

EIS RE-EVALUATION

ARDOT JOB NUMBER 001747

U.S. 71 RELOCATION – DEQUEEN TO INTERSTATE 40

ROUTE 49

SEVIER, POLK, SCOTT, SEBASTIAN, AND CRAWFORD COUNTIES

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

June 2022

June 22, 2022

Date of Approval



Randal Looney
Randal Looney
Environmental Coordinator
Federal Highway Administration

The referenced project proposed to construct a new location highway from DeQueen to Interstate 40, originally as a relocation of Highway 71, but now considered an extension of Interstate 49 to the south. The project was evaluated as an Environmental Impact Statement (EIS) and approved with a Record of Decision (ROD) on December 17, 1997. Public Hearings were held in December 1996 and July 2004. A National Environmental Policy Act re-evaluation of this proposed work is now required due to the time elapsed since the approval of the EIS and ROD.

A re-evaluation is currently underway for construction of the next phase of the project between Highway 22 and Interstate 40 under job 040748. A clearing and grubbing job at, and north of, the proposed Highway 22 interchange in the City of Barling, job 040900, has been broken out of this study for construction phasing and is the subject of this re-evaluation. A project location map for 040900 is attached.

The 040900 footprint has not substantially changed since approval of the ROD and would involve clearing and grubbing approximately 30 acres of vegetation. The right of way involved in the clearing and grubbing job was previously acquired from the U.S. Department of Defense, Fort Chaffee, under the original Record of Decision for the subject job.

There are no relocations or additional right of way acquisition anticipated with the clearing and grubbing project. There are no anticipated impacts to important farmland, public water supplies, cultural resources, hazardous materials, Section 4(f) properties, environmental justice or Title VI populations

The job is located within a Zone AE Special Flood Hazard Area. The clearing and grubbing work would not involve impacts to the floodplain, but floodplain impacts as a result of the highway construction will be evaluated in the 040748 re-evaluation.

The attached official species list obtained from the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation identified the following species as potentially occurring within the project area: Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), American burying beetle (*Nicrophorus americanus*), and monarch butterfly (*Danaus plexippus*). USFWS concurrence on the following determinations is attached.

Due to the lack of suitable habitat and distance to known species occurrences, it has been determined that the project would have “no effect” on the Eastern Black Rail, Piping Plover, and Red Knot.

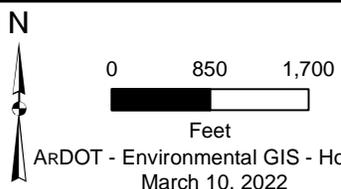
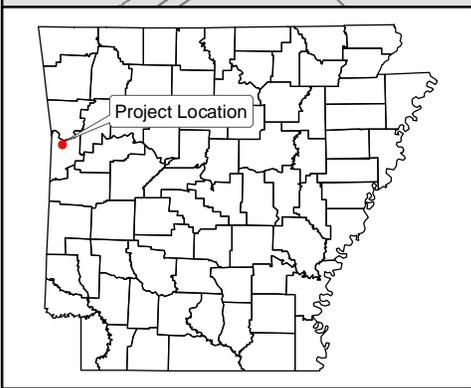
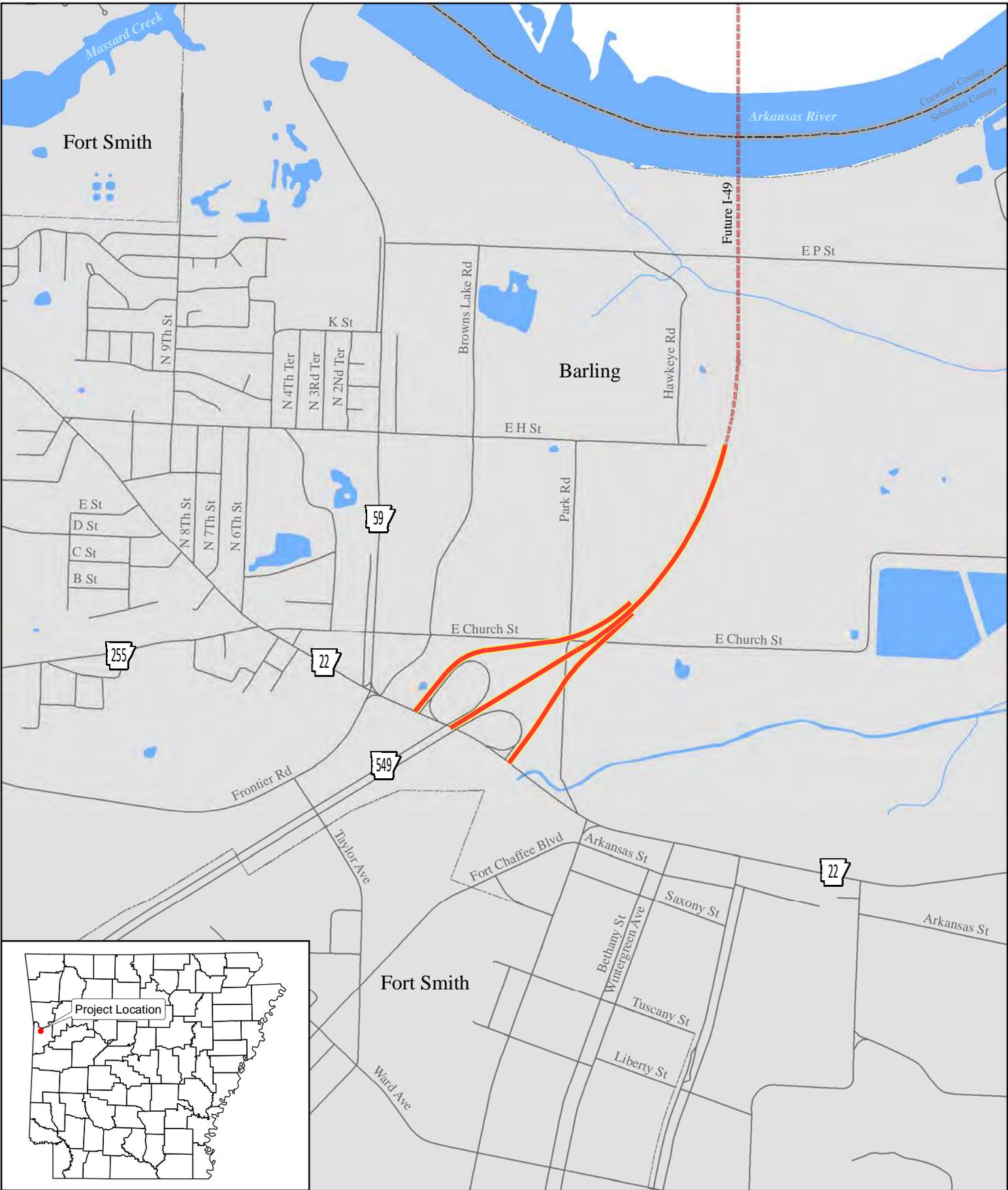
A Final 4(d) Rule applies to the project's activities that have the potential to affect northern long-eared bats. The Final 4(d) Rule exempts the incidental take of northern long-eared bats from take prohibitions in the Endangered Species Act. The exemptions apply as long as the activities do not occur within 0.25 mile of a known hibernaculum or within 150 feet of a known occupied maternity roost from June 1 to July 31. No known hibernacula or maternity roosts exist within the clearing and grubbing limits.

The proposed project is outside the scope of the Programmatic Biological Opinion for Transportation Projects within the Range of Indiana and Northern Long-eared Bats; however, all tree clearing will be conducted during the inactive season from November 15 to March 15 and a bat survey will be conducted. Due to these reasons, it has been determined that the project "may affect but is not likely to adversely affect" the Indiana bat and northern long-eared bat.

A Final 4(d) Rule applies to the project's activities that the potential to affect American burying beetle. The Final 4(d) Rule exempts the incidental take of American burying beetle from take prohibitions in the Endangered Species Act as long as the activities occur outside the boundaries of Fort Chaffee; therefore, the project can proceed without restrictions.

The monarch butterfly is a candidate species, and as such, is not federally protected under the Endangered Species Act. The USFWS recommends agencies implement conservation measures for candidate species in action areas, as these are species that may warrant future protection under the Act. ARDOT will plant native wildflowers on all disturbed areas following construction.

Total wetland impacts are estimated at 8.2 acres. Total stream impacts are estimated at 2,701.7 linear feet/0.2 acre. Compensatory mitigation will be provided at an approved mitigation bank that services the area. Construction should be allowed under the terms of a Section 404 Standard Individual Permit.



Job 040900
 I-49/Hwy. 22 Intchg.
 Clearing & Grubbing
 Sebastian County

Project Location



INTEROFFICE MEMORANDUM

May 12, 2022

TO: Environmental Job File

FROM: Kristina Boykin, Cultural Resources
Kristina Boykin

SUBJECT: Cultural Resources Clearance
Job 040900
I-49/Hwy. 22 Intchng. Clearing & Grubbing (S)
Route 22, Section 1
Sebastian County

The current project involves clearing and grubbing from Hwy. 22 to H Street within the existing right-of-way (ROW) for the future Interstate 49 in Sebastian County.

Previous cultural resources work was done, but design changes resulted in additional areas not previously surveyed under job 001747. Consultants conducted additional Phase I archeological survey and found no sites that are eligible for inclusion in the National Register of Historic Places in this project area. Additional archeological work was done in accordance with the 1997 Programmatic Agreement, and the appropriate documentation was submitted to the State Historic Preservation Officer for review and concurrence (AHPP Tracking Number 100314.05). No further archeological work is required for the above referenced project.



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



March 1, 2022

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

Dear Mr. Fleming:

The U.S. Fish and Wildlife Service (Service) has reviewed your request, assessment, and determinations for Arkansas Department of Transportation (ARDOT) Job # 040900_I-49/Hwy. 22 Interchange Clearing and Grubbing, Sebastian County, Arkansas. We received your request on February 23, 2022.

ARDOT made the following assessment and determination:

The Arkansas Department of Transportation is proposing a clearing and grubbing (only) job along the southern section of the proposed I-49 corridor from the Highway 22 interchange to the southern boundary of USACE's Springhill Park. Job # 040900 only includes clearing and grubbing along this southern section, and no other construction activities.

The official species list obtained from the U.S. Fish and Wildlife Service's (USFWS) Information for Planning and Consultation identified the following species as potentially occurring within the project boundaries: Indiana Bat (*Myotis sodalis*), Northern Long-eared Bat (*Myotis septentrionalis*), Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), American Burying Beetle (*Nicrophorus americanus*), and the Monarch Butterfly (*Danaus plexippus*). See the attached USFWS species list and verification letters generated from IPaC.

Utilizing the programmatic biological opinion (PBO) and 4(d) Rule Key for both the American Burying Beetle (ABB) and the Northern Long-eared Bat (NLEB), it has been determined that the project "may affect, but is not likely to adversely affect" both species. There is approximately 19.0 acres of woodland habitat proposed to be cleared that may be suitable ABB habitat, while there is approximately 30.6 acres of forested habitat proposed to be cleared that is potential suitable foraging and roosting habitat for the NLEB.

The ABB final 4(d) rule applies to the project's activities that have the potential to affect ABBs. The final 4(d) rule exempts the incidental take of ABBs from take prohibitions in the Endangered Species Act. The exemptions apply as long as the activities do not occur on certain conservation lands in the Southern Plains Analysis Areas. Within Arkansas,

these conservation lands are entirely within the existing boundaries of Fort Chaffee. This project occurs outside of the existing boundaries of Fort Chaffee; therefore, the project can proceed without restrictions.

The final 4(d) rule applies to the project's activities that have the potential to affect NLEBs. The final 4(d) rule exempts the incidental take of NLEBs from take prohibitions in the Endangered Species Act. The exemptions apply as long as the activities do not occur within 0.25 mile of a known hibernaculum or within 150 feet of a known occupied maternity roost from June 1 to July 31. No known hibernacula or maternity roosts exist within the project limits; therefore, the project can proceed without restrictions. However, a winter clearing restriction will be placed in the job contract.

The proposed project is outside the scope of the FHWA Programmatic Biological Opinion for Transportation Projects within the Range of Indiana and Northern Long-eared Bats; however, all tree clearing will be conducted during the inactive season from November 15 to March 15. In addition, a bat survey will be conducted prior to any clearing and grubbing activities. Due to the commitment to conduct a mist-net survey and the winter clearing only restriction, it is our determination that the project "may affect, but is not likely to adversely affect" the Indiana Bat.

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 three bird species.

The Monarch Butterfly is a candidate species, and as such, is not federally protected under the Endangered Species Act. However, The U.S. Fish and Wildlife Service recommends agencies implement conservation measures for candidate species in action areas, as these are species by definition that may warrant future protection under the Act. ARDOT will plant native wildflowers after construction as a conservation measure.

We request your concurrence in our determinations.

The Service concurs with the "no effect" determinations for the listed species identified and your assessment regarding Monarch Butterfly. No further consultation for this project is required for these species.

Based upon your IPaC submission, the Action is consistent with activities analyzed in the PBO. The Action may affect the Northern Long-eared Bat; however, any take that may occur as a result of the Action is not prohibited under the ESA Section 4(d) rule adopted for this species at 50 CFR §17.40(o). Unless the Service advises you within 30 days of the date of this letter that your IPaC-assisted determination was incorrect, this letter verifies that the PBO satisfies and concludes your responsibilities for this Action under ESA Section 7(a)(2) with respect to the Northern Long-eared Bat.

The Service agrees that the ABB final 4(d) rule applies to the project's activities that have the potential to affect American Burying Beetles. The final 4(d) rule exempts the incidental take of American Burying Beetles from take prohibitions in the Endangered Species Act. The

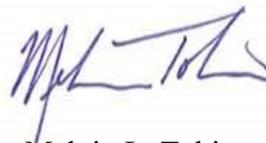
exemptions apply as long as the activities do not occur on certain conservation lands in the Southern Plains Analysis Areas. Within Arkansas, these conservation lands are entirely within the existing boundaries of Fort Chaffee. This project occurs outside of the existing boundaries of Fort Chaffee; therefore, the project can proceed without restrictions.

Furthermore, due to the location of the area being affected, limited suitable habitat within the footprint of the action, limited and poor habitat located immediately adjacent to the action, the commitment to conduct a mist-net survey prior to any clearing and grubbing activities, seasonal clearing restrictions (March 15 – November 15), the distance to known species locations, and the implementation of BMPs, the Service concurs with your determination of “may affect, but is not likely to adversely affect” the Indiana Bat. This concurrence concludes your ESA Section 7 responsibilities for this action.

The Service recommends that your agency contact the Arkansas Ecological Services Field Office or re-evaluate this key in IPaC if: 1) the scope, timing, duration, or location of the proposed project changes, 2) new information reveals the action may affect listed species or designated critical habitat; and 3) a new species is listed or critical habitat designated. If any of the above conditions occurs, additional consultation with the Arkansas Ecological Services Field Office should take place before project changes are final or resources committed.

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

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United States Department of the Interior



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

In Reply Refer To:

June 14, 2022

Project Code: 2022-0011710

Project Name: 040900_I-49/Hwy. 22 Intchno. Clearing and Grubbing

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

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological

evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts see <https://www.fws.gov/birds/policies-and-regulations.php>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures see <https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds.php>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/birds/policies-and-regulations/executive-orders/e0-13186.php>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

Endangered Species Act Species

There is a total of 7 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
Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. The location of the critical habitat is not available. 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

Birds

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

Insects

NAME	STATUS
<p>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</p>	Threatened
<p>Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743</p>	Candidate

Critical habitats

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

IPaC User Contact Information

Agency: Arkansas State Highway and Transportation Department

Name: Kayti Ewing

Address: 10324 I-30

City: Little Rock

State: AR

Zip: 72209

Email: kayti.ewing@ardot.gov

Phone: 5015692522

Lead Agency Contact Information

Lead Agency: Federal Highway Administration

ROADWAY DESIGN REQUEST

Job Number 040900 FAP No. _____ County Sebastian

Job Name I-49/Hwy. 22 Intchng. Clearing & Grubbing (S)

Design Engineer HNTB Environmental Staff _____

Detailed Project Description This project is implementing clearing and grubbing along the

Proposed I-49 new location corridor within Sebastian County. The limits of the proposed clearing

And grubbing are within the existing ROW that was established and acquired under previous

ARDOT project 001747. The parent project for this clearing and grubbing work project 040748.

There will be no ROW acquisition for this project.

A. Existing Conditions:

Roadway Width: N/A Shoulder Type/Width: N/A

Number of Lanes and Width: N/A Existing Right-of-Way: Var. (320'-1920')

Sidewalks? N/A Location: _____ Width: _____

Bike Lanes? N/A Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: N/A Shoulder Type/Width: N/A

Number of Lanes and Width: N/A Proposed Right-of-Way: N/A

Sidewalks? N/A Location: _____ Width: _____

Bike Lanes? N/A Location: _____ Width: _____

C. Construction Information:

If detour: Where: N/A Length: _____

D. Design Traffic Data:

2025 ADT: N/A 2045 ADT: 21000 % Trucks: 29

Design Speed: 70 m.p.h.

E. Approximate total length of project: 0.871 mile(s)

F. Justification for proposed improvements: New location interstate corridor extension

G. Total Relocatees: 0 Residences: 0 Businesses: 0

H. Have you coordinated with any outside agencies (e.g., FHWA, City, County, etc.)? Yes*

Agency/Official	Person Contacted	Date
USACE	Various	Various*
Fort Chaffee	Various	Various*
Crawford County	County Judge	Various*
Sebastian County	County Judge	Various*
City of Fort Smith	Mayor	Various*
City of Van Buren	Mayor	Various*
City of Alma	Mayor	Various*

*Note: All coordination with the agencies noted above with asterisk were facilitated by Environmental Division Staff