

TIER 3 CATEGORICAL EXCLUSION

**ARDOT JOB NUMBER 040805
FAP NUMBER STPAC-ER-1772(2)
HWYS. 220 & 265 FLOOD REPAIRS (S)
ROUTE 220, SECTIONS 2 & 3
ROUTE 265, SECTION 1
CRAWFORD & WASHINGTON 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

March 2020

3/2/2020

Date of Approval



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 flood damage on Highway 220 and 265 in Crawford and Washington Counties. Total length of the project is 7.1 miles. A project location map is attached.

The existing roadway consists of two 10' wide paved travel lanes with 2' wide paved shoulders. The typical cross section will not change on either highway due to the proposed project. The landslides on Highway 220 will be repaired with either rock buttresses or riprap slope plating with rock ditch checks. The failed culvert on Highway 265 be replaced with a new double 8'x7' reinforced concrete box culvert. The project will also involve drainage improvements, guardrail replacement, and patching or overlay/inlay to repair the asphalt pavement. At least one lane of traffic will be maintained throughout construction by using automated traffic signals. Approximately 0.8 acre of temporary construction easements will be required for this project; permanent easements and right of way required by ARDOT will be determined following construction.

The proposed project will require approximately 0.3 acre of temporary construction easements on Highway 220 from the U.S. Forest Service, Ozark-St. Francis National Forests, a cooperating agency on the proposed project. Native vegetation will be planted on all federal property.

There are no relocations or impacts to wetlands, cultural resources, environmental justice populations, hazardous materials, prime farmland, or public water supplies involved with this project. State Historic Preservation Officer clearance is attached.

The attached official species list obtained from the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) website identified the following federally-listed species as potentially occurring within the project area: the endangered gray bat (*Myotis grisescens*), the endangered Indiana bat (*Myotis sodalis*), the threatened northern long-eared bat (*Myotis septentrionalis*), the endangered Ozark big-eared bat (*Corynorhinus townsendii ingens*), the proposed threatened Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), the threatened Piping Plover (*Charadrius melodus*), the threatened Red Knot (*Calidris canutus rufa*), the endangered Whooping Crane (*Grus americana*), the endangered Neosho Mucket (*Lampsilis rafinesqueana*), the threatened Rabbitsfoot (*Theliderma cylindrical*), the endangered American burying beetle

(*Nicrophorus americanus*), and the threatened Missouri bladderpod (*Physaria filiformis*).

The Final 4(d) Rule applies to the project's activities that have the potential to affect northern long-eared bats and 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 project limits; therefore, the project can proceed without restrictions. All offsite locations will require coordination with USFWS. See the attached letter generated from IPaC for the northern long-eared bat.

A "may affect, not likely to adversely affect" determination was made for the Indiana bat, gray bat, and Ozark big-eared bat due to the minimal tree clearing associated with the project and the absence of suitable winter habitat. See the attached letter generated from IPaC and the USFWS concurrence letter for the Indiana bat.

Due to the lack of suitable habitat in the project area and the distance to known occurrence records, it has been determined that the project will have "no effect" on the Eastern Black Rail, Piping Plover, Red Knot, Whooping Crane, Missouri bladderpod, Neosho Mucket, and Rabbitsfoot. It has also been determined that the project will have "no effect" on the American burying beetle as the project is outside of the consultation area.

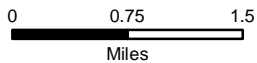
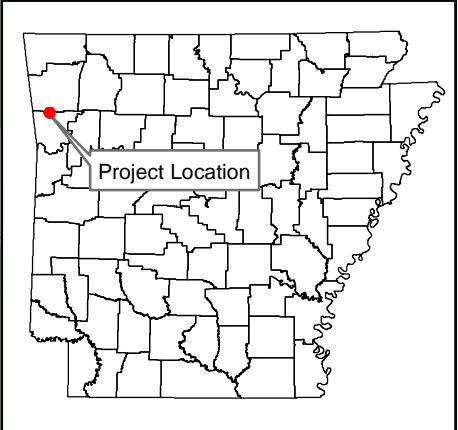
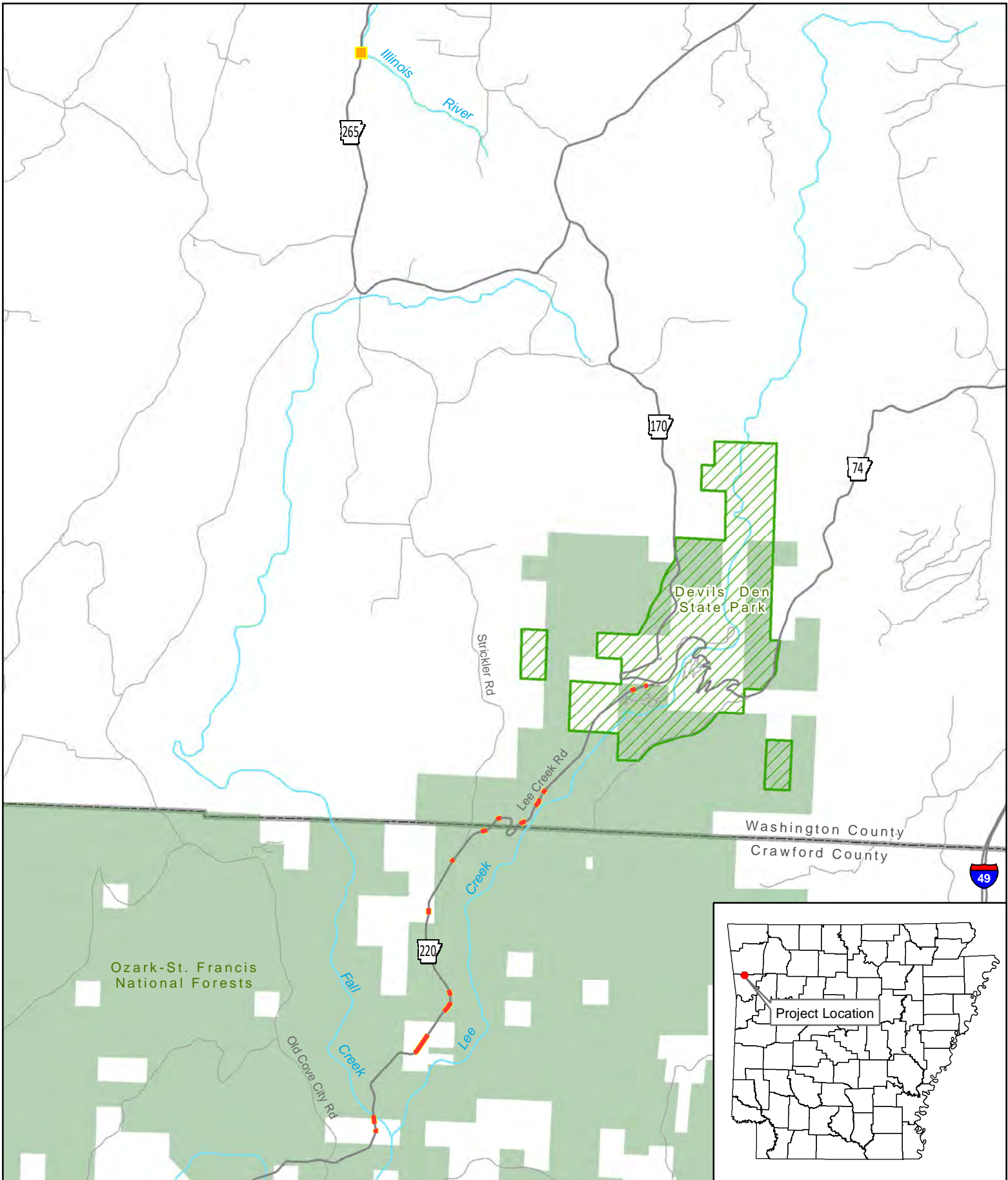
It is anticipated that there will be 45 linear feet of permanent impacts to the unnamed tributary of the Illinois River on Highway 265. Construction of the proposed project should be allowed under the terms of a Nationwide 14 Section 404 Permit for Linear Transportation Projects as defined in the Federal Register 82(4):1860-2008.

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

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 toxic (MSAT) concerns. As such, this project will not result in changes in traffic volumes, vehicle mix, basic project location, or any other factor that would cause

a meaningful increase in MSAT impacts of the project from that of a no build alternative.

Based on the ARDOT noise policy, a noise analysis is not required for this project. The flood repairs will not involve adding capacity, substantially changing the roadway alignment, or exposing noise sensitive land uses to traffic noise sources. In compliance with federal guidelines, local authorities will not require notification.



Job 040805
Hwys. 220 & 265 Flood Repairs
Crawford & Washington Counties

- Slide Repair
- Culvert Replacement



ARKANSAS HERITAGE



January 17, 2020

Mr. John Fleming
Division Head
Environmental Division
Arkansas State Highway and Transportation Department
P.O. Box 2261
Little Rock, AR 72203-2261

RE: Crawford and Washington Counties – General
Section 106 Review – FHWA
Highway 220 and 265 Flood Repairs (S)
Route 220, Sections 2 & 3
Route 265, Section 1
ARDOT Job Number: 040805
AHPP Tracking Number: 105262

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the Project Identification Form (PIF) for the above-referenced job in Crawford and Washington Counties. As described, the undertaking entails repair of four landslide locations on Highway 220 and replacement of a culvert on Highway 265.

The cover page for the PIF notes that a, "records check and pedestrian survey failed to identify any cultural resources within or near the project locations." Please see the following findings from the AHPP records check.

1. Site 3CW0080, as recorded on the topographic map from a 2009 revisit by Geo-Marine, Inc., lies adjacent to the north boundary of the slide location in Sections 17 and 20, Township 12 North, Range 31 West (Figure 1/Sheet 2 of 3 in your submission). Site 3CW0080 is determined eligible for inclusion in the National Register of Historic Places (NRHP) (AHPP Tracking Number 100187).
2. Figure 1/Sheet 2 of 3: Two Civilian Conservation Corps Culverts (CCC) (Culvert #1 and Culvert #2A) (AHPP Resource Number WA0803) appear to lie within or adjacent to two project locations in Section 26, Township 13 North, Range 31 West. The culverts are unevaluated for NRHP eligibility.
3. Figure 1/Sheet 2 of 3: CCC Culverts #14A (WA0816), #15A (WA0817), #16A (WA0818), #17A (WA0819), #18A (WA0820), #20A (WA0822), and #21A (WA0823) appear to lie within or adjacent to project locations in Section 34, Township 13 North, Range 31 West. These seven resources are determined eligible for listing in the NRHP.

4. Figure 1/Sheet 2 of 3: CCC Culverts #23A (WA0825) and #24A (WA0826) appear to lie within or adjacent to project locations in Section 33, Township 13 North, Range 31 West. Both resources are determined eligible for listing in the NRHP.

The PIF indicates the project entails replacement of one culvert. See the Job Description section that describes the proposal to “repair four slide locations on Hwy. 220 and replace a culvert on Hwy. 265 in Crawford and Washington Counties.” Figure 1 shows 15 project locations. Assuming one is the culvert replacement on Highway 265, although it is not depicted as such on any map, a significant discrepancy remains. Additionally, page 14, paragraph 2 indicates excavation of three shovel tests “at the culvert locations.” Please clarify if these are historic culverts and if so, what the potential effects from the undertaking may be, if any.

In consideration of the issues noted above, the AHPP requests a revised PIF that accounts for historic or unevaluated properties within the area of potential effects (APE) and accurately describes the scope of the project and level of effort to identify historic properties within the APE for the proposed undertaking.

Tribes that have expressed an interest in the area include the Cherokee Nation (Ms. Elizabeth Toombs), the Choctaw Nation of Oklahoma (Ms. Madison Currie), the Muscogee (Creek) Nation (Ms. Corain Lowe-Zepeda), the Osage Nation (Dr. Andrea Hunter), the Quapaw Nation (Mr. Everett Bandy), the Shawnee Tribe (Ms. Tonya Tipton), and the United Keetoowah Band of Cherokee Indians (Ms. Erin Thompson and Charlotte Wolfe). We recommend consultation in accordance with 36 CFR § 800.2(c)(2).

Please refer to the AHPP Tracking Number listed above in all correspondence. If you have any questions, please call Eric Mills of my staff at 501-324-9784 or email eric.mills@arkansas.gov.

Sincerely,


Scott Kaufman
Director, AHPP

cc: Mr. Randall Looney, Federal Highway Administration
Dr. Ann Early, Arkansas Archeological Survey



ARKANSAS HERITAGE



January 29, 2020

Mr. John Fleming
Division Head
Environmental Division
Arkansas State Highway and Transportation Department
P.O. Box 2261
Little Rock, AR 72203-2261

RE: Crawford and Washington Counties – General
Section 106 Review – FHWA
Highway 220 and 265 Flood Repairs (S)
Route 220, Sections 2 & 3
Route 265, Section 1
ARDOT Job Number: 040805
AHPP Tracking Number: 105262.01

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the Addendum Project Identification Form (PIF) for the above-referenced job in Crawford and Washington Counties. Thank you for the additional information and clarification regarding historic properties and mitigated properties within or proximal to the area of potential effects. Based on the provided information, the AHPP concurs with the finding of **no historic properties affected pursuant to 36 CFR § 800.4(d)(1)**.

Tribes that have expressed an interest in the area include the Cherokee Nation (Ms. Elizabeth Toombs), the Choctaw Nation of Oklahoma (Ms. Madison Currie), the Muscogee (Creek) Nation (Ms. Corain Lowe-Zepeda), the Osage Nation (Dr. Andrea Hunter), the Quapaw Nation (Mr. Everett Bandy), the Shawnee Tribe (Ms. Tonya Tipton), and the United Keetoowah Band of Cherokee Indians (Ms. Erin Thompson and Charlotte Wolfe). We recommend consultation in accordance with 36 CFR § 800.2(c)(2).

Please refer to the AHPP Tracking Number listed above in all correspondence. If you have any questions, please call Eric Mills of my staff at 501-324-9784 or email eric.mills@arkansas.gov.

Sincerely,

Scott Kaufman
Director, AHPP

cc: Mr. Randall Looney, Federal Highway Administration
Dr. Ann Early, Arkansas Archeological Survey



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



February 12, 2020

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

Consultation Code: 04ER1000-2020-SLI-0350
Consultation Code: 04ER1000-2020-SLI-0351

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 Number 040805 proposed road slide repairs on Hwy 220 and replacing a flood damaged culvert on Hwy 265 in Crawford and Washington Counties near Devil's Den State Park, Arkansas. The HWY 265 portion of 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 (*Myotis sodalis*) and/or Northern Long-eared Bat (*Myotis septentrionalis*). We received your request and the associated Project Submittal Form on February 6, 2020.

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

ArDOT proposes to repair road slides on Hwy 220 in Crawford and Washington Counties near Devil's Den State Park and replace a flood damaged culvert on Hwy 265 in Washington County near Hogeys. These two sites were evaluated separately in IPaC due to distance between them (approximately 7 miles).

The official species list obtained from the U.S. Fish and Wildlife Service's (USFWS) Information for Planning and Consultation (IPaC) for the Hwy 220 site identified the following endangered and threatened species within the project boundaries; the endangered Gray Bat (*Myotis grisescens*), the endangered Indiana Bat (*Myotis sodalis*), the threatened Northern Long-eared Bat (*Myotis septentrionalis*), the endangered Ozark Big-eared Bat (*Corynorhinus (=Plecotus townsendii ingens)*), the proposed threatened Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), the threatened Piping Plover (*Charadrius melodus*), the threatened Red Knot (*Calidris canutus rufa*), the endangered Whooping Crane (*Grus americana*), the endangered American Burying Beetle (*Nicrophorus americanus*), and the threatened Missouri Bladderpod (*Physaria filiformis*).

For the Hwy 265 site, IPaC identified the following endangered and threatened species within the project boundaries; the endangered Gray Bat (*Myotis grisescens*), the endangered Indiana Bat (*Myotis sodalis*), the threatened Northern

Long-eared Bat (*Myotis septentrionalis*), the endangered Ozark Big-eared Bat (*Corynorhinus (=Plecotus) townsendii ingens*), the proposed threatened Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), the threatened Piping Plover (*Charadrius melodus*), the threatened Red Knot (*Calidris canutus rufa*), the endangered Whooping Crane (*Grus americana*), the endangered Neosho Mucket (*Lampsilis rafinesqueana*), the threatened Rabbitsfoot (*Theliderma cylindrica*), and the threatened Missouri Bladderpod (*Physaria filiformis*).

Consultation with the USFWS via IPaC has determined that the Hwy 220 slide is outside of the scope of the programmatic biological opinion for Indian Bat (IBAT) and Northern Long-eared Bat (NLEB) due to the removal of trees >9" DBH in suitable habitat during the active season. The Hwy 220 portion of this job was first paved in 2014 in ArDOT job# 040128. This area is in close proximity (approximately 0.6 miles) to records of IBAT, NLEB, and Ozark Big-eared Bat (OBEB) in and around Devil's Den State Park. Gray Bat is not known to occur near the project area. Additionally, NLEB was captured in 2014 during the survey for 040128 at this location. The existing right-of-way at this site is still clear of mature trees from project 040128. Some additional temporary construction easement (0.6 acres) will be acquired in 4 spots to repair landslide areas. A small portion of this acreage (0.08 acres) is greater than 100' from the existing road surface. Many of the trees in these easements have already fallen as a result of the slides. On January 31, 2020, ArDOT biologist Matthew Schrum joined USFWS biologist Pedro Ardapple-Kindberg to search for suitable OBEB winter habitat in the project area. No suitable winter habitat was located.

The Hwy 265 culvert replacement will be limited in scope (approximately 0.45 acre footprint). Any clearing required for this culvert replacement will take place during the winter. This culvert is on an unnamed tributary of the Illinois River, approximately 11 miles upstream of the nearest record of Neosho Mucket, and miles further from the designated critical habitat for Neosho Mucket. Rabbitsfoot is known to occur further downstream. The Illinois River is an intermittent stream where it joins this unnamed tributary.

The USFWS, via IPaC, provided a "may affect, not likely to adversely affect" determination for Indiana Bat and Northern Long-eared Bat.

A "may affect, not likely to adversely affect" determination was made for Indiana Bat, Northern Long-eared Bat, and Gray Bat due to the limited scope of tree clearing associated with the project at the Hwy 220 site. A "may affect, not likely to adversely affect" determination was made for Ozark Big-eared Bat, due to the limited scope of tree clearing and the absence of suitable winter habitat in the project area.

A “no effect” determination was made for the Eastern Black Rail, Piping Plover, Red Knot, and Whooping Crane due to distance to known occurrence records and lack of suitable habitat in the project area.

A “no effect” determination was made for the American Burying Beetle due to the project occurring outside of the 2- and 3-acre consultation areas.

A “no effect” determination was made for the Neosho Mucket and Rabbitsfoot due to lack of suitable habitat and distance to known occurrence records.

A “no effect” determination was made for the Missouri Bladderpod due to the distance to known occurrence records and lack of suitable habitat in the project area.

The Service has received your concurrence verification letter and request to verify that the HWY 265 portion of the Proposed Action may rely on the concurrence provided in the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C 1531 et seq.).

Based on the information you provided, you have determined that the Proposed Action 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 Indiana Bat and Northern Long-eared Bat. The Service concurs that this particular project action may rely on the PBO.

The Service has reviewed your determination that the proposed action will not result in any prohibited incidental take for Northern Long-eared Bat. This project may affect the Northern Long-eared Bat; however, there are no effects beyond those previously disclosed in the Service’s programmatic biological opinion for the final 4(d) rule dated January 5, 2016. Any taking that may occur incidental to this project is not prohibited under the final 4(d) rule (50 CFR§17.40(o)).

This project is consistent with the description of the proposed action in the programmatic biological opinion, and the 4(d) rule does not prohibit incidental take of the Northern Long-eared Bat that may occur as a result of this project. Therefore, the programmatic biological opinion satisfies the "action agency" responsibilities under ESA section 7(a)(2) relative to the Northern Long-eared Bat for this project.

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 HWY 220 and HWY 265, the action occurring along existing roadway and bridge/culvert crossings, limited tree trimming to adjacent right-of-way, previous disturbance and loss of trees due to the slides, negative survey results for Ozark Big-eared Bats and habitat, previous bat survey results in the vicinity having only captured NLEB, consideration of the 4(d) rule for NLEB, the distance to known species locations or hibernacula, the implementation of best management practices, and the standard provisions for stream sediment control and water quality conservation measures, the Service concurs with your determinations and agrees with your assessments for all other listed species and critical habitat 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,

A handwritten signature in blue ink, appearing to read "Mel Tobin".

Melvin L. Tobin
Field Supervisor

cc: Project File
Read File

Filename: C:\Users\lilewis\Documents\PROJECTS\FY2020\ARDOT\ARDOT Job 040805\AFO Letter - ARDOT Job Number 040805 - 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:

December 19, 2019

Consultation Code: 04ER1000-2020-SLI-0350

Event Code: 04ER1000-2020-E-00735

Project Name: 040805 - Hwy 220 slide repairs

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-0350

Event Code: 04ER1000-2020-E-00735

Project Name: 040805 - Hwy 220 slide repairs

Project Type: TRANSPORTATION

Project Description: This is site 1 of 2 on this job. Slide repairs on Hwy 220 in Crawford and Washington counties AR. This road is in the Boston Mountains south of Devil's Den state park. Toward the north end of the site, previous slide repairs are failing, and rip rap is sliding into Lee Creek, and ERW.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.735841070462705N94.29805880981246W>



Counties: Crawford, AR | Washington, AR

Endangered Species Act Species

There is a total of 10 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 |
| Whooping Crane <i>Grus americana</i> Population: U.S.A. (AL, AR, CO, FL, GA, ID, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, NM, OH, SC, TN, UT, VA, WI, WV, western half of WY) No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/758 | Experimental Population, Non- Essential |

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 |

Flowering Plants

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

Critical habitats

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



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:

December 19, 2019

Consultation Code: 04ER1000-2020-SLI-0351

Event Code: 04ER1000-2020-E-00737

Project Name: 040805 - Hwy. 265 slide repairs

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-0351

Event Code: 04ER1000-2020-E-00737

Project Name: 040805 - Hwy. 265 slide repairs

Project Type: TRANSPORTATION

Project Description: This is site 2 of 2 on this job. This is a culvert that washed out in a flood. This will most likely be replaced with a 4 sided box culvert, with wing walls projecting east into the Illinois River headwaters.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.86746431241125N94.31261425688899W>



Counties: Washington, 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 |
| Whooping Crane <i>Grus americana</i> Population: U.S.A. (AL, AR, CO, FL, GA, ID, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, NM, OH, SC, TN, UT, VA, WI, WV, western half of WY) No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/758 | Experimental Population, Non- Essential |

Clams

| NAME | STATUS |
|--|------------|
| Neosho Mucket <i>Lampsilis rafinesqueana</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/3788 | Endangered |
| Rabbitsfoot <i>Quadrula cylindrica cylindrica</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5165 | Threatened |

Flowering Plants

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

Critical habitats

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



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110 South Amity Suite 300
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In Reply Refer To:

February 11, 2020

Consultation Code: 04ER1000-2020-TA-0350

Event Code: 04ER1000-2020-E-01156

Project Name: 040805 - Hwy 220 slide repairs

Subject: Verification letter for the '040805 - Hwy 220 slide repairs' project under the January 5, 2016, Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-eared Bat and Activities Excepted from Take Prohibitions.

Dear Matthew Schrum:

The U.S. Fish and Wildlife Service (Service) received on February 11, 2020 your effects determination for the '040805 - Hwy 220 slide repairs' (the Action) using the northern long-eared bat (*Myotis septentrionalis*) key within the Information for Planning and Consultation (IPaC) system. This IPaC key assists users in determining whether a Federal action is consistent with the activities analyzed in the Service's January 5, 2016, Programmatic Biological Opinion (PBO). The PBO addresses activities excepted from "take"^[1] prohibitions applicable to the northern long-eared bat under the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

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.

Please report to our office any changes to the information about the Action that you submitted in IPaC, the results of any bat surveys conducted in the Action area, and any dead, injured, or sick northern long-eared bats that are found during Action implementation. If the Action is not completed within one year of the date of this letter, you must update and resubmit the information required in the IPaC key.

This IPaC-assisted determination allows you to rely on the PBO for compliance with ESA Section 7(a)(2) only for the northern long-eared bat. It **does not** apply to the following ESA-protected species that also may occur in the Action area:

- American Burying Beetle, *Nicrophorus americanus* (Endangered)
- Eastern Black Rail, *Laterallus jamaicensis ssp. jamaicensis* (Proposed Threatened)
- Gray Bat, *Myotis grisescens* (Endangered)
- Indiana Bat, *Myotis sodalis* (Endangered)
- Missouri Bladderpod, *Physaria filiformis* (Threatened)
- Ozark Big-eared Bat, *Corynorhinus (=Plecotus) townsendii ingens* (Endangered)
- Piping Plover, *Charadrius melodus* (Threatened)
- Red Knot, *Calidris canutus rufa* (Threatened)
- Whooping Crane, *Grus americana* (Experimental Population, Non-Essential)

If the Action may affect other federally listed species besides the northern long-eared bat, a proposed species, and/or designated critical habitat, additional consultation between you and this Service office is required. If the Action may disturb bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act is recommended.

[1]Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct [ESA Section 3(19)].

Action Description

You provided to IPaC the following name and description for the subject Action.

1. Name

040805 - Hwy 220 slide repairs

2. Description

The following description was provided for the project '040805 - Hwy 220 slide repairs':

This is site 1 of 2 on this job. Slide repairs on Hwy 220 in Crawford and Washington counties AR. This road is in the Boston Mountains south of Devil's Den state park. Toward the north end of the site, previous slide repairs are failing, and rip rap is sliding into Lee Creek, and ERW.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.735841070462705N94.29805880981246W>

**Determination Key Result**

This Federal Action may affect the northern long-eared bat in a manner consistent with the description of activities addressed by the Service's PBO dated January 5, 2016. Any taking that may occur incidental to this Action is not prohibited under the final 4(d) rule at 50 CFR §17.40(o). Therefore, the PBO satisfies your responsibilities for this Action under ESA Section 7(a)(2) relative to the northern long-eared bat.

Determination Key Description: Northern Long-eared Bat 4(d) Rule

This key was last updated in IPaC on May 15, 2017. Keys are subject to periodic revision.

This key is intended for actions that may affect the threatened northern long-eared bat.

The purpose of the key for Federal actions is to assist determinations as to whether proposed actions are consistent with those analyzed in the Service's PBO dated January 5, 2016.

Federal actions that may cause prohibited take of northern long-eared bats, affect ESA-listed species other than the northern long-eared bat, or affect any designated critical habitat, require ESA Section 7(a)(2) consultation in addition to the use of this key. Federal actions that may affect species proposed for listing or critical habitat proposed for designation may require a conference under ESA Section 7(a)(4).

Determination Key Result

This project may affect the threatened Northern long-eared bat; therefore, consultation with the Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.) is required. However, based on the information you provided, this project may rely on the Service's January 5, 2016, *Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-Eared Bat and Activities Excepted from Take Prohibitions* to fulfill its Section 7(a)(2) consultation obligation.

Qualification Interview

1. Is the action authorized, funded, or being carried out by a Federal agency?

Yes

2. Have you determined that the proposed action will have "no effect" on the northern long-eared bat? (If you are unsure select "No")

No

3. Will your activity purposefully **Take** northern long-eared bats?

No

4. Is the project action area located wholly outside the White-nose Syndrome Zone?

Automatically answered

No

5. Is the project action area located within 0.25 miles of a known northern long-eared bat hibernaculum?

Note: The map queried for this question contains proprietary information and cannot be displayed. If you need additional information, please contact your State wildlife agency

Automatically answered

No

6. Is the project action area located within 150 feet of a known occupied northern long-eared bat maternity roost tree?

Note: The map queried for this question contains proprietary information and cannot be displayed. If you need additional information, please contact your State wildlife agency

Automatically answered

No

Project Questionnaire

If the project includes forest conversion, report the appropriate acreages below. Otherwise, type '0' in questions 1-3.

1. Estimated total acres of forest conversion:

0.6

2. If known, estimated acres of forest conversion from April 1 to October 31

0.6

3. If known, estimated acres of forest conversion from June 1 to July 31

0.6

If the project includes timber harvest, report the appropriate acreages below. Otherwise, type '0' in questions 4-6.

4. Estimated total acres of timber harvest

0

5. If known, estimated acres of timber harvest from April 1 to October 31

0

6. If known, estimated acres of timber harvest from June 1 to July 31

0

If the project includes prescribed fire, report the appropriate acreages below. Otherwise, type '0' in questions 7-9.

7. Estimated total acres of prescribed fire

0

8. If known, estimated acres of prescribed fire from April 1 to October 31

0

9. If known, estimated acres of prescribed fire from June 1 to July 31

0

If the project includes new wind turbines, report the megawatts of wind capacity below. Otherwise, type '0' in question 10.

10. What is the estimated wind capacity (in megawatts) of the new turbine(s)?
0



United States Department of the Interior



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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>

IPaC Record Locator: 152-19558380

February 06, 2020

Subject: Consistency letter for the '040805 - Hwy. 265 slide repairs' project (TAILS 04ER1000-2020-R-0351) 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 **040805 - Hwy. 265 slide repairs** (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 (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 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 - not 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 with a request for review, and as the agency deems appropriate, to submit for concurrence verification through the IPaC system. The lead Federal action agency or designated non-federal representative should log into IPaC using their agency email account and click "Search by record locator". They will need to enter the record locator **152-19558380**.

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:

- Eastern Black Rail, *Laterallus jamaicensis ssp. jamaicensis* (Proposed Threatened)
 - Gray Bat, *Myotis grisescens* (Endangered)
 - Missouri Bladderpod, *Physaria filiformis* (Threatened)
 - Neosho Mucket, *Lampsilis rafinesqueana* (Endangered)
 - Ozark Big-eared Bat, *Corynorhinus (=Plecotus) townsendii ingens* (Endangered)
 - Piping Plover, *Charadrius melodus* (Threatened)
 - Rabbitsfoot, *Quadrula cylindrica cylindrica* (Threatened)
 - 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

040805 - Hwy. 265 slide repairs

Description

This is site 2 of 2 on this job. This is a culvert that washed out in a flood. This will most likely be replaced with a 4 sided box culvert, with wing walls projecting east into the Illinois River headwaters.

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?

Yes

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. Is the slash pile burning portion of this project consistent with a Not Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because it is near suitable habitat and >0.5 miles from any hibernaculum

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 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.

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 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.

37. **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

38. 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

39. 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

40. 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

41. 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

42. 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 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.)

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.

0.45

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 040805 FAP Number STPAC-ER-1772(2)
Job Title Hwys. 220 & 265 Flood Repairs (S)

| Environmental Resource | None | Minimal | Major | Comments |
|--------------------------------|------|---------|-------|--|
| Air Quality | X | | | No impacts anticipated |
| Cultural Resources | X | | | "No historic properties affected" |
| Economic | X | | | No impacts anticipated |
| Endangered Species | | X | | "May affect, not likely to adversely affect" |
| Environmental Justice/Title VI | X | | | No protected populations in project area |
| Fish and Wildlife | | X | | Temporary impacts during construction |
| Floodplains | | X | | Minor impacts within Zone A SFHA |
| Forest Service Property | | X | | 0.3 acre TCE from Ozark-St. Francis NFs |
| Hazardous Materials/Landfills | X | | | No impacts anticipated |
| Land Use | | X | | 0.8 acre TCEs |
| Migratory Birds | X | | | No structures with nests involved |
| Navigation/Coast Guard | X | | | No navigable waterways involved |
| Noise Levels | X | | | No noise analysis required |
| Prime Farmland | X | | | None in project area |
| Protected Waters | X | | | None occur in project area |
| Public Recreation Lands | X | | | No impacts to Devil's Den State Park |
| Public Water Supply/WHPA | | X | | Wellhead Protection SP added to contract |
| Relocatees | X | | | No relocations |
| Section 4(f)/6(f) | X | | | No impacts to Devil's Den State Park |
| Social | X | | | No impacts anticipated |
| Underground Storage Tanks | X | | | No impacts anticipated |
| Visual | | X | | Minor: rock-faced/rock slopes |
| Streams | | X | | 45lf permanent stream impacts |
| Water Quality | | X | | Temporary decline during construction |
| Wetlands | X | | | None in project area |
| Wildlife Refuges | X | | | None in the area |

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

Remarks: _____

Signature of Evaluator *Susan Stapfield* Date February 19, 2020