Indiana Bat and Northern Long-eared Bat
Range-wide Consultation and Conservation Strategy under Section 7

FAQS (AS OF 14 SEPTEMBER 2015)

BACKGROUND ON THE INFORMAL PROGRAMMATIC CONSULTATION
On April 17, 2015 the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA) and the US Fish and Wildlife Service (FWS) finalized the range-wide informal programmatic consultation. A concurrence letter from the FWS and the biological assessment (BA) can both be found on the FWS website. The consultation covers actions that are expected to result in classifications of "no effect" and "may affect, not likely to adversely affect" (NLAA) with and without avoidance and minimization measures (AMMs). The consultation does not address certain actions that may affect the bats that are not fully analyzed. Additional coordination with the appropriate field office is necessary to make a final effect determination on these projects. The User's Guide and related background materials (e.g., effects analysis matrix, AMMs, and the project submittal form) are available on the FWS website for this project.

GENERAL QUESTIONS ON USE OF THE INFORMAL PROGRAMMATIC CONSULTATION
Q: When does the informal programmatic consultation take effect?
A: The informal programmatic consultation is currently in effect. State Departments of Transportation (DOT) may begin using the project submittal form immediately.

Q: Can State DOTs and FHWA Division Offices use existing consultation procedures in lieu of the programmatic informal consultation?
A: FWS expects their Field Offices to use this programmatic consultation to consult on all projects that fall within the bounds of the programmatic.

While FHWA cannot require State DOTs to use the informal programmatic consultation, the agency would like to support consistency in consultation standards across the species' range. To do so, FHWA would like State DOTs to use the standard project submittal form and standard operating procedures (SOP).

FHWA also feels that the informal programmatic consultation offers time- and cost-saving benefits to State DOTs. In order to use a different procedure, State DOTs will need to work with their FHWA Division Offices and FWS Field Office to reach an agreement that the alternative procedure satisfies the State DOT's consultation requirements and that the standards are consistent with the programmatic informal consultation.

Q: What is the anticipated consultation timeframe for projects that are categorized as "may affect, not fully analyzed"?
A: For this "not fully analyzed" category we anticipate that the request for consultation could be delayed to allow for coordination to resolve uncertainties. It is anticipated that additional projects will fall within the scope of the programmatic consultation with additional information provided by DOTs and review by Field Offices. For other informal consultations that ultimately do not fit within the programmatic, FWS's general policy would remain in effect—to respond to requests for concurrence within 30 days of receipt. If the DOT determines up-front that a project in this category is May Affect Likely to Adversely Affect (LAA) or if upon review of additional information the Field Office determines LAA, DOTs should follow the existing formal consultation processes.

Q: Do State DOTs need an official designation from their FHWA Division Offices for consultation under the BA?
A: Yes, however, FHWA has designated the State DOTs to act as their non-Federal representative regarding this Endangered Species Act (ESA) consultation. State DOTs should coordinate with their appropriate FHWA Division Office regarding local implementation procedures. FHWA may withdraw a State DOTs non-Federal designation.

Q: Some FHWA Division offices currently seek written FWS concurrence for all "no effect" determinations. However, the User's Guide states that when "the transportation agency documents no effect on the project submittal form for their files, no coordination is required, and the consultation concludes." How should this be reconciled when using the programmatic consultation?
A: In the BA, FHWA identified activities it determined would have "no effect" on the two listed bat species and Indiana bat critical habitat, and requested concurrence with the determinations of "not likely to adversely affect for additional activities. FWS has concurred with FHWA's determination. For those projects consistent with the "no effect" determination in the BA, no further coordination is required. The "no effect" determination and its rationale should be documented in the project file. The "project submittal form" can be used to document this decision, if needed. If a FHWA Division already has a procedure in place with a FWS Field Office to review "no effects" determinations, then that procedure may be followed.

Q: Does the term "existing road/rail surface" include to the operational Right of Way (ROW) or only the space between the edges of pavement?
A: The term refers to the distance between the edge of pavement or rail ballast.

Q: Do agencies need to report on projects that involve percussive activities if those activities are restricted to the existing road surface? How are percussive activities defined?
A: If the percussive work does not occur within suitable habitat, then agencies are not expected to report on this activity. There is a list of percussive activities in the BA. There is no minimum weighted decibel (dBA) level for an activity to be considered percussive.

Q: If a project does not conform to the list of activities covered in the range-wide programmatic informal consultation, can State DOTs still engage FWS Field Offices in informal consultation?
A: The programmatic informal only applies to a suite of activities that FHWA and FWS have determined predictably have no effect or are NLAA bats. If a project does not fit into the terms of the BA, but has no effect or is NLAA bats, it is still possible to conduct an informal consultation with the respective FWS Field Office. FWS and FHWA expect that most actions that have no effect or are categorized as NLAA will fit into the programmatic (effects analysis available here).

Q: Do projects that are currently under construction need to consult on the Northern Long-Eared bat (NLEB)?
A: If a State DOT has not completed an ESA Section 7 consultation on a project that may affect either bat species, then the State DOT should stop activities that may affect the listed species and consult immediately or risk violating the applicable prohibitions against taking listed species.

TREES

Q: What should State DOTs do for projects that involve tree clearing during a time frame that is not covered in the BA (i.e., the summer months)?

A: If a State DOT cannot implement AMMs for tree clearing (i.e., winter tree clearing), then the agencies options are to either conduct a presence/absence (P/A) survey, or conduct a site-specific consultation with the respective FWS Field Office.

Q: If trees do not have features for suitable roosting, are they still considered suitable habitat?
A: No, but this can be very difficult to assess (especially with larger numbers of trees). Generally all trees that meet the minimum diameter at breast height (DBH) criteria are considered suitable roosting habitat. However, in specific cases where there only a few trees are of concern and a State DOT would like to exclude those trees as suitable habitat based on relevant characteristics (e.g., exfoliating bark or cracks and crevices), then the State DOT should coordinate with the local FWS Field Office.

Q: How does the BA define an "urban area" as it relates to habitat?
A: In addition to urban centers where there is virtually no habitat, typically high-density neighborhoods and subdivisions do not provide suitable habitat. However, agencies should coordinate with their local FWS Field Office to define "urban" as it relates to areas not suitable for Indiana bats and NLEBs (see 2015 summer survey guidance).

Q: If a State DOT has already consulted with FWS regarding the NLEB, does the State DOT need to consult with FWS again regarding the new tree clearing parameters (i.e., distance from the edge of pavement)?
A: If a State DOT has already consulted with FWS regarding NLEB and the Field Office has concurred, it is up to the Field Office to decide whether the concurrence is still valid. There are three triggers for re-initiation of consultation, including the discovery of new information. The informal consultation process could provide new information for effects analysis.

Q: How is "documented foraging habitat" determined?
A: Documented foraging habitat is identified by acoustic surveys or radio telemetry.

BRIDGES

Q: Will a bridge replacement project, where bats are not using the bridge result in a "no effect" determination?
A: If the bridge is not used by bats, it will receive a "no effect" determination.

Q: If removing a bridge with no signs of bat use results in a "no effect" determination, why does removal of a tree with no signs of bat use (i.e., negative P/A survey) result in a determination of NLAA?
A: Although FWS is aware that some bridge types may be inherently unsuitable bat habitat, there is currently not enough data to make determinations solely based on bridge type. For trees, DBH and structural features, such as exfoliating bark, are evaluated to determine suitability. Therefore, bridges with no signs of bat use are not considered suitable habitat and actions affecting them are determined to have no effect rather than NLAA. At present, there is ongoing research to determine if some bridge types may not be suitable habitat based on their structure, similar to how trees under 3" DBH are not considered suitable habitat for the NLEB.

Q: Can DOTs and FWS Field Offices collaborate to identify bridge types of concern based on their experience?
A: Per the previous FAQ, FHWA and FWS have used the best available science in making determinations of effect in the informal programmatic consultation. In the future, both agencies hope that newly gathered information will allow the agencies to make more specific determinations about bridge types that can be integrated into the BA. This information may be used to modify the consultation.

Q: Does a bridge need to be near suitable forested habitat to be considered suitable habitat itself?
A: No, however, it is unlikely that a bridge would be used by bats without suitable habitat within several miles. For now, bridges are defined as suitable habitat if there are signs of bats using the bridge. In the future, FHWA and FWS hope to gain information about bridge characteristics that help determine whether certain bridge types are not suitable habitat.

Q: Is there a minimum diameter for pipes or culverts to be considered suitable habitat?
A: Indiana bats and NLEBs have been found to roost in pipes and culverts. There is currently no minimum size that defines whether pipes are suitable for habitat.

Q: Is there a specific season for surveying bridges to determine presence or can the bridge evaluation occur at any time of year?
A: No. Signs of bat use (i.e., urine stains, guano piles) are visible year-round, so there is no specific season for bridge surveys. A survey conducted under conditions that might preclude the ability to see potential signs of bat use (e.g., heavy snow cover, high water) might be determined to be invalid.

Q: What steps should a State DOT take if they find evidence of bats during bridge construction, but are unsure of the bat species?
A: The State DOT should either assume presence of the NLEB/Indiana bat or should conduct a more thorough survey of the site to determine what species are using the bridge.

Q: What additional considerations should be made if a State DOT plans to demolish a building or other structure as part of a transportation project?
A: Structures should be evaluated using the same protocol as bridges; if a structure shows signs of use by bats, the State DOT should perform an additional assessment.

Q: Does completing the bridge inspection form meet the P/A requirement for structure work? Does it still meet the requirement if there is forested habitat in the vicinity?
A: Yes, the survey form satisfies the requirement for bridges and structures in informal consultation.

Q: Who can perform a bridge inspection for bat use?
A: Qualifications for individuals performing bride inspection surveys are posted on the FWS website for the programmatic. Requirements vary by Field Office, and in some States, DOT biologists are able to perform the survey, other Field Offices require a qualified bat biologist do the inspection. State DOTs should reach out to their local FWS Field Office to determine the specific requirements.

HABITAT ASSESSMENT (TREES AND BRIDGES)

Q: What source of information should State DOTs consult on regarding documented roosts or foraging habitat?
A: State DOTs should consult the local FWS Field Office or State Resource Agencies. At this time FHWA and FWS do not have any planned rangewide data sharing activities.

Q: What guidance should State DOTs consult for habitat assessment protocols, such as the time-of-year and time-of-day to conduct assessments?
A: The *Rangewide Indiana Bat Summer Survey Guidance* provides information on habitat assessments, including definitions of what qualifies as habitat and guidance on how to identify habitat. The Indiana bat guidance presently applies to NLEB. Habitat assessments should occur during the day, when visibility is highest, and should ideally occur when trees do not have foliage. If there are trees that meet the minimum DBH criteria for suitable roosting habitat on a project site, it is likely that the site will be considered

suitable habitat. In this case a State DOT should coordinate with the local FWS Field Office prior to conducting habitat assessments.

Q: Can new surveys be used to demonstrate that former bat habitat is no longer occupied (i.e., if white nose syndrome has resulted in a loss of the local population)?
A: One year of negative surveys is not generally sufficient to invalidate a previous positive survey. Even when following FWS survey protocols, individual surveys are not sufficient to determine if a site is still occupied. In addition, both Indiana bats and NLEBs show a high level of fidelity to maternity sites. To address these challenges, State DOTs should coordinate with their local FWS Field Office to determine what is required in order to determine if existing surveys are still valid.

Q: For acoustic surveys, does the person collecting data in the field need to be a qualified biologist, or does that requirement only apply to the individual analyzing the survey results?
A: See *Rangewide Indiana Bat Summer Survey Guidance* for information on qualifications.

Q: Do bridge surveys have to be conducted or repeated seven days before work begins on a bridge project?
A: Yes, if the work will occur during the active season for either bat species. Bridge surveys can be conducted any time of year, however if work is going to occur when bats are not hibernating, a follow-up inspection must occur a maximum of 7 days prior to the onset of work that could disturb the bats. If a previous thorough survey has been conducted within the year, an abbreviated "confirmation" survey is acceptable prior to work commencing.

Q: How should State DOTs address inability to survey an entire bridge when portions of the bridge are inaccessible or unsafe to access during the inspection?
A: If portions of the bridge are unsafe to inspect or are inaccessible, then we recommend that inspectors avoid that section and base their determination on the portion of the bridge that is safe to survey. If possible, a partial inspection should be combined with night observation. If the entire bridge (or a significant portion) is unsafe, night observation should be used to determine if bats are using the bridge. This approach is similar to an emergence survey for a tree (see Appendix E in the *Range-wide Indiana bat Summer Survey Guidelines*).

AVOIDANCE AND MINIMIZATION MEASURES

Q: Do DOTs need to meet all 4 tree removal AMMs for tree removal projects to use the informal consultation?
A: Yes, DOTs must apply all applicable AMMs.

Q: When an activity is included in the BA, do all of the AMMs for that particular activity (e.g., tree removal) need to be instituted to determine NLAA?
A: Yes, DOTs must apply all applicable AMMs.

Q: Will projects that are classified as NLAAs with no AMMs require coordination with FWS?
A: Yes, but the projects can be batched. State DOTs should submit the project submittal form to their respective FWS Field Office in order to make use of the informal programmatic consultation.

Q: If a DOT can't implement all of the applicable AMMs, should the agency consult with the respective FWS Field Office?
A: Yes. If a State DOT cannot implement the applicable bridge and tree removal AMMs, then a State DOT may conduct P/A surveys to stay within the confines of the programmatic. If there are signs of bats using a tree, bridge, or structure, then a site-specific consultation with the Field Office is required.

Q: Because the NLEB was listed during construction season, can State DOTs wait until next year to apply the tree removal AMM #2?
A: No. Projects that cannot wait to remove trees until next year will need to perform consultations on a project by project basis.

Q: Does tree removal AMM #2 mean that no tree cutting can occur during the active season?
A: No. However, to fit under this programmatic, tree clearing may not occur in the active season. If a project does not fit within the programmatic consultation, transportation agencies can still conduct project-specific consultations with their FWS Field Office.

TRACKING AND REPORTING REQUIREMENTS

Q: How should the project submittal form be accessed? Is the form part of Information, Planning, and Conservation (IPaC) system?
A: State DOTs should access the latest version of the form on the FWS website. At present the form cannot be accessed via IPaC.

Q: Are State DOTs required to use the project submittal form, or can they use other project screening tools to report information for the programmatic consultation to FWS?
A: State DOTs should use the project submittal form and other tools developed specifically for the consultation that were designed to minimize effort and capture the required information. FHWA and FWS are allowing for some flexibility in how States use the programmatic, where appropriate. State DOTs may use other systems if they coordinate with their local FWS Field Office to provide adequate project information.

Q: Is a project submittal form required for every project?
A: The form is required to use the informal consultation, unless projects are being batched, in which case multiple projects that meet a specific determination can be included in a single form. States should pay particular attention to make sure that all projects submitted under one form meet the criteria of the informal consultation to avoid requests for additional information from FWS Field Offices and project delays.

Q: Is the use of the IPaC system required for DOTs?
A: While DOTs are not required to use IPaC, FHWA and FWS feel it provides strong support to the programmatic consultation. State DOTs can use IPaC to create project maps that FWS can use during the 14-day review period. That map, along with the project submittal form, initiates the informal consultation. Any State DOT that does not use IPaC will need to develop a different method of meeting the needs of the informal consultation and coordinating with FWS to make sure that consultations are consistent.

Q: Can consultants submit the project submittal form to FWS Field Offices?
A: State DOTs should work with their local FHWA Division Office to determine the appropriate role for consultants and communicate the preferred process to the local FWS Field Office.

Q: There is no distinction in the User's Guide's SOPs for no effect and NLAA projects. Are State DOTs expected to follow the process in Section 3.1 process for no effect projects?
A: No. DOTs will continue to make their own determination of "no effect" as they currently do. The informal programmatic consultation does not require DOTs to report to FWS on "no effect" projects. DOTs are encouraged to use the project submittal form internally to maintain an administrative record for their "no effect" projects. They may also need to coordinate with their respective FHWA Division Office to ensure that "no effect" projects meet the parameters of the informal programmatic consultation.

OTHER AGENCIES

Q: Will the U.S. Army Corps of Engineers accept this informal programmatic consultation in their review of permit applications, or do State DOTs still need to secure a coordination letter from FWS?
A: If FHWA is not the lead Federal agency for a project, then the State DOT will still need to conduct their own project review. If another Federal agency is involved, they will consult with the FWS. If FHWA is the lead Federal agency, then the U.S. Army Corps of Engineers should accept the consultation, although they may request additional information. A copy of the FWS concurrence letter is available on the FWS website for this project.

UPDATES AND REVISIONS

Q: Do FHWA and FWS plan to provide a response to comments already submitted on the BA?
A: Comments submitted during the development process have already been considered and are reflected in the Informal Programmatic Agreement. FHWA and FWS will continue to collect and record comments received during implementation. Minor administrative changes will be addressed quickly; however, more substantive comments on the BA will not be formally considered until FHWA and FWS complete more significant updates to the BA and User's Guide.

Q How will updates to the BA and User's Guide be issued or publicized?
A: Minor updates to the User's Guide and project submittal form will be posted as needed to the FWS website for this project. Major updates will also be put on the FWS website and provided directly to State DOTs and FWS Field Offices.