

The Wildlife Crossing

A USFWS newsletter to facilitate collaboration between the Michigan Ecological Services Field Office and Michigan's transportation agencies

Proposed Change in Northern Long-Eared Bat Listing Status



NLEB - USFWS

On March 23, 2022, the USFWS published a proposed rule to reclassify the northern long-eared bat (NLEB) from threatened to endangered under the Endangered Species Act. NLEB is imperiled by impacts of white-nose syndrome, a deadly disease affecting cave-dwelling bats. The proposed reclassification, if finalized, would remove the current 4(d) Rule, as these types of rules only apply to threatened species. The current 4(d) Rule is based on a limited set of prohibitions regarding activities that may cause incidental take, such as removing trees. If the proposed rule is finalized, the endangered status would become effective in late December 2022. Depending on the type of effects a project has on NLEB, the change in species' status may trigger the need to reinitiate consultation for any actions that are not completed and for which the Federal action agency retains discretion.

If your project was determined to not likely adversely affect NLEB, that determination would be the same if the species is listed as endangered, so there is no need to reinitiate consultation based on the status change. If you used the [All-Species Michigan Dkey](#) and your project was given a may affect determination for NLEB, or if you used the [NLEB 4\(d\) Rule Dkey](#) (see Figure 1), you should determine which project activities resulted in that determination (please see the [Michigan NLEB Project Design Guidelines](#)), and when those project activities will be concluded. If all activities that are likely to adversely affect NLEB (e.g., tree cutting) are completed by late December 2022, no further action is required. If activities that are likely to adversely affect NLEB will not be concluded by late December 2022, you will need to reinitiate consultation.

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.

Northern Long-eared Bat: The Action "May Affect" the Northern Long-eared Bat (NLEB). However, the Action complies with the final 4(d) rule with incidental take covered by the U.S. Fish and Wildlife Service's January 5, 2016, Intra-Service Programmatic Biological Opinion on the final 4(d) rule for the NLEB addressing "Activities Exceeded from Take Prohibitions." As such, no further consultation is required for NLEB.

Figure 1. Example Language from May Affect letters from the NLEB 4(d) Rule Dkey (left) and the Michigan Dkey (right)

If reinitiating consultation, your first step should be to use the newest version of the Michigan Dkey to reevaluate your project and determine if you can reach a not likely to adversely affect determination for NLEB. To do this, login to IPaC and go to your project home page. Select "Resume Review" and then "Evaluate Determination Keys". Click the "View/Modify" button under your completed key, scroll to the very bottom of the page, and click "Delete Evaluation". From there, you can use the newest version of the Michigan Dkey to evaluate your project.

What's next?

ESA REVIEW
Review this project's effects on listed species pursuant to the Endangered Species Act (ESA), as part of the overall regulatory review.

Endangered species
Endangered species are protected under the Endangered Species Act (ESA).
9 endangered species are known to occur or may be affected by activities in this location.
Request an official species list
An official species list was generated 9 minutes ago.
Evaluate Determination Keys
There are 2 determination keys available for this project. You have evaluated one of them. There is one key that cannot be evaluated.

There are 2 determination keys that may apply to your project. Each determination key starts with a qualification interview to see if the key is appropriate for your project.

- FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indiana Bat
You completed the latest version of this key, published December 29, 2020, and reached a determination of no effect for species or critical habitats covered by the key.

If you no longer wish to use this key for your project, you can delete your evaluation. This will make the consistency letter created as part of this evaluation no longer valid, but it will still be accessible on the documents page.

RESUME REVIEW → **Evaluate Determination Keys** → **VIEW / MODIFY** → **DELETE EVALUATION**

If you still receive a may affect determination, please contact the Michigan Ecological Services Field Office at EastLansing@fws.gov. In the event the species is reclassified to endangered status, the USFWS anticipates having tools available to efficiently address the need for some projects to complete a reinitiated consultation outside of the Dkey.

Michigan Mussel Mapper

Transportation projects that involve construction below the ordinary high-water mark or results in sediment or other materials entering waterways have the potential to impact federally endangered mussel species. The [Michigan Natural Features Inventory](#) hosts a useful tool that can help you determine if your project may impact protected mussels. The [Mussel Map Viewer](#) is an interactive tool that allows users to determine if state or federally listed mussels may be present within the project area. Projects that have an impact to streams with listed mussels often must conduct mussel surveys and may have to implement conservation measures, including relocation. These projects should plan for an extended timeline to conduct threatened and endangered species review, including formal consultation with USFWS (up to 135 days). Additionally, these projects provide great opportunities for incorporating stream improvements to benefit native species and improve fish passage. Depending on the project location, there may be federal funding available to help offset project costs, such as the [National Fish Passage Program](#) funded by the [Bipartisan Infrastructure Law](#).

Federally Listed
Mussels - USFWS



Making a Determination - No Effect

When [reviewing](#) how a federally funded project will impact threatened and endangered species, you can make 3 determinations (with agreement from FHWA): likely to adversely affect, not likely to adversely affect (NLAA), or no effect. A NLAA determination is the appropriate conclusion when a species or critical habitat might be exposed to a consequence of a federal action, and the effects of that action are entirely beneficial, insignificant, or discountable. For species/critical habitat for which you make a NLAA determination, the USFWS will review your determination, and if we agree, we will provide concurrence in writing. This is called the informal consultation process and can take up to 60 days from the time all required information is submitted to USFWS. A no effect determination is appropriate when species or critical habitat will not be exposed to any direct or indirect effects of a federal action. For example, if a project will not leave the footprint of the existing roadway and will have no impact on the surrounding environment (such as asphalt resurfacing or sidewalk replacement in kind), listed species will not be exposed to your action, and it would be appropriate to make a no effect determination. Determination keys (Dkeys) in [IPaC](#) can be used to assist you in finding the correct determination for your project and to increase the efficiency of informal consultation.

If you make a no effect determination for all species on your Official Species List, you should document your findings and rationale for your records. When you make a no effect determination for all species in your project area, you do not need to use a Dkey. Consultation is not required for projects with no effects to listed species or critical habitat, and the USFWS does not provide written concurrence for no effect determinations. To reflect this, we have recently changed the first question in the [Michigan Dkey](#). The first question in the Dkey now asks, "Are there any possible effects to listed species or designated critical habitat from your project?" If you respond no, then that means you have made a no effect determination, and do not need to continue with the Dkey. Since the USFWS does not concur with no effect determinations, this means you will not receive an output letter. If your project may have an impact on listed species, even a small one, you should answer yes to the first question and continue answering questions about your project.

The MIFO transportation liaisons are Shaughn Galloway and Michelle Kane. You can reach Shaughn at shaughn_galloway@fws.gov or at (517)-648-5634. You can reach Michelle at michelle_kane@fws.gov or at (517)-351-5350. For an accessible version of this newsletter or copies of past newsletters, please email michelle_kane@fws.gov