

Compatibility Determination

Title

Draft Compatibility Determination for Issuance of a right-of-way permit for the Construction of the Black Hawk Bridge within the McGregor District of Upper Mississippi River National Wildlife and Fish Refuge

Refuge Use Category

Rights-of-way and Rights to Access

Refuge Use Type(s)

Right-of-way (road)

Refuge

McGregor District of Upper Mississippi River National Wildlife and Fish Refuge

Refuge Purpose and Establishing and Acquisition Authority

The Upper Mississippi River National Wildlife and Fish Refuge (Refuge) was established by Public Law No. 268, 68th Congress on June 7, 1924. This act authorized acquisition of lands for Refuge purposes. Additional lands acquired in fee title by the U.S. Army Corps of Engineers (Corps) are managed as part of the Refuge under a 1963 Cooperative Agreement between the Department of the Army and the Department of the Interior.

The Refuge shall be established and maintained (a) as a refuge and breeding place for migratory birds included in the terms of the convention between the United States and Great Britain for the protection of migratory birds, concluded August 16, 1916, and (b) to such extent as the Secretary of the Interior by regulations, prescribes, as a refuge and breeding place for other wild birds, game animals, fur-bearing animals, and for the conservation of wild flowers and aquatic plants, and (c) to such extent as the Secretary of the Interior may, by regulations, prescribe a refuge and breeding place for fish and other aquatic animal life.

National Wildlife Refuge System Mission

The mission of the U. S. Fish and Wildlife Service's (Service) National Wildlife Refuge System, otherwise known as Refuge System, is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (Pub. L.

105-57; 111 Stat. 1252).

Description of Use

Is this an existing use?

No

A right-of-way was issued on May 11, 1955 (BLM-A-039718) for the construction of Iowa Highway 9 (IA 9) and Wisconsin State Highway 82 (WI 82) over the Mississippi River at Lansing, Iowa Hwy 82. The right-of-way application for BLM-A-039718 originally included the land under the Black Hawk Bridge as well as lands near Winneshiek landing. However, it was discovered that the U.S. Fish and Wildlife Service did not own the lands under the Black Hawk bridge and these areas were removed from the right-of-way application. The existing right-of-way, BLM-A-039718, thereby only includes lands near Winneshiek Landing. A new right-of-way permit has been requested to construct a replacement for the existing Black Hawk bridge, as an increased footprint will be required.

What is the use?

Rights-of-way (road).

The Iowa Department of Transportation (Iowa DOT) in partnership with the Wisconsin Department of Transportation (Wisconsin DOT) is proposing to improve the existing bridge crossing of Iowa Highway 9 (IA 9) and Wisconsin State Highway 82 (WI 82) over the Mississippi River at Lansing, Iowa. The proposed improvements include construction of a new bridge spanning the main channel of the Mississippi River and construction of new or improvement of existing roadways, minor bridges, and intersections connecting the river bridge to IA 9 and IA 26 on the Iowa bank and WI 82 on the Wisconsin bank of the Mississippi River. While these proposed actions will take place throughout an extended project area, a portion of these improvements will impact refuge lands, with a right-of-way permit being issued for a total of 0.75 acre of permanent impacts to floodplain forest within the refuge. It is also the desire of Iowa DOT and Wisconsin DOT to donate 0.75 acre of land from Wisconsin DOT. These lands are currently managed as Refuge and donation is administratively beneficial to both agencies.

Is the use a priority public use?

No

Where would the use be conducted?

The proposed project is located primarily within the city of Lansing, Allamakee County, Iowa and extends across the Mississippi River into Crawford County, Wisconsin (Fig. 1). IA 9 and IA 26 intersect at the existing crossing of the Mississippi

River, known as the Black Hawk Bridge. IA 9 becomes WI 82 at the Iowa/Wisconsin State line (mid-river), continuing east across the river and through a portion of the Upper Mississippi River National Wildlife and Fish Refuge to connect to WI-35.

Action (issuing right-of-way permit for bridge construction and maintenance): The new bridge crossing will be on an alignment north of and nearly parallel to the existing crossing. The new crossing connects to WI 82 west of the Big Slough Bridge and improves the entrance to the Dredged Material Beneficial Use Site managed and maintained by the Corps and Big Slough boat landing, which is managed by the Refuge. The project will directly impact 0.75 acre of mature floodplain forest habitat on Refuge Island Number 146, Township 10N, Range 7W, Section 4, Crawford County, Wisconsin; latitude/longitude coordinates: 91.209336°W 43.367224°N (Fig 2; see “refuge impact”).

Land donation: The 0.75 acre of land proposed to be donated is east of the proposed construction site and on the south side of the existing WI 82 fee title right-of-way in Township 10N, Range 7W, Section 4, Crawford County, Wisconsin; latitude/longitude coordinates: 91.206673°W 43.368208°N (Fig. 2; see “donation to refuge”).

When would the use be conducted?

Action: Construction of the bridge and roadway updates are expected to start in the fall of 2023 and continue through 2027. Construction will take place daily and potentially occur year-round during regular daylight hours.

Land donation: The donation of the 0.75 acres from Wisconsin DOT is expected to occur concurrent with the right-of-way permit issuance.

How would the use be conducted?

Action (issuing right-of-way permit for bridge construction and maintenance): The new bridge crossing will be constructed on an alignment north of and nearly parallel to the existing crossing. The new crossing connects to WI 82 west of the Big Slough Bridge and improves the entrance to the Dredged Material Beneficial Use Site and Big Slough Landing boat ramp. The alignment continues west and ties into IA 26 just north of the existing bridge. The new bridge will include a span of at least 750 feet (minimum) to provide the required horizontal clearance for navigation on the river, as defined by the United States Coast Guard, while also providing the appropriate vertical clearance to support river navigation. The existing Black Hawk Bridge and the two dolphins (pilings) north of the existing bridge would be removed. Pier 1, along the Iowa bank, would only be removed to approximately one foot below grade to avoid potential impacts to any archaeological resources that may exist in the area. No improvements would be made to Big Slough Bridge or to WI 82 east of Big Slough Bridge.

Land donation: Wisconsin DOT will donate 0.75 acres of floodplain forest just east of

the project site on the south side of Wisconsin 82. Wisconsin DOT currently owns the 0.75 acres in fee. It is intact floodplain forest bordering Refuge lands and currently is signed as refuge along the road shoulder.

Why is this use being proposed or reevaluated?

The replacement of the existing bridge is a safety project. The current bridge is antiquated and is structurally unsafe for vehicle travel. The right-of-way easement permit is needed for structure construction, right-of-way realignment, ditches, side slope grading and long-term maintenance. This project will provide safe access to refuge units by visitors and staff as well as interstate travel between Wisconsin and Iowa. Additionally, the bridge provides primary access for two FWS owned boat ramps (Winneshiek and Big Slough) that are located on the causeway. The regional need for the bridge is summarized below. The Federal Highway Administration has notified the Refuge of the intent to make a Section 4 (f) *de minimis* finding for the project. Section 4(f) refers to the original section within the U.S. Department of Transportation Act of 1966 which provided for consideration of park and recreation lands, wildlife and waterfowl refuges, and historic sites during transportation project development. The law, now codified in 49 U.S.C. §303 and 23 U.S.C. §138, applies only to the U.S. Department of Transportation (U.S. DOT) and is implemented by the Federal Highway Administration (FHWA) and the Federal Transit Administration through the regulation 23 Code of Federal Regulations (CFR) 774. The Refuge issued their concurrence with this determination on September 3, 2021.

The Black Hawk bridge superstructure (e.g., truss) and supporting elements are nearly 90 years old. The bridge deck is only 21- feet wide supporting two narrow travel lanes with no shoulders. Iowa DOT standards recommend that bridges be the same width as the approaching highway section, which would mean the bridge deck would need to be widened to at least 36 feet to match the existing width of IA 26/IA 9 and WI 82. The crossing supports regional mobility and connectivity, connecting northeastern Iowa via IA 9 and IA 26 to Wisconsin via WI 35, a gateway to the city of La Crosse. The next closest river crossings are located approximately 40 miles north of Lansing at La Crescent, Minnesota/La Crosse, Wisconsin; and approximately 30 miles south of Lansing at Marquette, Iowa/Prairie du Chien, Wisconsin. Lansing maintains a river town culture and supports businesses that cater to tourism and focus on the community's connection to the river. The community serves as a gateway to recreational facilities including multi-use areas associated with the Refuge, the IA 26 Great River Road, Mount Hosmer Park, and the Driftless Area Visitor and Education Center. The crossing provides access to regional education and health facilities as well as larger employment centers. Black Hawk Bridge links health care services within the four-county project area. Routine health care facilities are available in Lansing, but the nearest emergency medical care facilities are in La Crosse, Wisconsin; and most of the ambulance trips originating in Lansing and Waukon are destined for two hospitals in La Crosse. Additionally, the Lansing Fire

Department has a mutual aid agreement in place with the fire department of De Soto, Wisconsin, with the bridge serving as a necessary link. The city of Lansing also operates a public ambulance service that responds to automobile accidents along the WI 82 causeway.

The Iowa Department of Transportation's Environmental Assessment for the project originally proposed a 5.9-acre impact to the Refuge. During project design, this impact was further reduced to 0.75 acre, significantly avoiding, and minimizing impacts to the refuge. The current bridge is a public safety issue and other locations that were considered would have greater impacts to the refuge and/or cultural and environmental resources. Outside of the rebuild and/or the add on to existing bridge alternatives, the selected alternative had the lowest impact to archeological resources, equal or less impact to the refuge, and lowest wetland and woodland impacts than all other alternatives. Please see the Iowa Department of Transportation's 2021 "Mississippi River Crossing at Lansing Environmental Assessment" for an in-depth description of the proposed project.

The Service will provide Wisconsin DOT a right-of-way for 50 years. The anticipated life span for the new Black Hawk Bridge is 75 years. Upon completion of its useful life, it is likely that future updates will be required.

Availability of Resources

Current staffing levels and funding are available to administer the right-of-way permit. This use will not require a significant increase in staff time or expenditures, as Iowa DOT and Wisconsin DOT will be conducting construction project activities and have completed environmental compliance work necessary to facilitate the project. The Service will not provide any equipment supporting the bridge construction portion of this project. There will be modest administrative costs from refuge staff overseeing and monitoring the construction project. Existing refuge resources are sufficient to administer this use properly and safely. The additional time to issue letters of authorization or Special Use Permits for construction and future maintenance activities is relatively minor and within existing refuge resources. There will also be administrative costs and time involved with acquisition of the 0.75-acre land donation from the Wisconsin DOT through the FWS Realty office.

Anticipated Impacts of the Use

Potential impacts of a proposed use on the refuge's purpose(s) and the Refuge System mission

Congressional intent in applying compatibility reviews to existing rights-of-way (at the time of the National Wildlife Refuge System Administration Act 1997 amendments)

dictates that no new interpretation of compatibility requirements established by the Act should be interpreted as finding existing long-term permitted uses of refuges not compatible, presuming no significant changes have occurred to when they were initially permitted (and determined to be compatible). Regulations (50 CFR 25.21 (h)) prescribe that when evaluating compatibility in the re-authorization of these historic rights-of-way, that the analysis of impacts will be based on existing conditions with the use in place, not from a pre-use perspective. In other words, only modifications from the historic permitted use are to be analyzed for impacts. Although there is no current right-of-way across Service lands, in this location, it has the same impacts as a right-of-way and has historically functioned as such. The impacts of this new right-of-way easement on refuge land will be minimal. A total area of impact, to be included in the right-of-way easement, is 0.75 acres. NEPA compliance was addressed in the Mississippi River Crossing at Lansing Environmental Assessment February 2021.

Replacement of the bridge including re-alignment of roadway approaches to the bridge improves public safety and enhances access by various refuge user groups including wildlife observers, hunters, and anglers.

It is anticipated that this permanent impact on the refuge at this location will not diminish the overall function of the refuge nor interfere with the activities or purposes of the refuge.

Short-term impacts

Issuance of the right of way permit would allow the applicant to complete a project which will result in direct impacts to habitat and wildlife within the 0.75-acre bridge construction area. These impacts would include tree clearing, demolition, and grading activities, which would disrupt wildlife activity temporarily. Areas indicated for clearing will be surveyed to determine if bird species protected under the Migratory Bird Treaty Act are nesting in or on the structures or in the area. If active nests are present, clearing activities would be postponed until after the young have fledged. Indirect short-term impacts could include traffic-related noise, particularly during construction, but these effects would be temporary. Any areas with disturbed vegetation will be seeded for erosion control and final seeding will be with native vegetation, approved by Refuge staff. No short-term impacts to the existing habitat and wildlife within the 0.75-acre land donation area are expected.

The Refuge has determined that multiple federally protected species may utilize the floodplain forest habitat within the 0.75-acre bridge construction area, including the Northern long-eared bat (*Myotis septentrionalis*), tri-colored bat (*Perimyotis subflavus*), and monarch butterfly (*Danaus plexippus*). Monarch butterfly are more common in terrestrial habitats and should not be impacted by the construction, so the proposed project is not expected to result in jeopardy of the candidate Monarch Butterfly (*Danaus plexippus*). Additionally, tree removal will only occur on the 0.75-acre impact area between October 1 and March 31, so it is not expected to impact the overall usability of the area by tree roosting bats. Nine additional federally

threatened or endangered species are known to have ranges overlapping the project area, including the Higgins eye pearlymussel (*Lampsilis higginsii*), sheepnose (*Plethobasus cyphus*), rusty patched bumblebee (*Bombus affinis*), eastern massasauga rattlesnake (*Sistrurus catenatus*), eastern prairie fringed orchid (*Platanthera leucophaea*), western prairie fringed orchid (*Platanthera praeclara*), northern wild monkshood (*Aconitum noveboracense*), prairie bush-clover (*Lespedeza leptostachya*), and whooping crane (*Grus Americana*, experimental population). The Service has determined that, based on the project description and the conservation measures proposed, the levels of anticipated take are not likely to result in jeopardy to the Higgins eye pearlymussel. No sheepnose individuals were identified during surveys, and the project does not contain suitable habitat for the seven remaining species.

A clearance under Section 106 of the National Historic Preservation Act was completed for the 0.75-acre bridge construction area. The cultural resource assessment associated with the bridge construction (as referenced in Iowa DOT, 2021) was reviewed, and it has been confirmed that no additional surveys will be required. It was also determined that there will be no cultural resource survey required for donation area as no ground disturbing actions have been proposed for this area.

Long-term impacts

Ongoing impacts to the area would continue at existing rates through vehicular use of the road and recurring maintenance of the road within the right-of-way. High volumes of traffic would continue to use I9/WI82, although it is not anticipated that the volume of traffic would be above that which is currently occurring. It is anticipated that road and bridge repairs may occur within the 50-year life of the right-of-way permit which could require equipment and crews grading and re-paving portions of the road. Actions that are not considered to be routine operation and maintenance, or those which would further impact refuge lands and/or trust resources would be evaluated and regulated through the issuance of a special use permit by the Service.

Public Review and Comment

The draft compatibility determination will be available for public review and comment for (insert number of days – note 14 calendar days to provide comments following the day the notice is published; 30 days recommended for uses with an Environmental Assessment) days from (insert date) to (insert date). The public will be made aware of this comment opportunity through website and social media, letters to potentially interested people such as adjacent landowners, states, and tribes, public meetings, federal register, or other places/media outlets). State and Tribes have been asked to review and comment on the draft compatibility determination. A hard copy of this document will be posted at the Refuge Headquarters or Visitor Center (insert refuge

address). It will be made available electronically on the refuge website (insert refuge web address). Please let us know if you need the documents in an alternative format. Concerns expressed during the public comment period will be addressed in the final determination.

Determination

Is the use compatible?

Yes

Stipulations Necessary to Ensure Compatibility

1. All fees/requirements of the application and mitigation process must be satisfied.
2. A special use permit outlining parameters and stipulations is required for all future non-routine maintenance activities and will include provisions that ensure disturbance to wildlife and public use, impacts to habitat and other resources is avoided or minimized.
3. Exposed soils must be redressed with “clean” soil and excavations refilled with adequate soil for settlement to restore the original landscape.
4. If temporary use outside of right-of-way boundaries is necessary, the applicant must request and receive written approval prior to conducting any disturbance activity from the refuge. All vegetation removal along the road right-of-way will either be accomplished by mechanical means or if herbicides are used submitted for approval to the Refuge Manager, Upper Mississippi River National Wildlife and Fish Refuge.
5. No herbicides, pesticides, solvents, or fuel storage tanks may be stored on the right-of-way.
6. The project complies with other Federal, State, and local permitting requirements and regulations relating to environmental and cultural resource protection.
7. Refuge lands temporarily disturbed during the construction process will be re-vegetated with appropriate native species appropriate for associated habitat, as designated by refuge staff.
8. Terms and conditions of the right-of-way permit/easement will allow for modification to ensure Compatibility (603 FW 2.11 (H)(3)).

Justification

The stipulations outlined above would help ensure that the use is compatible. Based on available science and best professional judgement, the Service has determined that

issuance of the right-of-way permit for construction of the Black Hawk Bridge within the McGregor District of the Upper Mississippi River National Wildlife and Fish Refuge, in accordance with the stipulations provided here, would not materially interfere with, or detract from, the fulfillment of the National Wildlife Refuge System mission or the purpose for which the refuge was established. This use will comply with Service policy (340 FW 3) and the regulations listed in 50 CFR, 29.21 and 29.22.

Signature of Determination

Refuge Manager Signature and Date

Signature of Concurrence

Assistant Regional Director Signature and Date

Mandatory Reevaluation Date

2073

Literature Cited/References

Iowa Department of Transportation. 2021. Mississippi River Crossing at Lansing Environmental Assessment. <https://iowadot.gov/ole/NEPA-Compliance/NEPA-documents/Iowa-9-Wisconsin-82-Black-Hawk-Bridge>

United States Fish and Wildlife Service. 2006. Final Environmental Impact Statement and Comprehensive Conservation Plan, Upper Mississippi River National Wildlife and Fish Refuge.

Figure 1: Project Location Map

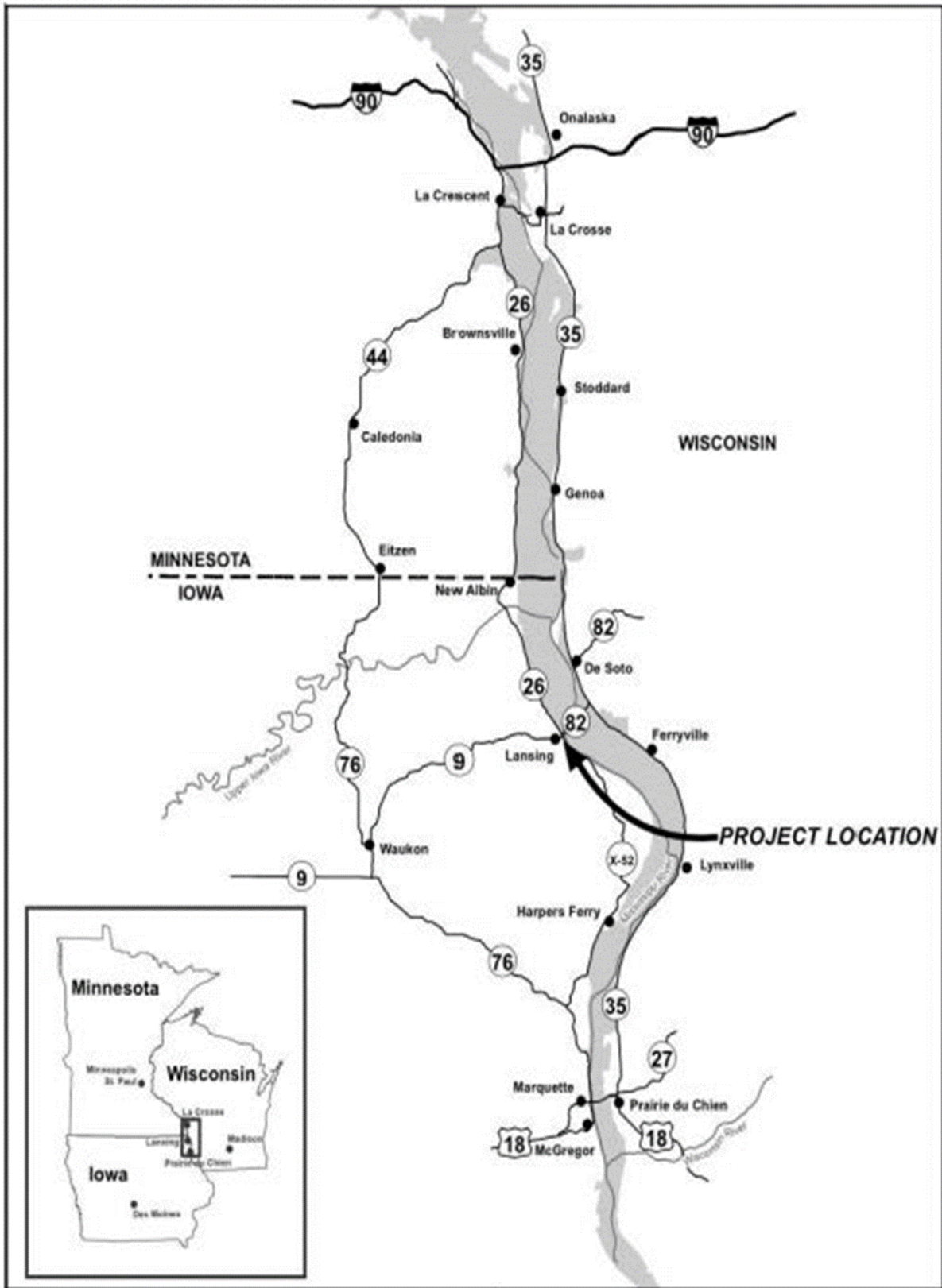


Figure 2: Refuge Habitat Impact and Donation Locations

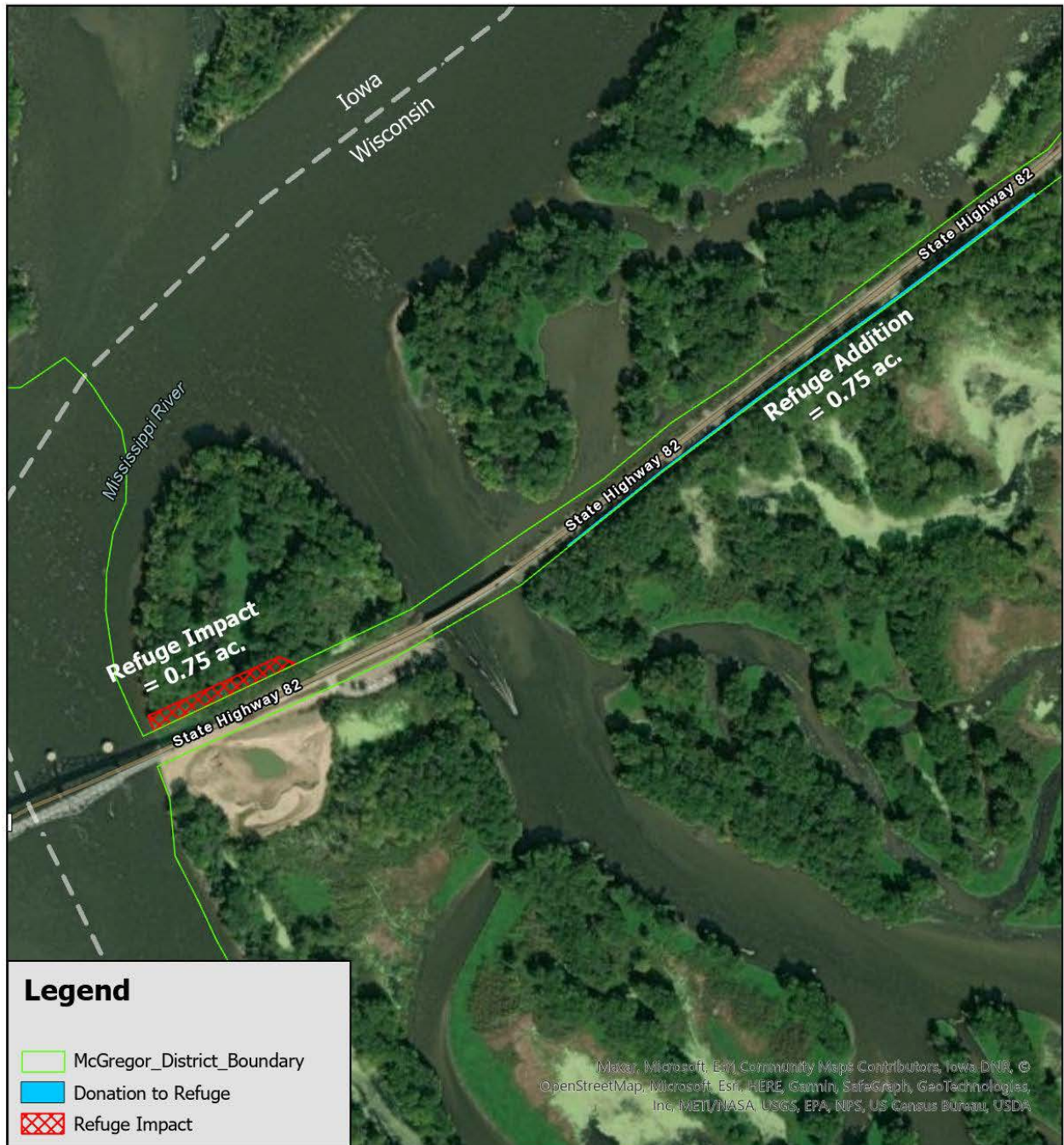


U.S. Fish & Wildlife Service

Lansing Bridge: Refuge Impact and Addition

Upper Mississippi River National Wildlife & Fish Refuge

Crawford County, Wisconsin



* Locations shown are sketches, actual polygons will be determined in the field.