



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Asheville Field Office
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Asheville, North Carolina 28801



May 8, 2023

Patrick Breedlove
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253 Webster Road
Sylva, North Carolina 28779

Subject: Update of the Informal Consultation and Conference Report for Bridge 155, 158, and 168 Replacement and Road Realignment on US 23/74 in Haywood County, North Carolina (TIP No. B-3186 and B-5898, Service Log #21-333, ECOSphere Project Code: 2023-0069023)

Dear Patrick Breedlove:

On March 10, 2023, we received (via e-mail) your letter notifying us of changes to the subject project. We reviewed the information that you provided and notified you on April 7, 2023 that reinitiation was not needed based on a review of revised impacts. On April 12, 2023, we received your email which included a more complete project description and a request for a revised concurrence letter. After review of the information provided and the original concurrence letter, dated July 26, 2021, the following letter is provided in accordance with the provisions of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 - 667e); the Migratory Bird Treaty Act, as amended (16 U.S.C. 703); and section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 - 1543) (Act). This letter supersedes our concurrence letter for the subject project dated July 26, 2021.

Project Description

According to the information provided, the North Carolina Department of Transportation (NCDOT) is proposing to replace Bridges 155, 158, and 168 in Haywood County on US 74 near Waynesville. The previous design included substantial reconfiguration of the US 23/74 interchange. However, after completion of the design and section 7 consultation, NCDOT chose to re-design the project to reduce the scope of the improvements.

The B-3186 / B-5898 project has now been scaled down to include slight realignment of the existing roadway and replacement of the three existing bridges. All project activities are within 300 feet of existing roads. Bridges 155 and 158 on US 23/74 over Richland Creek and Bridge 168 on US 23/74 over US 19/23 will be replaced. The re-design of the project no longer includes: the addition of through-traffic lanes, a flyover ramp from US 19 to US 74, substantial horizontal alteration, widening, or work on Bridges 107 and 110 (Enclosure). A temporary metal bridge may still be needed on the upstream side of Bridges 155 and 158 to provide a detour during construction.

Most construction will be confined to the existing rights-of-way. The demolition and replacement of the bridges will require intermittent and short-term percussive activities such as cutting, drilling, hammering, and jackhammering to remove old bridge decks and supports as well as installation of new guardrail posts. Percussive activities will not occur at night.

Nighttime deck pouring may be required if it coincides with hot weather. Night work is not expected for other kinds of work, though concrete delivery or weather delays could occur without predictability and force work later into the evening on rare occasions. Bridges 155, 158, and 168 will take up to three pours (two to three nights if done in hot weather) each. Bridge replacement will occur over several months or years, to allow for complex detours, construction, and demolition schedules.

Existing permanent lighting will be replaced, but new lighting is not currently proposed. Replacement lights may be of different brightness and type (for example LED) than current lighting. The only existing lighting near Richland Creek is 0.6 miles away. There is also existing lighting closer to Lake Junaluska but it will not be replaced. Temporary night lighting will be directed to illuminate the bridge deck and not the creek or riparian area. Typically, this will involve a mobile light unit on a mast that will be situated to direct light down the long axis of the bridge where pouring is occurring, rather than outward. Also notable is that during the deck pours for Bridges 155, 158, and 168, two will be done when there is an existing adjoining bridge, so incidental illumination of the riparian area will be largely to one side due to the shading on the other. The last bridge to be replaced, Bridge 155, will be demolished and constructed in between the temporary bridge and the new westbound bridge, further reducing incidental illumination of the creek and riparian area.

The project will require tree removal within the interchange medians and areas adjacent to the roadways to allow for construction access, grading, and crane movements. Removal of an estimated 500 trees (3 feet diameter at breast height or greater) from an estimated 7.5 acres is anticipated. Most of the project area is comprised of pavement, bridges, or maintained medians and road shoulders with fragmented forested habitat. Most tree clearing will occur within about 100 feet of the road.

The Federal Highway Administration (FHWA) is the federal lead for this project for section 7 purposes; NCDOT is FHWA's designated non-federal representative. NCDOT has committed to the following conservation measures as part of the project description:

1. Resurvey for small-whorled pogonia (*Isotria medeoloides*) prior to construction during the optimal survey window.
2. Remove all trees in the winter (October 16 to March 31) when bats are not active on the landscape.
3. Minimize illumination to the maximum extent practicable and avoid direct illumination of Richland Creek and its riparian area during construction.
4. Prior to any bridge demolition conducted between March 15 and November 15, including temporary bridges, surveys of the bridge decks, joints, and other potential roost areas of these bridges will be completed within 30 days of deck demolition or expansion (preferably within 14 days). If bats are present, the U.S. Fish and Wildlife Service (Service) will be consulted regarding how to proceed.
5. The NCDOT Division Environmental Officer (DEO) will conduct pre-construction kick-off meetings with the NCDOT Project Manager and On-Site Construction Manager to review conservation measures for this project.

NCDOT has also committed to implement the following Avoidance and Minimization Measures (AMMs) from the FHWA, Federal Railroad Administration (FRA), Federal Transit Administration (FTA) Programmatic Biological Opinion (PBO) for Transportation Projects within the Range of the Indiana Bat (*Myotis sodalis*) and Northern long-eared Bat (*Myotis septentrionalis*, NLEB) (March 23, 2023):

- 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.

LIGHTING AMM 1: Direct temporary lighting away from suitable habitat during the active season.

LIGHTING AMM 2: When installing new or replacing existing permanent lights, use downward-facing, full cut-off lens lights (with same intensity or less for replacement lighting); or for those transportation agencies using the BUG system developed by the Illuminating Engineering Society, be as close to 0 for all three ratings with a priority of "uplight" of 0 and "backlight" as low as practicable.

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 *all* trees that are being removed are clearly demarcated. 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 (for example, 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.

Federally Listed Species

Based on an updated species list from the Service's Information for Planning and Consultation (IPaC) website, the action area no longer overlaps with the consultation ranges of the blue ridge goldenrod (*Solidago spithamea*), Carolina northern flying squirrel (*Glaucomys sabrinus*), spreading avens (*Geum radiatum*), spruce-fir moss spider (*Microhexura montivaga*), or Appalachian elktoe (*Alasmindonta ravenliana*), therefore, section 7 is not required for these species. Also, while the project is located within the historical range of the rusty-patched bumble bee, the bee is considered not present and section 7 consultation is not required for this species within the action area.

The information provided states that no suitable habitat is present for rock gnome lichen (*Gymnoderma lineare*). We agree with the assessment and the determination that the proposed project will have no effect on this species.

The information provided states that suitable habitat for small whorled pogonia is present; however, the species was not observed on May 21 and June 10, 2021 during surveys within the optimal survey window. Detection of small whorled pogonia populations can be difficult due to a dormant phase where plants fail to emerge annually (Service Recovery Plan 1992). Because of this, the Service often recommends additional surveys when project duration exceeds one year. Based on the implementation of the above conservation measures, we would concur with a may affect, not likely to adversely affect (NLAA) determination for small whorled pogonia from the Federal action agency.

Suitable tree, bridge, and culvert roosts and suitable commuting and foraging habitat for gray bat (*Myotis grisescens*), Indiana bat, NLEB, tricolored bat (*Perimyotis subflavus*), and little brown bat (*Myotis lucifugus*) occur within the action area. Records for these species occur 1.25 miles, 4.75 miles, 6.75 miles, 1.25 miles, and 6.4 miles, respectively, from the action area. There are no caves or mines apparent near the project and removal of buildings for construction is not anticipated. All three bridges provide suitable roosting habitat for bats. NCDOT inspected Bridges 155, 158, and 168 for bats and signs of bat use on May 17, 2021 and May 25, 2021. There was a small amount of guano indicative of night roosting and a single big brown bat (*Eptesicus fuscus*) seen in a clogged deck drain on Bridge 155. No sign of bat use or bats were evident on Bridge 158. The deck drains of both Bridge 155 and 158 were rechecked on June 10, 2021 and no bats were present. Bridge 168 had no signs of bat use or bats on May 17, 2021.

Based on implementation of the above conservation measures and the information provided, we concur with NCDOT's determination that the project is NLAA the gray bat.

Consultation for the Indiana bat and NLEB was completed via the FHWA PBO and associated determination key on IPaC, which resulted in a NLAA determination. If Indiana bats and/or NLEB are detected prior to, or during construction, please submit the *Post Assessment Discovery of Bats at Bridge/Culvert/Structure Form* (User Guide Appendix E) to us within two working days of any potential take. In these instances, potential incidental take of Indiana bats and/or NLEB is covered under the incidental take statement in the 2018 FHWA, FRA, FTA PBO, provided that the take is reported to the Service.

On September 14, 2022, the Service published a proposal in the Federal Register to list the tricolored bat as endangered under the Act. The Service has up to 12-months from the date the proposal published to make a final determination, either to list the tricolored bat under the Act or to withdraw the proposal. The little brown bat is currently undergoing a discretionary status review by the Service. The Service anticipates determining if the little brown bat warrants listing under the Act in fiscal year 2024. Species undergoing a status review or species proposed for listing are not afforded protection under the Act; however, if a final rule to list the species is published, the prohibitions against jeopardizing its continued existence and "take" will apply as soon as a listing becomes effective (typically 30 days after publication of the final rule in the Federal Register). To avoid any disruption to ongoing or planned actions, the NCDOT requested conferencing procedures for the tricolored bat and little brown bat. This conference report can be adopted as concurrence if a final rule for either species becomes effective during the life of the project. Based on the information provided, the analysis above, and the commitment to implement the above conservation measures, we have determined that the proposed project will not jeopardize the continued existence of tricolored bat or little brown bat. Additionally, we would concur with NCDOT's determination that the project is NLAA the tricolored bat or little brown bat should one or both become federally listed.

Conservation Recommendations

Section 7(a)(1) of the Act directs federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

1. A colony of 59 big brown bats was identified in the deck of Bridge 107 on May 25, 2021. If any project-related activity will impact this bridge, please coordinate with the Service. We recommend resurveying this bridge to see if any federally listed or proposed bat species may share the roost.

Reinitiation

We believe the requirements under section 7 of the Endangered Species Act are fulfilled. However, obligations under section 7 of the Endangered Species Act must be reconsidered if: (1) new information reveals impacts of this proposed action may affect listed species or critical habitat in a manner not previously considered, (2) this proposed action is subsequently modified in a manner that was not considered in this review, or (3) a new species is listed or critical habitat is determined that may be affected by the proposed action.

Because we have concurred with your determination that the project is NLAA the tricolored bat and little brown bat in this conference report, you would not need to reinitiate section 7 consultation solely due to any final effective listing of the species, should either of them become listed.

Please contact Lauren B. Wilson of our staff at lauren_wilson@fws.gov if you have any questions. In any future correspondence concerning this project, please reference our Service Log #21-333.

Sincerely,

-- original signed --

Janet Mizzi
Field Supervisor

Electronic CC:

Dave McHenry, North Carolina Wildlife Resources Commission (NCWRC), NCDOT Liaison
Katherine Etchison, NCWRC, State Bat Biologist
Kevin Barnett, NCDOT, Division 14, Environmental Officer

Enclosure: Project Map

