat and/or NLEB. This letter also responds to your request for Service concurrence that the Project may affect, but is not likely to adversely affect (NLAA) ESA-listed species and/or designated critical habitats other than the Indiana bat and NLEB.

The official species list obtained through the Service's Information for Planning and Consultation website identified Piping Plover (*Charadrius melodus*) and Missouri bladderpod (*Physaria filiformis*), American burying beetle (*Nicrophorus americanus*), Rattlesnake-master Borer Moth (*Papaipema eryngii*) Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), and Red Knot (*Calidris canutus rufa*), Gray Bat (*Myotis grisescens*), Ozark Big-eared Bat (*Corynorhinus townsendii ingens*), Indiana Bat (*Myotis sodalis*), and Northern Long-eared Bat (*Myotis septentrionalis*) as potentially occurring in the project area.

Utilizing the FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the range of the Indiana Bat and northern long-eared bat, it has been determined that the project "may affect, and is likely to adversely affect" both the Indiana Bat and the northern long-eared bat. See the attached Consistency Letter generated by IPaC. Compensatory mitigation, in the form of a \$1,389 contribution to the Indiana Bat migration study program, will be provided for adverse impacts to the Indiana bat associated with this project.

The ArDOT has determined that the Project is likely to adversely affect (LAA) the Indiana Bat and/or NLEB. The Service concurs with these determinations, because of the proximity of known species sites and foraging range to the project location and the occurrence of suitable foraging habitat for these species that exists on and adjacent to the site. A determination of LAA for Indiana Bat and NLEB is appropriate based on the distance from the existing roadway and amount of suitable habitat being lost. The conservation measures being proposed, inactive season clearing (non-reproductive season) only provisions based on the site assessment and the proposed implementation of all required AMMs will help to mitigate the effects in accordance with the PBO.

ArDOT determined the Project is not likely to adversely affect (NLAA) Ozark Big-eared bat and Gray Bat. A winter clearing only and a timing of day restriction will be placed in the job contract for this project, which prohibits tree clearing from April 1 to November 15 and requires construction activities not occur 30 minutes prior to sunset and sunrise, respectively. A water pollution control special provision will be put in place to prevent material and debris from entering the waterway, minimizing the effects of the project on aquatic macroinvertebrates, the bats' forage base. A cave discovery special provision will be in place on this project, which will halt construction activity in the project area if a cave is discovered. Due to the preventive

Mr. John Fleming

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measures that will be in place during this project, concurs that the project "may affect, but is not likely to adversely affect" the Ozark Big-eared bat and Gray Bat.

This concurrence concludes your ESA Section 7 responsibilities relative to these species for this Project, subject to the Reinitiation Notice below.

Conclusion

The Service reviewed the effects of the proposed Project, which includes the ArDOT's commitment to implement any applicable mitigation measures as indicated on the Project Submittal Form. We confirm that the proposed Project's effects are consistent with those analyzed in the BO. The Service has determined that projects consistent with the conservation measures and scope of the program analyzed in the BO are not likely to jeopardize the continued existence of the Indiana Bat and/or the NLEB. In coordination with your agency and the other sponsoring Federal Transportation Agencies, the Service will reevaluate this conclusion annually in light of any new pertinent information under the adaptive management provisions of the BO.

Incidental Take: Indiana Bat

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of Indiana Bats. As described in the Incidental Take Statement (ITS) of the BO, such taking will be difficult to detect. The Service determined that it is appropriate to measure the amount or extent of incidental taking resulting from BO projects using the proposed acreage of tree removal from Indiana Bat suitable habitat as a surrogate for the numbers of individuals taken.

The proposed Project will remove 0.16 acre of trees from habitat that is suitable for the Indiana Bat. All tree removal will occur in winter and comply with all other conservation measures in the BO. Based on the BO, 0.36 acre are anticipated to not result in adverse effects, and 0.16 acre are anticipated to result in adverse effects.

The ARDOT uses the mitigation ratio of 1.5 from Table 3 of the BO¹ to calculate the compensatory mitigation required to offset these adverse impacts for a total of 0.24² acre of trees that is suitable for the Indiana bat. Mitigation will be provided in the form of a \$1,465 contribution to the Indiana Bat migration study program, will be provided for adverse impacts to the Indiana bat associated with this project.

The purchase of species conservation credits and/or in-lieu fee contributions shall occur prior to construction of a transportation project covered under this programmatic consultation. Exceptions to this program stipulation include emergency projects that do not require a letting prior to construction. In these cases, purchase of credits and/or in-lieu fee contributions shall occur within three months of completion of the project. This timeframe allows for measuring the acres of habitat affected by the emergency project and for financial processing.

¹ https://www.fws.gov/midwest/endangered/section7/fhwa/pdf/IBAT_ILF_ratios_transportation_agencies.pdf

² XX acres * XX ratio

The Service will add the acreage of Project-related tree removal to the annual total acreage attributed to the BO as a surrogate measure of Indiana Bat take and exempted from the prohibitions against incidental taking. Such exemption is effective as long as your agency implements the reasonable and prudent measure (RPM) and accompanying terms and conditions of the BO's ITS.

The sole RPM of the BO's ITS requires the Federal Transportation Agencies to ensure that State/Local transportation agencies, who choose to include eligible projects under the programmatic action, incorporate all applicable conservation measures in the project proposals submitted to the Service for ESA section 7 compliance using the BO. The implementing terms and conditions for this RPM require the Federal Transportation Agencies to offer training to appropriate personnel about using the BO, and about promptly reporting sick, injured, or dead bats (regardless of species) (or any other federally listed species) located in project action areas.

Northern Long-eared Bat

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of NLEBs. However, the Project is consistent with the BO, and such projects will not cause take of NLEB that is prohibited under the ESA section 4(d) rule for this species (50 CFR §17.40(o)). Therefore, the take of NLEBs resulting from this project does not require exemption from the Service.

Reporting Dead or Injured Bats

The Arkansas Department of Transportation, its State/Local cooperators, and any contractors must take care when handling dead or injured Indiana Bats and/or NLEBs, or any other federally listed species that are found at the Project site to preserve biological material in the best possible condition and to protect the handler from exposure to diseases, such as rabies. Project personnel are responsible for ensuring that any evidence about determining the cause of death or injury is not unnecessarily disturbed. Reporting the discovery of dead or injured listed species is required in all cases to enable the Service to determine whether the level of incidental take exempted by this BO is exceeded, and to ensure that the terms and conditions are appropriate and effective. Parties finding a dead, injured, or sick specimen of any endangered or threatened species must promptly notify this Service Office.

Reinitiation Notice

This letter concludes consultation for the proposed Project, which qualifies for inclusion in the BO issued to the Federal Transportation Agencies. To maintain this inclusion, a reinitiation of this Project-level consultation is required where the Arkansas Department of Transportation's discretionary involvement or control over the Project has been retained (or is authorized by law) and if:

1. the amount or extent of incidental take of Indiana Bat is exceeded;

2. new information reveals that the Project may affect listed species or critical habitat in a manner or to an extent not considered in the BO;
3. the Project is subsequently modified in a manner that causes an effect to listed species or designated critical habitat not considered in the BO; or
4. a new species is listed or critical habitat designated that the Project may affect.

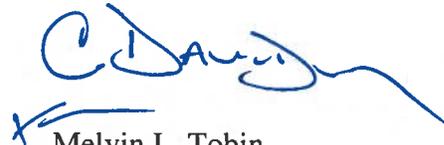
Per condition #1 above, the anticipated incidental take is exceeded when:

- the Project removes trees from more than 0.16 acres of habitat suitable for the Indiana Bat.

In instances where the amount or extent of incidental take is exceeded, the Federal Highway Administration/Arkansas Department of Transportation is required to immediately request a reinitiation of formal consultation. Please note that the Service cannot exempt from the applicable ESA prohibitions any Action-caused take that exceeds the amount or extent specified in the ITS of this BO that may occur before the reinitiated consultation is concluded.

We appreciate your continued efforts to ensure that this Project is fully consistent with all applicable provisions of the BO. If you have any questions regarding our response or if you need additional information, please contact Lindsey Lewis at (501) 513-4489 or lindsey_lewis@fws.gov

Sincerely,



Melvin L. Tobin
Field Supervisor

cc: Project File
Read File

Filename: C:\Users\lilewis\Documents\PROJECTS\FY2020\ARDOT\040815 - Hwy. 23 Flood Damage Repairs Site 1\AFO Letter -Job 040815 - Hwy. 23 Flood Damage Repairs Site 1 - Comments.docx



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 31, 2020

Mr. John Fleming
c/o Mickey Matthews
Arkansas Department of Transportation
10324 Interstate 30
Little Rock, AR 72209

Consultation Code: 04ER1000-2020-I-0443

RE: 040815 Hwy. 23 Flood Damage Repairs – Site 2

Dear Mr. Fleming,

The U.S. Fish and Wildlife Service (Service) is responding to your request dated January 21, 2020 to verify that the proposed Arkansas Department of Transportation (ArDOT) Job Number 040815 - Highway 23 Flood Damage Repairs – Site 2, Franklin County, Arkansas (the Project) may rely on the February 5, 2018, Programmatic Biological Opinion (BO) for federally funded or approved transportation projects that may affect the federally listed endangered Indiana Bat (*Myotis sodalis*) and/or federally listed threatened Northern Long-eared Bat (NLEB) (*Myotis septentrionalis*). We received your request and the associated not likely to adversely affect (NLAA) Consistency Letter on January 24, 2020.

The project was described and assessed as follows (abbreviated):

ArDOT will be repairing flood damage on Highway 23. The IPAC lists were provided. The project should have no affect on the Piping Plover (*Charadrius melodus*) and Missouri bladderpod (*Physaria filiformis*), American burying beetle (*Nicrophorus americanus*), Rattlesnake-master Borer Moth (*Papaipema eryngii*) Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), and Red Knot (*Calidris canutus rufa*) due to limited scope of the project, lack of habitat, and distance to known populations.

ArDOT determined the project may affect, but is not likely to adversely affect, the following species; gray bat (*Myotis grisescens*), Ozark big-eared bat (*Corynorhinus townsendii ingens*).

Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transportation Administration (FTA) Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) determination key within IPaC provided a not likely to adversely affect (NLAA) determination for the site.

Mr. John Fleming

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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.).

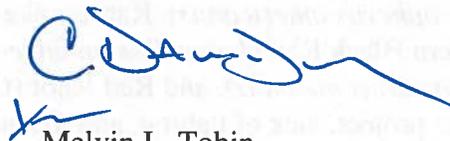
Based on the information you provided, ArDOT determined that the Proposed Action is within the scope and adheres to the criteria of the PBO, including the adoption of applicable avoidance and minimization measures, may affect, but is not likely to adversely affect (NLAA) Indiana Bat and Northern Long-eared Bat. The Service concurs that this action may rely on the PBO.

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.

Furthermore, due to the limited habitat being affected along existing roadway and right of way, the distance to known species locations or hibernacula, the implementation of BMPs, inactive season clearing, and the standard provisions for stream sediment control and water quality conservation measures, the Service concurs with your determination and agrees with your assessment for all other listed species identified. This concurrence concludes your ESA Section 7 responsibilities relative to these species 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,



Melvin L. Tobin
Field Supervisor

cc: Project File
Read File

Filename: C:\Users\lilewis\Documents\PROJECTS\FY2020\ARDOT\040815 - Hwy. 23 Flood Damage Repairs - Site 2\AFO Letter -Job 040815 - Hwy. 23 Flood Damage Repairs Site 2 - Comments.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
<http://www.fws.gov/arkansas-es>

In Reply Refer To:

January 23, 2020

Consultation Code: 04ER1000-2020-SLI-0440

Event Code: 04ER1000-2020-E-01003

Project Name: 040815 - Hwy. 23 Flood Damage Repairs (Franklin Co.) (S) Site 1

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies endangered, threatened, 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.*). **This letter only provides an official species list and technical assistance; if you determine that listed species and/or designated critical habitat may be affected in any way by the proposed project, even if the effect is wholly beneficial, consultation with the Service will be necessary.**

If you determine that this project will have no effect on listed species and their habitat in any way, then you have completed Section 7 consultation with the Service and may use this letter in your project file or application.

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. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found on our website.

Please visit our website at <http://www.fws.gov/arkansas-es/IPaC/home.html> for species-specific guidance to avoid and minimize adverse effects to federally endangered,

threatened, proposed, and candidate species. Our web site also contains additional information on species life history and habitat requirements that may be useful in project planning.

If your project involves in-stream construction activities, oil and natural gas infrastructure, road construction, transmission lines, or communication towers, please review our project specific guidance at <http://www.fws.gov/arkansas-es/IPaC/ProjSpec.html>.

The karst region of Arkansas is a unique region that covers the **northern third of Arkansas** and we have specific guidance to conserve sensitive cave-obligate and bat species. **Please visit <http://www.fws.gov/arkansas-es/IPaC/Karst.html> to determine if your project occurs in the karst region and to view karst specific-guidance.** Proper implementation and maintenance of best management practices specified in these guidance documents is necessary to avoid adverse effects to federally protected species and often avoids the more lengthy formal consultation process.

If your species list includes any mussels, Northern Long-eared Bat, Indiana Bat, Yellowcheek Darter, Red-cockaded Woodpecker, or American Burying Beetle, your project may require a presence/absence and/or habitat survey prior to commencing project activities. Please check the appropriate species-specific guidance on our website to determine if your project requires a survey. We strongly recommend that you contact the appropriate staff species lead biologist (see office directory or species page) prior to conducting presence/absence surveys to ensure the appropriate level of effort and methodology.

Under the ESA, it is the responsibility of the Federal action agency or its designated representative to determine if a proposed action "may affect" endangered, threatened, or proposed species, or designated critical habitat, and if so, to consult with the Service further. Similarly, it is the responsibility of the Federal action agency or project proponent, not the Service, to make "no effect" determinations. If you determine that your proposed action will have "no effect" on threatened or endangered species or their respective critical habitat, you do not need to seek concurrence with the Service. Nevertheless, it is a violation of Federal law to harm or harass any federally-listed threatened or endangered fish or wildlife species without the appropriate permit.

Through the consultation process, we will analyze information contained in a biological assessment that you provide. If your proposed action is associated with Federal funding or permitting, consultation will occur with the Federal agency under section 7(a)(2) of the ESA. Otherwise, an incidental take permit pursuant to section 10(a)(1)(B) of the ESA (also known as a habitat conservation plan) is necessary to harm or harass federally listed threatened or endangered fish or wildlife species. In either case, there is no mechanism for authorizing incidental take "after-the-fact." For more information regarding formal consultation and HCPs, please see the Service's Consultation Handbook and Habitat Conservation Plans at www.fws.gov/endangered/esa-library/index.html#consultations.

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.

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 Tracking Number 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

Consultation Code: 04ER1000-2020-SLI-0440

Event Code: 04ER1000-2020-E-01003

Project Name: 040815 - Hwy. 23 Flood Damage Repairs (Franklin Co.) (S) Site 1

Project Type: TRANSPORTATION

Project Description: Repair failing bank of North Fork White Oak Creek that is eroding the bridge abutment.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.55573427787501N93.86213212754018W>



Counties: Franklin, AR

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.

-
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 is outside 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	Threatened
Ozark Big-eared Bat <i>Corynorhinus (=Plecotus) townsendii ingens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7245	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	Proposed 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 is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

Insects

NAME	STATUS
American Burying Beetle <i>Nicrophorus americanus</i> Population: Wherever found, except where listed as an experimental population No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/66	Endangered
Rattlesnake-master Borer Moth <i>Papaipema eryngii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7863	Candidate

Flowering Plants

NAME	STATUS
Geocarpon minimum No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7699	Threatened
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.



United States Department of the Interior



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Phone: (501) 513-4470 Fax: (501) 513-4480
<http://www.fws.gov/arkansas-es>

In Reply Refer To:

January 24, 2020

Consultation Code: 04ER1000-2020-SLI-0443

Event Code: 04ER1000-2020-E-01010

Project Name: 040815 - Hwy. 23 Flood Damage Repairs (Franklin Co.) (S) site 2

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies endangered, threatened, 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.*). **This letter only provides an official species list and technical assistance; if you determine that listed species and/or designated critical habitat may be affected in any way by the proposed project, even if the effect is wholly beneficial, consultation with the Service will be necessary.**

If you determine that this project will have no effect on listed species and their habitat in any way, then you have completed Section 7 consultation with the Service and may use this letter in your project file or application.

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. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found on our website.

Please visit our website at <http://www.fws.gov/arkansas-es/IPaC/home.html> for species-specific guidance to avoid and minimize adverse effects to federally endangered,

threatened, proposed, and candidate species. Our web site also contains additional information on species life history and habitat requirements that may be useful in project planning.

If your project involves in-stream construction activities, oil and natural gas infrastructure, road construction, transmission lines, or communication towers, please review our project specific guidance at <http://www.fws.gov/arkansas-es/IPaC/ProjSpec.html>.

The karst region of Arkansas is a unique region that covers the **northern third of Arkansas** and we have specific guidance to conserve sensitive cave-obligate and bat species. **Please visit <http://www.fws.gov/arkansas-es/IPaC/Karst.html> to determine if your project occurs in the karst region and to view karst specific-guidance.** Proper implementation and maintenance of best management practices specified in these guidance documents is necessary to avoid adverse effects to federally protected species and often avoids the more lengthy formal consultation process.

If your species list includes any mussels, Northern Long-eared Bat, Indiana Bat, Yellowcheek Darter, Red-cockaded Woodpecker, or American Burying Beetle, your project may require a presence/absence and/or habitat survey prior to commencing project activities. Please check the appropriate species-specific guidance on our website to determine if your project requires a survey. We strongly recommend that you contact the appropriate staff species lead biologist (see office directory or species page) prior to conducting presence/absence surveys to ensure the appropriate level of effort and methodology.

Under the ESA, it is the responsibility of the Federal action agency or its designated representative to determine if a proposed action "may affect" endangered, threatened, or proposed species, or designated critical habitat, and if so, to consult with the Service further. Similarly, it is the responsibility of the Federal action agency or project proponent, not the Service, to make "no effect" determinations. If you determine that your proposed action will have "no effect" on threatened or endangered species or their respective critical habitat, you do not need to seek concurrence with the Service. Nevertheless, it is a violation of Federal law to harm or harass any federally-listed threatened or endangered fish or wildlife species without the appropriate permit.

Through the consultation process, we will analyze information contained in a biological assessment that you provide. If your proposed action is associated with Federal funding or permitting, consultation will occur with the Federal agency under section 7(a)(2) of the ESA. Otherwise, an incidental take permit pursuant to section 10(a)(1)(B) of the ESA (also known as a habitat conservation plan) is necessary to harm or harass federally listed threatened or endangered fish or wildlife species. In either case, there is no mechanism for authorizing incidental take "after-the-fact." For more information regarding formal consultation and HCPs, please see the Service's Consultation Handbook and Habitat Conservation Plans at www.fws.gov/endangered/esa-library/index.html#consultations.

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.

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 Tracking Number 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

Consultation Code: 04ER1000-2020-SLI-0443

Event Code: 04ER1000-2020-E-01010

Project Name: 040815 - Hwy. 23 Flood Damage Repairs (Franklin Co.) (S) site 2

Project Type: TRANSPORTATION

Project Description: Repair a slide on Hwy 23 with a rock buttress.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.646369411435906N93.83956392265283W>



Counties: Franklin, AR

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.

-
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 is outside 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	Threatened
Ozark Big-eared Bat <i>Corynorhinus (=Plecotus) townsendii ingens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7245	Endangered

Birds

NAME	STATUS
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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 is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

Insects

NAME	STATUS
American Burying Beetle <i>Nicrophorus americanus</i> Population: Wherever found, except where listed as an experimental population No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/66	Endangered
Rattlesnake-master Borer Moth <i>Papaipema eryngii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7863	Candidate

Flowering Plants

NAME	STATUS
Geocarpon minimum No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7699	Threatened
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.



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IPaC Record Locator: 750-19960274

January 24, 2020

Subject: Consistency letter for the '040815 - Hwy. 23 Flood Damage Repairs (Franklin Co.) (S) Site 1' project (TAILS 04ER1000-2020-R-0440) under 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.

To whom it may concern:

The U.S. Fish and Wildlife Service (Service) has received your request to verify that the **040815 - Hwy. 23 Flood Damage Repairs (Franklin Co.) (S) Site 1** (Proposed Action) may rely on 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 (Project Description shown below), you have determined that the Proposed Action is within the scope and adheres to the criteria of the PBO, including the adoption of applicable avoidance and minimization measures, and may affect, and is likely to adversely affect the endangered Indiana bat (*Myotis sodalis*) and/or the threatened Northern long-eared bat (*Myotis septentrionalis*). Consultation with the Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) is required.

This "may affect - likely to adversely affect" determination becomes effective when the lead Federal action agency or designated non-federal representative requests the Service rely on the PBO to satisfy the agency's consultation requirements for this project. Please provide this consistency letter to the lead Federal action agency or its designated non-federal representative for review, and as the agency deems appropriate, transmit to this Service Office for verification that the project is consistent with the PBO.

This Service Office will respond by letter to the requesting Federal action agency or designated non-federal representative within 30 calendar days to:

- verify that the Proposed Action is consistent with the scope of actions covered under the PBO;
- verify that all applicable avoidance, minimization, and compensation measures are included in the action proposal;
- identify any action-specific monitoring and reporting requirements, consistent with the monitoring and reporting requirements of the PBO, and
- identify anticipated incidental take.

ESA Section 7 compliance for this Proposed Action is not complete until the Federal action agency or its designated non-federal representative receives a verification letter from the Service.

For Proposed Actions that include bridge/structure removal, replacement, and/or maintenance activities: If your initial bridge/structure assessments failed to detect Indiana bats, but you later detect bats during construction, please submit the Post Assessment Discovery of Bats at Bridge/Structure Form (User Guide Appendix E) to this Service Office. In these instances, potential incidental take of Indiana bats may be exempted provided that the take is reported to the Service.

If the Proposed Action may affect any other federally-listed or proposed species and/or designated critical habitat, additional consultation between the lead Federal action agency and this Service Office is required. If the proposed action has the potential to take bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act may also be required. In either of these circumstances, please advise the lead Federal action agency accordingly.

The following species may occur in your project area and **are not** covered by this determination:

- American Burying Beetle, *Nicrophorus americanus* (Endangered)
 - Eastern Black Rail, *Laterallus jamaicensis ssp. jamaicensis* (Proposed Threatened)
 - Geocarpon minimum, (Threatened)
 - Gray Bat, *Myotis grisescens* (Endangered)
 - Missouri Bladderpod, *Physaria filiformis* (Threatened)
 - Ozark Big-eared Bat, *Corynorhinus (=Plecotus) townsendii ingens* (Endangered)
 - Piping Plover, *Charadrius melodus* (Threatened)
 - Rattlesnake-master Borer Moth, *Papaipema eryngii* (Candidate)
 - Red Knot, *Calidris canutus rufa* (Threatened)
-

Project Description

The following project name and description was collected in IPaC as part of the endangered species review process.

Name

040815 - Hwy. 23 Flood Damage Repairs (Franklin Co.) (S) Site 1

Description

Repair failing bank of North Fork White Oak Creek that is eroding the bridge abutment.

Determination Key Result

Based on your answers provided, this project is likely to adversely affect the endangered Indiana bat and/or the threatened Northern long-eared bat. Therefore, consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended 16 U.S.C. 1531 *et seq.*) is required. However, also based on your answers provided, this project may rely on the conclusion and Incidental Take Statement 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.

Qualification Interview

1. Is the project within the range of the Indiana bat^[1]?

[1] See [Indiana bat species profile](#)

Automatically answered

Yes

2. Is the project within the range of the Northern long-eared bat^[1]?

[1] See [Northern long-eared bat species profile](#)

Automatically answered

Yes

3. Which Federal Agency is the lead for the action?

A) Federal Highway Administration (FHWA)

4. Are *all* project activities limited to non-construction^[1] activities only? (examples of non-construction activities include: bridge/abandoned structure assessments, surveys, planning and technical studies, property inspections, and property sales)

[1] Construction refers to activities involving ground disturbance, percussive noise, and/or lighting.

No

5. Does the project include *any* activities that are **greater than** 300 feet from existing road/rail surfaces^[1]?

[1] Road surface is defined as the actively used [e.g. motorized vehicles] driving surface and shoulders [may be pavement, gravel, etc.] and rail surface is defined as the edge of the actively used rail ballast.

No

6. Does the project include *any* activities **within** 0.5 miles of a known Indiana bat and/or NLEB hibernaculum^[1]?

[1] For the purpose of this consultation, a hibernaculum is a site, most often a cave or mine, where bats hibernate during the winter (see suitable habitat), but could also include bridges and structures if bats are found to be hibernating there during the winter.

No

7. Is the project located **within** a karst area?

No

8. Is there *any* suitable^[1] summer habitat for Indiana Bat or NLEB **within** the project action area^[2]? (includes any trees suitable for maternity, roosting, foraging, or travelling habitat)

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] The action area is defined as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR Section 402.02). Further clarification is provided by the [national consultation FAQs](#).

Yes

9. Will the project remove *any* suitable summer habitat^[1] and/or remove/trim any existing trees **within** suitable summer habitat?

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

Yes

10. Will the project clear more than 20 acres of suitable habitat per 5-mile section of road/rail?

No

11. Have presence/probable absence (P/A) summer surveys^{[1][2]} been conducted^{[3][4]} **within** the suitable habitat located within your project action area?

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] Presence/probable absence summer surveys conducted within the fall swarming/spring emergence home range of a documented Indiana bat hibernaculum (contact local Service Field Office for appropriate distance from hibernacula) that result in a negative finding requires additional consultation with the local Service Field Office to determine if clearing of forested habitat is appropriate and/or if seasonal clearing restrictions are needed to avoid and minimize potential adverse effects on fall swarming and spring emerging Indiana bats.

[3] For projects within the range of either the Indiana bat or NLEB in which suitable habitat is present, and no bat surveys have been conducted, the transportation agency will assume presence of the appropriate species. This assumption of presence should be based upon the presence of suitable habitat and the capability of bats to occupy it because of their mobility.

[4] Negative presence/probable absence survey results obtained using the [summer survey guidance](#) are valid for a minimum of two years from the completion of the survey unless new information (e.g., other nearby surveys) suggest otherwise.

No

12. Does the project include activities **within documented Indiana bat habitat**^{[1][2]}?

[1] Documented roosting or foraging habitat – for the purposes of this consultation, we are considering documented habitat as that where Indiana bats and/or NLEB have actually been captured and tracked using (1) radio telemetry to roosts; (2) radio telemetry triangulation/triangulation to estimate foraging areas; or (3) foraging areas with repeated use documented using acoustics. Documented roosting habitat is also considered as suitable summer habitat within 0.25 miles of documented roosts.)

[2] For the purposes of this key, we are considering documented corridors as that where Indiana bats and/or NLEB have actually been captured and tracked to using (1) radio telemetry; or (2) treed corridors located directly between documented roosting and foraging habitat.

No

13. Will the removal or trimming of habitat or trees occur **within** suitable but **undocumented Indiana bat** roosting/foraging habitat or travel corridors?

Yes

14. What time of year will the removal or trimming of habitat or trees **within** suitable but **undocumented Indiana bat** roosting/foraging habitat or travel corridors occur^[1]?

[1] Coordinate with the local Service Field Office for appropriate dates.

B) During the inactive season

15. Does the project include activities **within documented NLEB habitat**^{[1][2]}?

[1] Documented roosting or foraging habitat – for the purposes of this consultation, we are considering documented habitat as that where Indiana bats and/or NLEB have actually been captured and tracked using (1) radio telemetry to roosts; (2) radio telemetry biangulation/triangulation to estimate foraging areas; or (3) foraging areas with repeated use documented using acoustics. Documented roosting habitat is also considered as suitable summer habitat within 0.25 miles of documented roosts.)

[2] For the purposes of this key, we are considering documented corridors as that where Indiana bats and/or NLEB have actually been captured and tracked to using (1) radio telemetry; or (2) treed corridors located directly between documented roosting and foraging habitat.

Yes

16. Will the removal or trimming of habitat or trees occur **within documented NLEB** roosting/foraging habitat^[1] or travel corridors^[2]?

[1] Documented roosting or foraging habitat – for the purposes of this consultation, we are considering documented habitat as that where Indiana bats and/or NLEB have actually been captured and tracked using (1) radio telemetry to roosts; (2) radio telemetry biangulation/triangulation to estimate foraging areas; or (3) foraging areas with repeated use documented using acoustics. Documented roosting habitat is also considered as suitable summer habitat within 0.25 miles of documented roosts.)

[2] For the purposes of this key, we are considering documented corridors as that where Indiana bats and/or NLEB have actually been captured and tracked to using (1) radio telemetry; or (2) treed corridors located directly between documented roosting and foraging habitat.

Yes

17. What time of year will the removal or trimming of habitat or trees **within documented NLEB** roosting/foraging habitat or travel corridors occur^[1]?

[1] Coordinate with the local Service Field Office for appropriate dates.

B) During the inactive season

18. Will the removal or trimming of habitat or trees occur **within** suitable but **undocumented NLEB** roosting/foraging habitat or travel corridors?

Yes

19. What time of year will the removal or trimming of habitat or trees **within** suitable but **undocumented NLEB** roosting/foraging habitat or travel corridors occur?
B) During the inactive season
20. Will *any* tree trimming or removal occur **within** 100 feet of existing road/rail surfaces?
Yes
21. Will the tree removal alter *any* **documented** Indiana bat or NLEB roosts and/or alter any surrounding summer habitat **within** 0.25 mile of a documented roost?
No
22. Will *any* tree trimming or removal occur **between** 100-300 feet of existing road/rail surfaces?
Yes
23. Are *all* trees that are being removed clearly demarcated?
Yes
24. Will the removal of habitat or the removal/trimming of trees include installing new or replacing existing **permanent** lighting?
No
25. Does the project include wetland or stream protection activities associated with compensatory wetland mitigation?
No
26. Does the project include slash pile burning?
No
27. Does the project include *any* bridge removal, replacement, and/or maintenance activities (e.g., any bridge repair, retrofit, maintenance, and/or rehabilitation work)?
No
28. Does the project include the removal, replacement, and/or maintenance of *any* structure other than a bridge? (e.g., rest areas, offices, sheds, outbuildings, barns, parking garages, etc.)
No
29. Will the project involve the use of **temporary** lighting *during* the active season?
No
-

30. Will the project install new or replace existing **permanent** lighting?

No

31. Does the project include percussives or other activities (**not including tree removal/trimming or bridge/structure work**) that will increase noise levels above existing traffic/background levels?

No

32. Are *all* project activities that are **not associated with** habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives, limited to actions that DO NOT cause any additional stressors to the bat species?

Examples: lining roadways, unlighted signage , rail road crossing signals, signal lighting, and minor road repair such as asphalt fill of potholes, etc.

Yes

33. Will the project raise the road profile **above the tree canopy**?

No

34. Are the project activities that are not associated with habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives consistent with a No Effect determination in this key?

Automatically answered

Yes, other project activities are limited to actions that DO NOT cause any additional stressors to the bat species as described in the BA/BO

35. Is the habitat removal portion of this project consistent with a Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because tree removal that occurs within documented NLEB roosting/foraging habitat or travel corridors outside the active season will be done ≤ 300 feet from the existing road/rail surface

36. Is the habitat removal portion of this project consistent with a Not Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because the tree removal/trimming that occurs outside of the Indiana bat's active season occurs greater than 0.5 miles from the nearest hibernaculum, is less than 100 feet from the existing road/rail surface, includes clear demarcation of the trees that are to be removed, and does not alter documented roosts and/or surrounding summer habitat within 0.25 miles of a documented roost.

37. Is the habitat removal portion of this project consistent with a Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because the tree removal that occurs outside the Indiana bat's active season is 100-300 feet from the existing road/rail surface, and is not in documented roosting/foraging habitat or travel corridors.

38. Is the habitat removal portion of this project consistent with a Not Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because the tree removal/trimming that occurs outside of the NLEB's active season occurs greater than 0.5 miles from the nearest hibernaculum, is less than 100 feet from the existing road/rail surface, includes clear demarcation of the trees that are to be removed, and does not alter documented roosts and/or surrounding summer habitat within 0.25 miles of a documented roost.

39. Is the habitat removal portion of this project consistent with a Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because the tree removal that occurs outside the NLEB's active season is 100-300 feet from the existing road/rail surface, and is not in documented roosting/foraging habitat or travel corridors.

40. **General AMM 1**

Will the project ensure *all* operators, employees, and contractors working in areas of known or presumed bat habitat are aware of *all* FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable Avoidance and Minimization Measures?

Yes

41. **Tree Removal AMM 1**

Can *all* phases/aspects of the project (e.g., temporary work areas, alignments) be modified, to the extent practicable, to avoid tree removal^[1] in excess of what is required to implement the project safely?

Note: Tree Removal AMM 1 is a minimization measure, the full implementation of which may not always be practicable. Projects may still be NLAA as long as Tree Removal AMMs 2, 3, and 4 are implemented and LAA as long as Tree Removal AMMs 3, 5, 6, and 7 are implemented.

[1] The word "trees" as used in the AMMs refers to trees that are suitable habitat for each species within their range. See the USFWS' current summer survey guidance for our latest definitions of suitable habitat.

Yes

42. Tree Removal AMM 3

Can tree removal be limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits)?

Yes

43. For Indiana bat, if applicable, compensatory mitigation measures are required to offset adverse effects on the species (see Section 2.10 of the BA). Please select the mechanism in which compensatory mitigation will be implemented:

6. Not Applicable

Project Questionnaire

1. Have you made a No Effect determination for *all* other species indicated on the FWS IPaC generated species list?

No

2. Have you made a May Affect determination for *any* other species on the FWS IPaC generated species list?

Yes

3. How many acres^[1] of trees are proposed for removal between 0-100 feet of the existing road/rail surface?

[1] If described as number of trees, multiply by 0.09 to convert to acreage and enter that number.

0.11

4. How many acres^[1] of trees are proposed for removal between 100-300 feet of the existing road/rail surface?

[1] If described as number of trees, multiply by 0.09 to convert to acreage and enter that number.

0.16

5. Please verify:

All tree removal will occur greater than 0.5 mile from any hibernaculum.

Yes, I verify that all tree removal will occur greater than 0.5 miles from any hibernaculum.

6. Is the project location 0-100 feet from the edge of existing road/rail surface?

Yes

7. Is the project location 100-300 feet from the edge of existing road/rail surface?

Yes

8. **Please verify:**

No documented Indiana bat roosts or surrounding summer habitat within 0.25 mile of documented roosts will be impacted between May 1 and July 31.

Yes, I verify that no documented Indiana bat roosts or surrounding summer habitat within 0.25 mile of documented roosts will be impacted during this period.

9. **Please verify:**

No documented NLEB roosts or surrounding summer habitat within 150 feet of documented roosts will be impacted between June 1 and July 31.

Yes, I verify that no documented NLEB roosts or surrounding summer habitat within 150 feet of documented roosts will be impacted during this period.

10. You have indicated that the following Avoidance and Minimization Measures (AMMs) will be implemented as part of the proposed project:

- *General AMM 1*
- *Tree Removal AMM 1*
- *Tree Removal AMM 3*

Avoidance And Minimization Measures (AMMs)

This determination key result includes the commitment to implement the following Avoidance and Minimization Measures (AMMs):

GENERAL AMM 1

Ensure all operators, employees, and contractors working in areas of known or presumed bat habitat are aware of all FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable AMMs.

TREE REMOVAL AMM 1

Modify all phases/aspects of the project (e.g., temporary work areas, alignments) to avoid tree removal.

TREE REMOVAL AMM 3

Ensure tree removal is limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits).

Determination Key Description: FHWA, FRA, FTA Programmatic Consultation For Transportation Projects Affecting NLEB Or Indiana Bat

This key was last updated in IPaC on December 02, 2019. Keys are subject to periodic revision.

This decision key is intended for projects/activities funded or authorized by the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and/or Federal Transit Administration (FTA), which may require consultation with the U.S. Fish and Wildlife Service (Service) under Section 7 of the Endangered Species Act (ESA) for the endangered **Indiana bat** (*Myotis sodalis*) and the threatened **Northern long-eared bat** (NLEB) (*Myotis septentrionalis*).

This decision key should only be used to verify project applicability with the Service's [February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects](#). The programmatic biological opinion covers limited transportation activities that may affect either bat species, and addresses situations that are both likely and not likely to adversely affect either bat species. This decision key will assist in identifying the effect of a specific project/activity and applicability of the programmatic consultation. The programmatic biological opinion is not intended to cover all types of transportation actions. Activities outside the scope of the programmatic biological opinion, or that may affect ESA-listed species other than the Indiana bat or NLEB, or any designated critical habitat, may require additional ESA Section 7 consultation.



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
<http://www.fws.gov/arkansas-es>

In Reply Refer To:

January 24, 2020

Consultation Code: 04ER1000-2020-I-0443

Event Code: 04ER1000-2020-E-01011

Project Name: 040815 - Hwy. 23 Flood Damage Repairs (Franklin Co.) (S) site 2

Subject: Concurrence verification letter for the '040815 - Hwy. 23 Flood Damage Repairs (Franklin Co.) (S) site 2' project under 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.

To whom it may concern:

The U.S. Fish and Wildlife Service (Service) has received your request to verify that the **040815 - Hwy. 23 Flood Damage Repairs (Franklin Co.) (S) site 2** (Proposed Action) may rely on the concurrence provided in the 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 (Project Description shown below), you have determined that the Proposed Action is within the scope and adheres to the criteria of the PBO, including the adoption of applicable avoidance and minimization measures, and may affect, but is not likely to adversely affect (NLAA) the endangered Indiana bat (*Myotis sodalis*) and/or the threatened Northern long-eared bat (*Myotis septentrionalis*).

The Service has 14 calendar days to notify the lead Federal action agency or designated non-federal representative if we determine that the Proposed Action does not meet the criteria for a NLAA determination under the PBO. If we do not notify the lead Federal action agency or designated non-federal representative within that timeframe, you may proceed with the Proposed Action under the terms of the NLAA concurrence provided in the PBO. This verification period allows Service Field Offices to apply local knowledge to implementation of the PBO, as we may identify a small subset of actions having impacts that were unanticipated. In such instances, Service Field Offices may request additional information that is necessary to verify inclusion of the proposed action under the PBO.

For Proposed Actions that include bridge/structure removal, replacement, and/or maintenance activities: If your initial bridge/structure assessments failed to detect Indiana bats, but you later detect bats during construction, please submit the Post Assessment Discovery of Bats at Bridge/Structure Form (User Guide Appendix E) to this Service Office. In these instances, potential incidental take of Indiana bats may be exempted provided that the take is reported to the Service.

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. If the Proposed Action may affect any other federally-listed or proposed species, and/or any designated critical habitat, additional consultation between the lead Federal action agency and this Service Office is required. If the proposed action has the potential to take bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act may also be required. In either of these circumstances, please contact this Service Office.

The following species may occur in your project area and **are not** covered by this determination:

- American Burying Beetle, *Nicrophorus americanus* (Endangered)
 - Eastern Black Rail, *Laterallus jamaicensis ssp. jamaicensis* (Proposed Threatened)
 - Geocarpon minimum, (Threatened)
 - Gray Bat, *Myotis grisescens* (Endangered)
 - Missouri Bladderpod, *Physaria filiformis* (Threatened)
 - Ozark Big-eared Bat, *Corynorhinus (=Plecotus) townsendii ingens* (Endangered)
 - Piping Plover, *Charadrius melodus* (Threatened)
 - Rattlesnake-master Borer Moth, *Papaipema eryngii* (Candidate)
 - Red Knot, *Calidris canutus rufa* (Threatened)
-

Project Description

The following project name and description was collected in IPaC as part of the endangered species review process.

Name

040815 - Hwy. 23 Flood Damage Repairs (Franklin Co.) (S) site 2

Description

Repair a slide on Hwy 23 with a rock buttress.

Determination Key Result

Based on your answers provided, this project(s) may affect, but is not likely to adversely affect the endangered Indiana bat and/or the threatened Northern long-eared bat, therefore, consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended 16 U.S.C. 1531 *et seq.*) is required. However, also based on your answers provided, this project 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.

Qualification Interview

1. Is the project within the range of the Indiana bat^[1]?

[1] See [Indiana bat species profile](#)

Automatically answered

Yes

2. Is the project within the range of the Northern long-eared bat^[1]?

[1] See [Northern long-eared bat species profile](#)

Automatically answered

Yes

3. Which Federal Agency is the lead for the action?

A) *Federal Highway Administration (FHWA)*

4. Are *all* project activities limited to non-construction^[1] activities only? (examples of non-construction activities include: bridge/abandoned structure assessments, surveys, planning and technical studies, property inspections, and property sales)

[1] Construction refers to activities involving ground disturbance, percussive noise, and/or lighting.

No

5. Does the project include *any* activities that are **greater than** 300 feet from existing road/rail surfaces^[1]?

[1] Road surface is defined as the actively used [e.g. motorized vehicles] driving surface and shoulders [may be pavement, gravel, etc.] and rail surface is defined as the edge of the actively used rail ballast.

No

6. Does the project include *any* activities **within** 0.5 miles of a known Indiana bat and/or NLEB hibernaculum^[1]?

[1] For the purpose of this consultation, a hibernaculum is a site, most often a cave or mine, where bats hibernate during the winter (see suitable habitat), but could also include bridges and structures if bats are found to be hibernating there during the winter.

No

7. Is the project located **within** a karst area?

Yes

8. Will the project include *any* type of activity that could impact a **known** hibernaculum^[1], or impact a karst feature (e.g., sinkhole, losing stream, or spring) that could result in effects to a **known** hibernaculum?

[1] For the purpose of this consultation, a hibernaculum is a site, most often a cave or mine, where bats hibernate during the winter (see suitable habitat), but could also include bridges and structures if bats are found to be hibernating there during the winter.

No

9. Is there *any* suitable^[1] summer habitat for Indiana Bat or NLEB **within** the project action area^[2]? (includes any trees suitable for maternity, roosting, foraging, or travelling habitat)

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] The action area is defined as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR Section 402.02). Further clarification is provided by the [national consultation FAQs](#).

Yes

10. Will the project remove *any* suitable summer habitat^[1] and/or remove/trim any existing trees **within** suitable summer habitat?

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

Yes

11. Will the project clear more than 20 acres of suitable habitat per 5-mile section of road/rail?

No

12. Have presence/probable absence (P/A) summer surveys^{[1][2]} been conducted^{[3][4]} **within** the suitable habitat located within your project action area?

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] Presence/probable absence summer surveys conducted within the fall swarming/spring emergence home range of a documented Indiana bat hibernaculum (contact local Service Field Office for appropriate distance from hibernacula) that result in a negative finding requires additional consultation with the local Service Field Office to determine if clearing of forested habitat is appropriate and/or if seasonal clearing restrictions are needed to avoid and minimize potential adverse effects on fall swarming and spring emerging Indiana bats.

[3] For projects within the range of either the Indiana bat or NLEB in which suitable habitat is present, and no bat surveys have been conducted, the transportation agency will assume presence of the appropriate species. This assumption of presence should be based upon the presence of suitable habitat and the capability of bats to occupy it because of their mobility.

[4] Negative presence/probable absence survey results obtained using the [summer survey guidance](#) are valid for a minimum of two years from the completion of the survey unless new information (e.g., other nearby surveys) suggest otherwise.

No

13. Does the project include activities **within documented Indiana bat habitat**^{[1][2]}?

[1] Documented roosting or foraging habitat – for the purposes of this consultation, we are considering documented habitat as that where Indiana bats and/or NLEB have actually been captured and tracked using (1) radio telemetry to roosts; (2) radio telemetry triangulation/triangulation to estimate foraging areas; or (3) foraging areas with repeated use documented using acoustics. Documented roosting habitat is also considered as suitable summer habitat within 0.25 miles of documented roosts.)

[2] For the purposes of this key, we are considering documented corridors as that where Indiana bats and/or NLEB have actually been captured and tracked to using (1) radio telemetry; or (2) treed corridors located directly between documented roosting and foraging habitat.

No

14. Will the removal or trimming of habitat or trees occur **within** suitable but **undocumented Indiana bat** roosting/foraging habitat or travel corridors?

Yes

15. What time of year will the removal or trimming of habitat or trees **within** suitable but **undocumented Indiana bat** roosting/foraging habitat or travel corridors occur^[1]?

[1] Coordinate with the local Service Field Office for appropriate dates.

B) During the inactive season

16. Does the project include activities **within documented NLEB habitat**^{[1][2]}?

[1] Documented roosting or foraging habitat – for the purposes of this consultation, we are considering documented habitat as that where Indiana bats and/or NLEB have actually been captured and tracked using (1) radio telemetry to roosts; (2) radio telemetry biangulation/triangulation to estimate foraging areas; or (3) foraging areas with repeated use documented using acoustics. Documented roosting habitat is also considered as suitable summer habitat within 0.25 miles of documented roosts.)

[2] For the purposes of this key, we are considering documented corridors as that where Indiana bats and/or NLEB have actually been captured and tracked to using (1) radio telemetry; or (2) treed corridors located directly between documented roosting and foraging habitat.

No

17. Will the removal or trimming of habitat or trees occur **within** suitable but **undocumented NLEB** roosting/foraging habitat or travel corridors?

Yes

18. What time of year will the removal or trimming of habitat or trees **within** suitable but **undocumented NLEB** roosting/foraging habitat or travel corridors occur?

B) During the inactive season

19. Will *any* tree trimming or removal occur **within** 100 feet of existing road/rail surfaces?

Yes

20. Will the tree removal alter *any* **documented** Indiana bat or NLEB roosts and/or alter any surrounding summer habitat **within** 0.25 mile of a documented roost?

No

21. Will *any* tree trimming or removal occur **between** 100-300 feet of existing road/rail surfaces?

No

22. Are *all* trees that are being removed clearly demarcated?

Yes

23. Will the removal of habitat or the removal/trimming of trees include installing new or replacing existing **permanent** lighting?

No

24. Does the project include wetland or stream protection activities associated with compensatory wetland mitigation?

No

25. Does the project include slash pile burning?

No

26. Does the project include *any* bridge removal, replacement, and/or maintenance activities (e.g., any bridge repair, retrofit, maintenance, and/or rehabilitation work)?

No

27. Does the project include the removal, replacement, and/or maintenance of *any* structure other than a bridge? (e.g., rest areas, offices, sheds, outbuildings, barns, parking garages, etc.)

No

28. Will the project involve the use of **temporary** lighting *during* the active season?

No

29. Will the project install new or replace existing **permanent** lighting?

No

30. Does the project include percussives or other activities (**not including tree removal/trimming or bridge/structure work**) that will increase noise levels above existing traffic/background levels?

No

31. Are *all* project activities that are **not associated with** habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives, limited to actions that DO NOT cause any additional stressors to the bat species?

Examples: lining roadways, unlighted signage , rail road crossing signals, signal lighting, and minor road repair such as asphalt fill of potholes, etc.

Yes

32. Will the project raise the road profile **above the tree canopy**?

No

33. Are the project activities that are not associated with habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives consistent with a No Effect determination in this key?

Automatically answered

Yes, other project activities are limited to actions that DO NOT cause any additional stressors to the bat species as described in the BA/BO

34. Is the habitat removal portion of this project consistent with a Not Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because the tree removal/trimming that occurs outside of the Indiana bat's active season occurs greater than 0.5 miles from the nearest hibernaculum, is less than 100 feet from the existing road/rail surface, includes clear demarcation of the trees that are to be removed, and does not alter documented roosts and/or surrounding summer habitat within 0.25 miles of a documented roost.

35. Is the habitat removal portion of this project consistent with a Not Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because the tree removal/trimming that occurs outside of the NLEB's active season occurs greater than 0.5 miles from the nearest hibernaculum, is less than 100 feet from the existing road/rail surface, includes clear demarcation of the trees that are to be removed, and does not alter documented roosts and/or surrounding summer habitat within 0.25 miles of a documented roost.

36. **General AMM 1**

Will the project ensure *all* operators, employees, and contractors working in areas of known or presumed bat habitat are aware of *all* FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable Avoidance and Minimization Measures?

Yes

37. Hibernacula AMM 1

Will the project ensure that on-site personnel will use best management practices^[1], secondary containment measures, or other standard spill prevention and countermeasures to avoid impacts to possible hibernacula?

[1] Coordinate with the appropriate Service Field Office on recommended best management practices for karst in your state.

Yes

38. Hibernacula AMM 1

Will the project ensure that, where practicable, a 300 foot buffer will be employed to separate fueling areas and other major containment risk activities from caves, sinkholes, losing streams, and springs in karst topography?

Yes

39. Tree Removal AMM 1

Can *all* phases/aspects of the project (e.g., temporary work areas, alignments) be modified, to the extent practicable, to avoid tree removal^[1] in excess of what is required to implement the project safely?

Note: Tree Removal AMM 1 is a minimization measure, the full implementation of which may not always be practicable. Projects may still be NLAA as long as Tree Removal AMMs 2, 3, and 4 are implemented and LAA as long as Tree Removal AMMs 3, 5, 6, and 7 are implemented.

[1] The word “trees” as used in the AMMs refers to trees that are suitable habitat for each species within their range. See the USFWS’ current summer survey guidance for our latest definitions of suitable habitat.

Yes

40. Tree Removal AMM 3

Can tree removal be limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits)?

Yes

41. Tree Removal AMM 4

Can the project avoid cutting down/removal of *all* (1) **documented**^[1] Indiana bat or NLEB roosts^[2] (that are still suitable for roosting), (2) trees **within** 0.25 miles of roosts, and (3) documented foraging habitat any time of year?

[1] The word documented means habitat where bats have actually been captured and/or tracked.

[2] Documented roosting or foraging habitat – for the purposes of this consultation, we are considering documented habitat as that where Indiana bats and/or NLEB have actually been captured and tracked using (1) radio telemetry to roosts; (2) radio telemetry triangulation/triangulation to estimate foraging areas; or (3) foraging areas with repeated use documented using acoustics. Documented roosting habitat is also considered as suitable summer habitat within 0.25 miles of documented roosts.)

Yes

Project Questionnaire

1. Have you made a No Effect determination for *all* other species indicated on the FWS IPaC generated species list?

No

2. Have you made a May Affect determination for *any* other species on the FWS IPaC generated species list?

Yes

3. How many acres^[1] of trees are proposed for removal between 0-100 feet of the existing road/rail surface?

[1] If described as number of trees, multiply by 0.09 to convert to acreage and enter that number.

0.25

Avoidance And Minimization Measures (AMMs)

This determination key result includes the commitment to implement the following Avoidance and Minimization Measures (AMMs):

GENERAL AMM 1

Ensure all operators, employees, and contractors working in areas of known or presumed bat habitat are aware of all FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable AMMs.

HIBERNACULA AMM 1

For projects located within karst areas, on-site personnel will use best management practices, secondary containment measures, or other standard spill prevention and countermeasures to avoid impacts to possible hibernacula. Where practicable, a 300 foot buffer will be employed to separate fueling areas and other major containment risk activities from caves, sinkholes, losing streams, and springs in karst topography.

TREE REMOVAL AMM 1

Modify all phases/aspects of the project (e.g., temporary work areas, alignments) to avoid tree removal.

TREE REMOVAL AMM 2

Apply time of year restrictions for tree removal when bats are not likely to be present, or limit tree removal to 10 or fewer trees per project at any time of year within 100 feet of existing road/rail surface and **outside of documented** roosting/foraging habitat or travel corridors; visual emergence survey must be conducted with no bats observed.

TREE REMOVAL AMM 3

Ensure tree removal is limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits).

TREE REMOVAL AMM 4

Do not remove **documented** Indiana bat or NLEB roosts that are still suitable for roosting, or trees within 0.25 miles of roosts, or **documented** foraging habitat any time of year.

Determination Key Description: FHWA, FRA, FTA Programmatic Consultation For Transportation Projects Affecting NLEB Or Indiana Bat

This key was last updated in IPaC on December 02, 2019. Keys are subject to periodic revision.

This decision key is intended for projects/activities funded or authorized by the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and/or Federal Transit Administration (FTA), which may require consultation with the U.S. Fish and Wildlife Service (Service) under Section 7 of the Endangered Species Act (ESA) for the endangered **Indiana bat** (*Myotis sodalis*) and the threatened **Northern long-eared bat** (NLEB) (*Myotis septentrionalis*).

This decision key should only be used to verify project applicability with the Service's [February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects](#). The programmatic biological opinion covers limited transportation activities that may affect either bat species, and addresses situations that are both likely and not likely to adversely affect either bat species. This decision key will assist in identifying the effect of a specific project/activity and applicability of the programmatic consultation. The programmatic biological opinion is not intended to cover all types of transportation actions. Activities outside the scope of the programmatic biological opinion, or that may affect ESA-listed species other than the Indiana bat or NLEB, or any designated critical habitat, may require additional ESA Section 7 consultation.

**ARDOT ENVIRONMENTAL VERIFICATION CHECKLIST
FOR CONSIDERATION OF POTENTIAL IMPACTS**

ARDOT Job Number 040815 FAP Number STPAC-ER-0024(40)
Job Title Hwy. 23 Flood Damage Repairs (Franklin Co.) (S)

Environmental Resource	None	Minimal	Major	Comments
Air Quality	X			No air quality/MSAT impacts
Cultural Resources	X			SHPO clearance is attached
Economic	X			No adverse impacts
Endangered Species		X		See USFWS consultation
Environmental Justice/Title VI	X			EJ populations not located in project area
Fish and Wildlife		X		Temporary impacts during construction
Floodplains	X			None occur in project area
Forest Service Property	X			Not located within project boundaries
Hazardous Materials/Landfills	X			No sites in project area
Land Use	X			Will not be impacted by project
Migratory Birds	X			None impacted by the project
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		ERW, NSW, & WSR: WPC SP
Public Recreation Lands	X			None in project area
Public Water Supply/WHPA		X		WHP SP for offsite areas included
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		Temporary impacts during construction
Water Quality		X		Temporary decline during construction
Wetlands	X			None in the project area
Wildlife Refuges	X			None in the project area

Section 401 Water Quality Certification Required? No
 Short-term Activity Authorization Required? Yes
 Section 404 Permit Required? Yes Type NW Permit 13 & 14

Remarks: A NW Permit 13 should cover the proposed bank stabilization at Section 1; a NW Permit 14 should cover the proposed slide repair at Section 2.

Section 2 (L.M. 12.95, 13.05): tributary to Mulberry River (ERW, NSW) and within a WHPA.

Signature of Evaluator Joshua Graham Date 2/10/2020