

## MDOT LOCAL AGENCY PROGRAM

### CONSIDERATIONS FOR DETERMINING THE EFFECT OF FEDERALLY FUNDED PROJECTS ON NORTHERN LONG-EARED BATS AND INDIANA BATS

DECEMBER 2016

#### PROPOSED BRIDGE PROJECTS

Bridge removal/replacement projects, major rehabilitation projects, or maintenance activities that make the bridge no longer suitable for roosting fall outside the scope of the FHWA/FRA/FTA Range-wide Programmatic Consultation for Indiana Bat and Northern Long-Eared Bat (FHWA Programmatic) unless an inspection/assessment for bats has been performed in accordance with the FHWA Programmatic and reveals no signs of bats.

If the assessment reveals the presence of bats roosting within the structure (and they are identified as federally protected species or not identified), or if no inspection/assessment has been completed (it is thus assumed that protected bats are roosting within the structure), additional or separate coordination with the U.S. Fish and Wildlife Service (USFWS) may be required. In these situations, the Local Agencies are recommended to consult with representatives of the USFWS early in the design phase of their projects.

If an assessment has been completed and no signs of bats were observed, the owner or their consultant can conclude "no effect" for the scope of work.

Work that will not alter the roosting potential of the bridge (i.e., preventative maintenance), may fit within the scope of the programmatic agreement even if an assessment has not been completed.

Consultation documents and implementation information for the FHWA Programmatic Agreement, including the User Guide, Project Submittal Form, and Bridge/Structure Assessment Guidelines/Form can be found at:

<https://www.fws.gov/Midwest/endangered/section7/fhwa/index.html>.

For federally-funded projects that fall outside the scope of the FHWA programmatic agreement, Local Agencies may engage in standard section 7 consultation with the USFWS on behalf of FHWA.

USFWS technical assistance for standard section 7 consultation can be found at:

<https://www.fws.gov/midwest/endangered/section7/s7process/7a2process.html>.

U.S. Fish and Wildlife Service Contact Information

For specific questions about the FHWA programmatic, bats, or bridge use, contact Matthew Ihnken at:

U.S. Fish and Wildlife Service  
East Lansing Field Office  
2651 Coolidge Road, Suite 101  
East Lansing, MI 48823  
517-351-2555 (office)  
517-351-1443 (fax)  
matthew\_ihnken@fws.gov

Address written requests for standard section 7 consultation to Scott Hicks (Field Supervisor) at:

U.S. Fish and Wildlife Service  
East Lansing Field Office  
2651 Coolidge Road, Suite 101  
East Lansing, MI 48823  
517-351-2555 (office)  
517-351-1443 (fax)

## PROJECTS PROPOSING TREE REMOVAL

Local Agencies and their consultants should use the guidance documents on the following pages when contemplating tree removals and how those removals could affect federally protected bat species.

The guidance is for:

- Areas with Northern Long-Eared Bats or their potential habitats
- Areas with Indiana Bats or their potential habitats

## Northern Long-Eared Bat (NLEB) Information December 2016

Local Agency (LA) projects proposing tree removal and/or bridge work within the range of the NLEB and/or Indiana Bat may use the FHWA/FRA/FTA Range-wide Programmatic Consultation for Indiana Bat and Northern Long-Eared Bat (FHWA Programmatic) if they meet the criteria. More information on the FHWA Programmatic, including consultation documents, is at:

<https://www.fws.gov/Midwest/endangered/section7/fhwa/index.html>.

NLEB may use a variety of forested habitats containing trees three (3) inches in diameter or larger with cracks/crevices, cavities, and/or exfoliating bark. Projects that may affect potential habitat for the NLEB but fall outside the scope of the FHWA programmatic may engage in Standard Section 7 consultation with the USFWS.

USFWS technical assistance for Standard Section 7 consultation can be found at:

<https://www.fws.gov/midwest/endangered/section7/s7process/7a2process.html>.

For projects that only affect potential habitat for the NLEB, LA's have the option to download and complete the "4(d) Rule Streamlined Consultation Form" from the following web link:

<https://www.fws.gov/midwest/endangered/mammals/nleb/s7.html>

Completed forms should be submitted to the U.S. Fish and Wildlife Service (USFWS), using the submittal information at the bottom of this document.

Note that the 4(d) Rule Streamlined Consultation Form applies only to the NLEB. LA projects that may affect the Indiana Bat or other federally protected species require additional coordination with the USFWS (i.e., FHWA Programmatic or Standard Section 7 consultation).

Incidental take of NLEB is prohibited when it results from tree cutting activities within 0.25 mile of known hibernacula or within 150 feet of known maternity roost trees, during the months of June and July.

See <https://www.fws.gov/Midwest/endangered/mammals/nleb/nhisites.html> for more details and locations of Michigan townships with known NLEB roosts/hibernacula.

Contact the USFWS for more specific location information.

For projects that are not within 0.25 mile of known NLEB hibernacula or within 150 feet of known NLEB maternity roost trees and which propose cutting trees three (3) inches in diameter or larger, MDOT has developed a Frequently Used Special Provision (FUSP) that the Local Agency Program staff engineer will include in the proposal. The FUSP includes information on tree cutting when habitats for Indiana Bats and/or the Northern Long-Eared Bats are potentially present.

Following is a basic guide for complying with the 4(d) rule.

1. If hazardous tree removal is necessary to protect human life or property, incidental take of NLEB is not prohibited.
2. For other projects where the LA proposes cutting trees, the LA completes the following tasks:
  - a. Verify whether the project falls within a MI township with known NLEB roosts or hibernacula, at the following link :

<https://www.fws.gov/Midwest/Endangered/mammals/nleb/nhisites.html>

If yes, contact USFWS for more specific location information and to discuss any restrictions or requirements, then submit the “4(d) Rule Streamlined Consultation Form” if advised by USFWS. Otherwise, a separate consultation process may be required.

If no, submit the “4(d) Rule Streamlined Consultation Form” to USFWS. Contacting USFWS ahead of time is not required.

- b. Using the “4(d) Rule Streamlined Consultation Form”, the Service has 30 days to review the submittal. If the Service does not respond, the LA may presume its determination is informed by best available information and consider its project responsibilities under section 7(a)(2) with respect to the NLEB fulfilled. If USFWS does not concur, they will respond within 30 days of the form’s receipt.

If the LA requests and/or receives a response from USFWS, then include all cutting and work restrictions in the project documents, and keep a copy of the USFWS response in the project file.

If no response is received within 30 days, the LA needs to note this in its project file and proceed with the scope of work as detailed/agreed upon in the “4(d) Rule Streamlined Consultation Form”.

3. Even when incidental take of NLEB is exempt, the USFWS recommends avoiding the removal of potentially suitable roost trees (i.e., three (3) inches dbh or larger with cracks/crevices, cavities, and/or exfoliating bark) during the summer roosting period (April 1st through September 30th) whenever feasible. In particular, avoiding tree removal during the months of June and July, when young bats are nursing and unable to fly, will help to preclude adverse effects to the species.

**Note that 4(d) Rule exemptions pertain only to the NLEB. Incidental take of Indiana Bats is prohibited throughout the species’ range.**

If you have additional questions, contact Mark Harrison (MDOT Local Agency Program Project Development Engineer) at (517) 373-2286, [harrisonm@michigan.gov](mailto:harrisonm@michigan.gov).

U.S. Fish and Wildlife Service Contact Information.

When submitting 4(d) Rule Streamlined Consultation Forms, send electronic copies of the completed forms to each of the e-mail addresses below.

[eastlansing@fws.gov](mailto:eastlansing@fws.gov)  
[jennifer\\_wong@fws.gov](mailto:jennifer_wong@fws.gov)

When submitting FHWA Programmatic forms, send electronic copies of the completed forms to each of the following e-mail addresses below.

[eastlansing@fws.gov](mailto:eastlansing@fws.gov)  
[matthew\\_ihnken@fws.gov](mailto:matthew_ihnken@fws.gov)

Address written requests for standard section 7 consultation to Scott Hicks (Field Supervisor), at:

U.S. Fish and Wildlife Service  
East Lansing Field Office  
2651 Coolidge Road, Suite 101  
East Lansing, MI 48823  
517-351-2555 (office)  
517-351-1443 (fax)

For specific questions concerning bats, tree cutting, or section 7 consultation, contact Jennifer Wong or Matthew Ihnken or at:

U.S. Fish and Wildlife Service  
East Lansing Field Office  
2651 Coolidge Road, Suite 101  
East Lansing, MI 48823  
517-351-2555 (office)  
517-351-1443 (fax)  
[matthew\\_ihnken@fws.gov](mailto:matthew_ihnken@fws.gov)  
[jennifer\\_wong@fws.gov](mailto:jennifer_wong@fws.gov)

## Indiana Bat (IB) Information December 2016

Indiana Bats may use a variety of forested habitats containing trees at least five (5) inches in diameter or larger with cracks/crevices, and/or exfoliating bark.

For Local Agency (LA) projects that may affect potential habitat for the IB, winter tree cutting restrictions have not changed. See the map in the attached MDOT Frequently Used Special Provision (FUSP).

LA projects proposing tree removal and/or bridge work within the range of the IB may use the FHWA/FRA/FTA Range-wide Programmatic Consultation for Indiana Bat and Northern Long-Eared Bat (FHWA Programmatic) if they meet the criteria.

Information on the FHWA Programmatic, including consultation documents, is at:  
<https://www.fws.gov/Midwest/endangered/section7/fhwa/index.html>.

Completed forms should be submitted to the U.S. Fish and Wildlife Service (USFWS), using the submittal information at the bottom of this document.

Using the FHWA Programmatic, the Service has 14 days to review the submittal. If the Service does not respond within 14 days, the LA may presume its determination is informed by best available information and may consider its project responsibilities under section 7(a)(2) with respect to the Indiana Bat/NLEB as fulfilled. If USFWS does not concur, they will do so within 14 days of the form's receipt.

Projects that fall outside the scope of the FHWA programmatic may engage in standard section 7 consultation with the USFWS.

USFWS technical assistance for standard section 7 consultation is at:  
<https://www.fws.gov/midwest/endangered/section7/s7process/7a2process.html>.

Tree cutting in potentially suitable habitat for the IB must be restricted to the period of October 1st through March 31st to avoid incidental take/adverse effects to the endangered species. Tree clearing in suitable habitat between April 1st and September 30th will require additional coordination with the USFWS.

When cutting trees three (3) inches in diameter or larger, the Local Agency Program staff engineer will include the attached FUSP into the proposal. This FUSP includes information on tree cutting when IB and/or Northern Long-eared Bats are potentially present.

If you have additional questions, contact Mark Harrison (MDOT Local Agency Program Project Development Engineer) at (517) 373-2286, [harrisonm@michigan.gov](mailto:harrisonm@michigan.gov).

U.S. Fish and Wildlife Service Contact Information.

When submitting 4(d) Rule Streamlined Consultation Forms, send electronic copies of the completed forms to each of the e-mail addresses below.

[eastlansing@fws.gov](mailto:eastlansing@fws.gov)  
[jennifer\\_wong@fws.gov](mailto:jennifer_wong@fws.gov)

When submitting FHWA Programmatic forms, send electronic copies of the completed forms to each of the following e-mail addresses below.

[eastlansing@fws.gov](mailto:eastlansing@fws.gov)  
[matthew\\_ihnken@fws.gov](mailto:matthew_ihnken@fws.gov)

Address written requests for standard section 7 consultation to Scott Hicks (Field Supervisor), at:

U.S. Fish and Wildlife Service  
East Lansing Field Office  
2651 Coolidge Road, Suite 101  
East Lansing, MI 48823  
517-351-2555 (office)  
517-351-1443 (fax)

For specific questions concerning bats, tree cutting, or section 7 consultation, contact Jennifer Wong or Matthew Ihnken or at:

U.S. Fish and Wildlife Service  
East Lansing Field Office  
2651 Coolidge Road, Suite 101  
East Lansing, MI 48823  
517-351-2555 (office)  
517-351-1443 (fax)  
[matthew\\_ihnken@fws.gov](mailto:matthew_ihnken@fws.gov)  
[jennifer\\_wong@fws.gov](mailto:jennifer_wong@fws.gov)

MICHIGAN  
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION  
FOR  
**TREE REMOVAL**

ENV:JDG

1 of 2

APPR:DMG:MJO:02-26-16  
FHWA:APPR:02-29-16

**a. Description.** This work consists of all tree removals greater than 3 inches in diameter required for the project as defined in section 202 of the Standard Specifications for Construction.

1. Due to the existence of federally protected species, complete all tree removals required for the project between October 1 and March 31 for all projects located in the counties shown on the map included in this special provision as having both Indiana bats (IB) and Northern Long Eared bats (NLEB).

2. In the counties shown on the map included in the special provision as having NLEB only, tree removal can be done at any time during the year.

**b. Materials.** None specified.

**c. Construction.** The work must be conducted in accordance with section 202 of the Standard Specifications for Construction.

**d. Measurement and Payment.** Tree removals will be paid for according to subsection 202.04 of the Standard Specifications for Construction and applicable special provisions.

If the project is in a county shown on the map as having NLEB bats only, payment will be in accordance with subsection 202.04 of the Standard Specifications for construction.

If the project is in a county shown on the map as having both IB and NLEB the work must be conducted between October 1 and March 31. If the work is not completed within this timeframe, and additional environmental evaluation is required, the Contractor may face penalties from paying any additional costs and being assessed liquidated damages up to being held in default of the contract.

