

Endangered Species Act Federal Updates



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Agenda

- Brief review of policy
- Review using IPaC to streamline ESA project review
- Brief review of recent and Upcoming Endangered Species Act Listing actions affecting Michigan
 - Monarch
 - *Listed bats
 - *Mussels



*Join afternoon session to learn more!

U.S. Endangered Species Act (ESA)

Purpose and Policy

- "...to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved..." (Section 2(b))
- "...all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act." (Section 2(c)(1))

ESA Section 7 – Interagency Cooperation

- "...Federal agencies shall, in consultation with and with the assistance of the Secretary [DOI], utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species..." (section 7(a)(1))
- "Each Federal agency shall, in consultation with and with the assistance of the Secretary [DOI], ensure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species..." (Section 7(a)(2))

ESA Sections 9

- **Section 9** defines prohibited acts. Listed wildlife is protected from “take” and commercial trade.
- **Take** means: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in these activities.
- **Harm** includes habitat destruction that kills or injures listed species by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
- Listed plants are protected from commercial trade, collection, or malicious destruction on Federal lands, and similar actions that violate State law.

ESA Section 10

- Standard is “**reasonably certain**” to result in incidental take
- **Section 10** covers exceptions and allows us to issue Incidental Take Permits (ITP) for take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity.
- 10(a)(1)(B) – the FWS issues permits to private landowners with an approved Habitat Conservation Plan which ensures the action will not “appreciably reduce the likelihood of survival and recovery of the species in the wild”.

Using online planning tools

IPaC

- Information for Planning and Consultation
- Obtain an official species list
- List of federally listed species, critical habitat, migratory birds, and other natural resources that may be in your action area
- Determination keys (Dkeys) to expedite consultation

U.S. Fish & Wildlife Service

LOG IN

IPaC Information for Planning and Consultation

IPaC is a project planning tool that streamlines the USFWS environmental review process

GET STARTED LOG IN

Integrate the environmental review process into your project design

Quickly and easily identify USFWS managed resources and suggested conservation measures for your project.

Explore species and habitat

See if any listed species, critical habitat, migratory birds or other natural resources may be impacted by your project.

Using the map tool, explore other

Conduct a regulatory review

Log in and define a project to get an official species list and evaluate potential impacts on resources managed by the U.S. Fish and Wildlife Service.

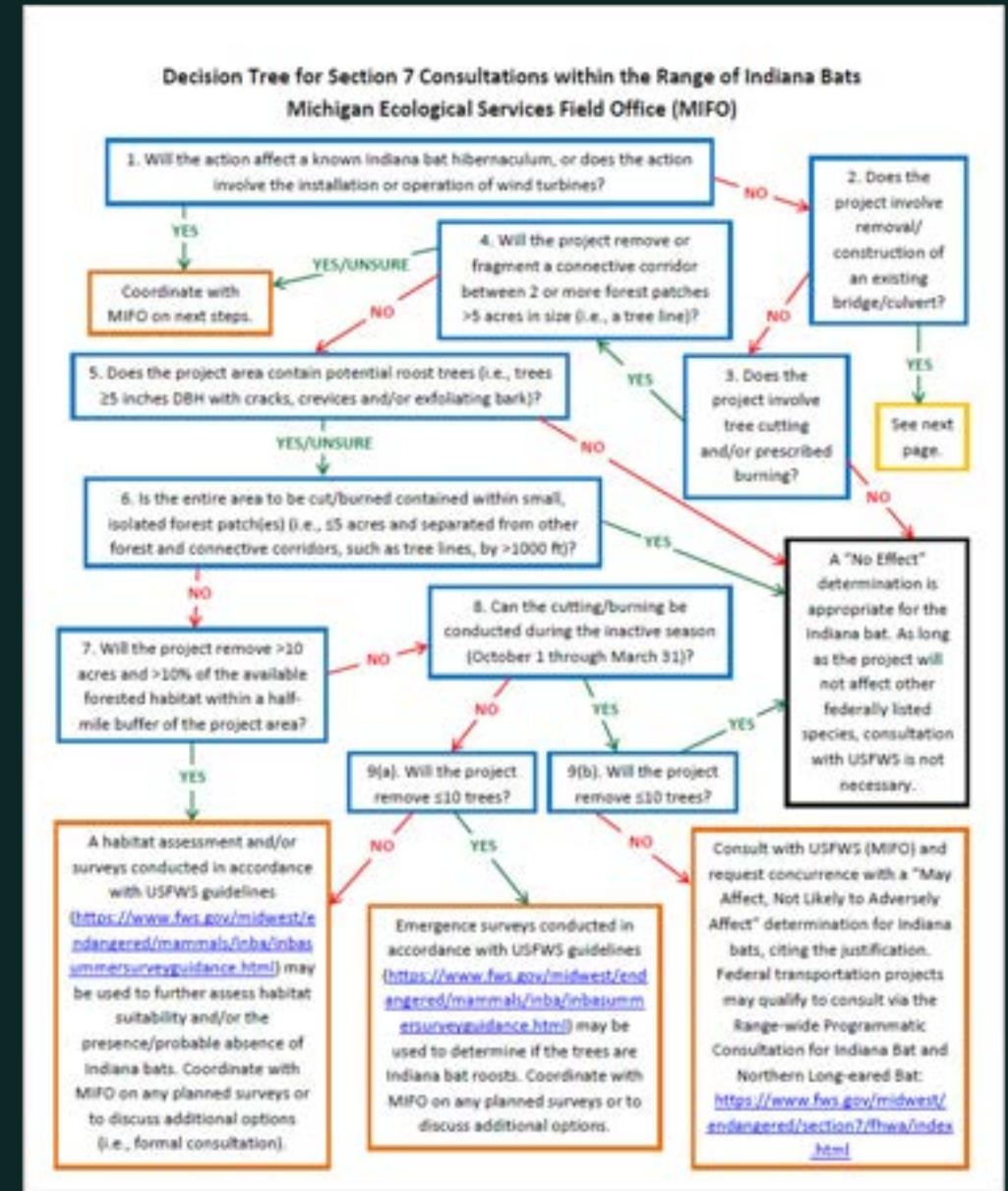
Build a Consultation Package

Consultation Package Builder (CPB) replaces and improves on the original Impact Analysis by providing an interactive, step-by-step process to help

<https://ipac.ecosphere.fws.gov/fws>

Determination Keys (Dkeys)

- Dkeys are logically-structured sets of questions which assists an applicant in making an effects determination
- Relies on hidden spatial data
- Automate the section 7 process
- If project qualifies, IPAC can deliver an automated concurrence letter
- Significantly streamline and expedite section 7 process



All-species Michigan Determination Key

- Covers relatively low-impact projects, routine, small in scale
- Explicitly does not cover projects with potential for broad impacts
- Wind energy development, certain communications towers, aerial application of chemicals, large volume groundwater withdrawals





IPaC is a project planning tool that streamlines the USFWS environmental review process

GET STARTED

LOG IN



Integrate the environmental review process into your project design

Quickly and easily identify USFWS managed resources and suggested conservation measures for your project.

Explore species and habitat

See if any listed species, critical habitat, migratory birds or other natural resources may be impacted by your project.

Using the map tool, explore other resources in your location, such as wetlands, wildlife refuges, GAP land cover

Conduct a regulatory review

Log in and define a project to get an official species list and evaluate potential impacts on resources managed by the U.S. Fish and Wildlife Service.

Follow IPaC's Endangered Species Act (ESA) Review process - a streamlined, step-by-

Build a Consultation Package

Consultation Package Builder (CPB) replaces and improves on the original Impact Analysis by providing an interactive, step-by-step process to help you prepare a full consultation package leveraging U.S. Fish and Wildlife Service

1 Find location

Search or zoom to find the project location

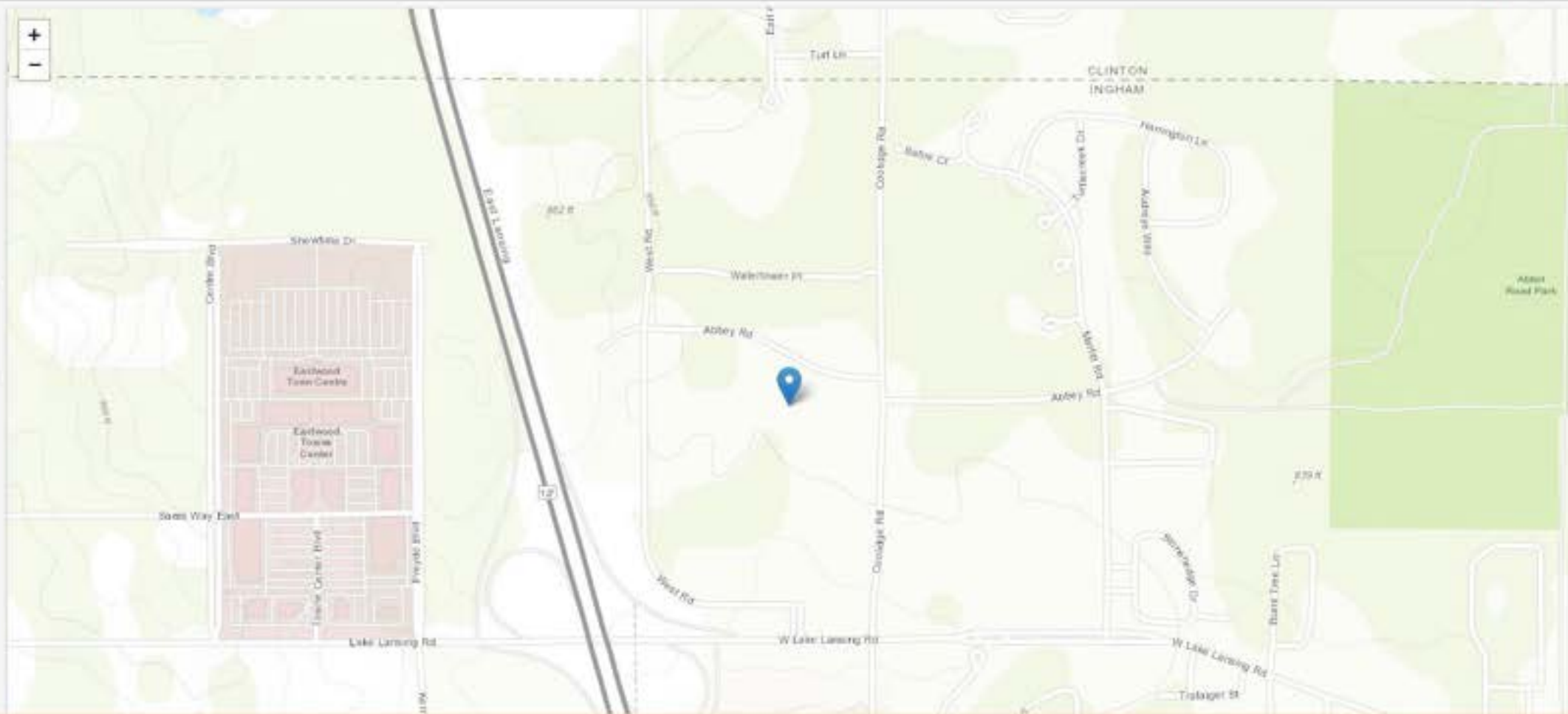
2651 Coolidge Rd, East Lansing

Or skip this step and:

UPLOAD SHAPE FILE

SELECT BY STATE OR COUNTY

2 Define area



1 Find location

2 Define area

3 Confirm

Verify the area where project activities will occur

Modify the shape by clicking and dragging the vertices or clicking on a solid vertex to remove it

AREA: 1.42 acres

CONTINUE

START OVER



When drawing action area, be sure to consider the reach of all direct and indirect (e.g., reach of water quality changes, effects to hydrology, noise, etc.)

Layers ADD

Demo Project Clinton County, Michigan

PROJECT HOME

REGULATORY REVIEW

LOCAL OFFICE **MICHIGAN ESFO** -

Demo Project

Be sure to add a complete project description!



LOCATION Clinton County, Michigan

CREATED December 2, 2022

1 MEMBER

3 DOCUMENTS

Resources

This project potentially impacts 15 resources managed or regulated by the U.S. Fish and Wildlife Service.

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.

[START REVIEW](#)

SPECIES LIST

Requesting an official species list is now part of IPaC's ESA Review.

[REQUEST SPECIES LIST](#)

Local office

Michigan Ecological Services Field Office **LEAD**

(517) 351-2555

(517) 351-1443

2651 Coolidge Road Suite 101
East Lansing, MI 48823-6360

Demo Project

Newaygo County, Michigan

Endangered Species Act Review

[EXIT REVIEW](#)

Step-by-step consultation process

The Endangered Species Act (ESA) Review in IPaC is a streamlined, step-by-step consultation process. The steps below prepare you for consultation with the U.S. Fish and Wildlife Service or provide official documentation if consultation is not necessary.

1 Request an official species list

An official species list must be requested for projects conducted, permitted, funded, or licensed by a Federal agency. Projects unaffiliated with a Federal agency may skip this step.

NOTE: Generating an official species list does not start the consultation clock for a project.

2 Evaluate determination keys

Determination Keys are up-front analyses from the U.S. Fish and Wildlife Service that streamline the consultation process for common project types. Each determination key starts with a qualification interview to see if the key is appropriate for your project.

3 Evaluate effects to remaining species through the Consultation Package Builder

When you have listed species ¹ in your project that have not been addressed by a determination key, IPaC's project analysis tool is used to further analyze your project. The process assists you in making effect determinations and results in a document (e.g., Biological Assessment or other environmental review document) that can be submitted to the U.S. Fish and Wildlife Service for consultation.

4 Finalize your consultation package

Print your project documents to PDF.

Demo Project

Newaygo County, Michigan

Endangered Species Act Review

[← BACK](#)[EXIT REVIEW](#)

- 1 Request an official species list
- 2 Evaluate Determination Keys
- 3 Analyze project (optional)
- 4 Download documentation

Step 1: Request an official species list

An official species list is a letter from the local U.S. Fish and Wildlife Service field office that assists in the evaluation of potential impacts of your project. It includes a list of species that should be considered under [Section 7](#) of the Endangered Species Act, a project tracking number, and other pertinent information from the field office.

Does this project require an official species list?

Federal agencies are required to "request of the Secretary of Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action" ([Section 7](#) of the Endangered Species Act).

This requirement applies to projects that are **conducted, permitted, funded, or licensed** by any Federal agency.

NOTE: Generating an official species list does not start the consultation clock for a project.

Demo Project Newaygo County, Michigan

Endangered Species Act Review

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EXIT REVIEW

- 1 Request an official species list
Skipped
- 2 Evaluate
Determination Keys
- 3 Analyze project (optional)
- 4 Download documentation

Step 2: Evaluate determination keys

The U.S. Fish and Wildlife Service has performed up-front analyses for certain project types, agencies, and species. The analyses have been compiled into *determination keys*, a simple interview process to help you arrive at a recommended determination for some species in your project area.

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.

- All Species Michigan Determination Key

Release date: October 13, 2022

This key is intended to streamline review of projects for potential effects to Federally listed threatened and endangered species and designated critical habitat. This key covers all Michigan species and incorporates the NLEB 4(d) rule Dkey as an option.

EVALUATE

SKIP / DOES NOT APPLY

- FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting

Endangered Species Act Review

[← BACK](#)[EXIT REVIEW](#)

- 1 Request an official species list
Skipped
- 2 Evaluate Determination Keys
- 3 Analyze project (optional)
- 4 Download documentation

EVALUATING: ALL SPECIES MICHIGAN DETERMINATION KEY

Qualification interview

The following questions will determine whether this key applies to your project and provide guidance to help you make appropriate determinations for the species covered by this key.

1. Are there any possible effects to any listed species or to designated critical habitat from your project or effects from any other actions or projects subsequently made possible by your project?

Select "Yes" even if the expected effects to the species or critical habitat are expected to be 1) extremely unlikely (discountable), 2) can't meaningfully be measured, detected, or evaluated (insignificant), or 3) wholly beneficial.

Select "No" to confirm that the project details and supporting information allow you to conclude that listed species and their habitats will not be exposed to any effects (including discountable, insignificant, or beneficial effects) and therefore, you have made a "no effect" determination for all species. If you are unsure, select YES to answer additional questions about your project.

Yes

No

Demo Project Clinton County, Michigan

Endangered Species Act Review

[← BACK](#)[EXIT REVIEW](#)

- ✓ Request an official species list
- ✓ Evaluate Determination Keys Complete
- 3 Analyze project (optional)
Not required, no remaining species or critical habitat to analyze
- 4 Download documentation

Determination

You have reached a determination of may affect based on this determination key. Review the guidance below and request USFWS verification for this project.

Please review the language carefully in your letter to ensure any May Affect determinations do not require additional coordination.

[VIEW CONCURRENCE LETTER](#)

Demo Project

 Clinton County, Michigan[PROJECT HOME](#)[REGULATORY REVIEW](#)LOCAL OFFICE [MICHIGAN ESFO](#) ▾[Project home](#) / Documents

Documents

As the IPaC review process is completed, documents will be generated or made available which apply to this project. Examples include: official correspondence, such as official species lists or determination key concurrence letters; other FWS guidance, such as determination key consistency documents and general design guidelines; and any uploaded project design documentation.

Official correspondence

 [Species List: Michigan Ecological Services Field Office](#) [MA Verification Letter: All Species Michigan Determination Key 2022-12-02](#)

Other FWS documents/guidance

 [General project design guidelines](#) [Species survey guidelines](#)

Supporting documents

 [Project location \(shape file\)](#)

In Reply Refer To:
Project code: 2022-0084385
Project Name: Saline Pump Stations

November 07, 2022

Subject: Verification letter for the project named 'Saline Pump Stations' for specified threatened and endangered species that may occur in your proposed project location consistent with the Michigan Endangered Species Determination Key (Michigan DKey)

Dear [REDACTED]

The U.S. Fish and Wildlife Service (Service) received on **November 07, 2022** your effect determination(s) for the 'Saline Pump Stations' (the Action) using the Michigan DKey within the Information for Planning and Consultation (IPaC) system. The Service developed this system in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based on your answers and the assistance of the Service's Michigan DKey, you made the following effect determination(s) for the proposed Action:

| Species | Listing Status | Determination |
|---|----------------|---------------|
| Eastern Massasauga (=rattlesnake) (<i>Sistrurus catenatus</i>) | Threatened | NLAA |
| Eastern Prairie Fringed Orchid (<i>Platanthera leucophaea</i>) | Threatened | No effect |
| Indiana Bat (<i>Myotis sodalis</i>) | Endangered | No effect |
| Mitchell's Satyr Butterfly (<i>Neonympha mitchellii mitchellii</i>) | Endangered | No effect |
| Monarch Butterfly (<i>Danaus plexippus</i>) | Candidate | No effect |
| Northern Long-eared Bat (<i>Myotis septentrionalis</i>) | Threatened | No effect |

The Service will notify you within 30 calendar days if we determine that this proposed Action does not meet the criteria for a "may affect, not likely to adversely affect" (NLAA) determination for Federally listed species in Michigan. If we do not notify you within that timeframe, you may proceed with the Action under the terms of the NLAA concurrence provided here. This verification period allows the Michigan Ecological Services Field Office to apply local

All Species MI Dkey - Determinations & Letters

| File name | Subject line | Comments |
|---|---|--|
| NE Consistency Letter _ Michigan Federal Endangered Species Determination Key DATE | Subject: Consistency letter for PROJECT NAME | All species get NE determination |
| NLAA Consistency Letter _All Species Michigan Determination Key DATE | Subject: Consistency letter for PROJECT NAME | Non-federal projects, NLAA or NE for all species |
| NLAA Concurrence Letter _ All Species Michigan Determination Key DATE | Subject: Verification letter for PROJECT NAME | Federal project, gets NLAA or NE for all species. 30 day verification period. |
| MA Verification Letter _ All Species Michigan Determination Key DATE | Subject: Verification letter for PROJECT NAME | All listed species get NE or NLAA, candidate or experimental populations get MA; no additional action is needed; 30 day verification period. |
| MA Consistency Letter _All Species Michigan Determination Key DATE | Subject: Consistency letter for PROJECT NAME | At least one species wasn't able to use the key to get ESA clearance; s7 NOT complete |

In Reply Refer To:

October 12, 2022

Project code: 2023-0003479

Project Name: Macomb County North River Road Bridge Replacement

Subject: Consistency letter for 'Macomb County North River Road Bridge Replacement' for specified federally threatened and endangered species and designated critical habitat that may occur in your proposed project area consistent with the Michigan Determination Key for project review and guidance for federally listed species (Michigan Dkey).

Dear [REDACTED]

The U.S. Fish and Wildlife Service (Service) received on **October 12, 2022** your effect determination(s) for the 'Macomb County North River Road Bridge Replacement' (the Action) using the Michigan DKey within the Information for Planning and Consultation (IPaC) system. The Service developed this system in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based on your answers and the assistance of the Service's Michigan DKey, you made the following effect determination(s) for the proposed Action:

| Species | Listing Status | Determination |
|--|---|---------------|
| Eastern Massasauga (=rattlesnake) (<i>Sistrurus catenatus</i>) | Threatened | NLAA |
| Indiana Bat (<i>Myotis sodalis</i>) | Endangered | No effect |
| Northern Long-eared Bat (<i>Myotis septentrionalis</i>) | Threatened | No effect |
| Piping Plover (<i>Charadrius melodus</i>) | Endangered | NLAA |
| Rayed Bean (<i>Villosa fabalis</i>) | Endangered | May affect |
| Red Knot (<i>Calidris canutus rufa</i>) | Threatened | NLAA |
| Snuffbox Mussel (<i>Epioblasma triquetra</i>) | Endangered | May affect |
| Whooping Crane (<i>Grus americana</i>) | Experimental Population, Non- Essential | No effect |

Please carefully review this letter. Your Endangered Species Act requirements are not complete.



Best Management Practices (BMPs)

- Based on your project location, we will recommend certain conservation measures
 - Wildlife-friendly erosion control materials
 - Tree clearing dates (listed bats)

Next steps for “MA” determination from Dkey

- No habitat? → no effect
 - Document your determination and file it with your Dkey output letter
- Can you agree to an offered BMP?
- Reach out to MIFO_Dkey@fws.gov to review the project and assist you
- Consult outside of the key using the typical section 7 process (request concurrence in writing, 60 day timeline for informal; initiate formal consultation, 135 day timeline for formal consultation)



USFWS Photo, Vince Cavalieri

Monarch

Federal Status: Candidate

- Monarchs were found to be "Warranted but Precluded" for listing under the Endangered Species Act in 2020
- Review annually

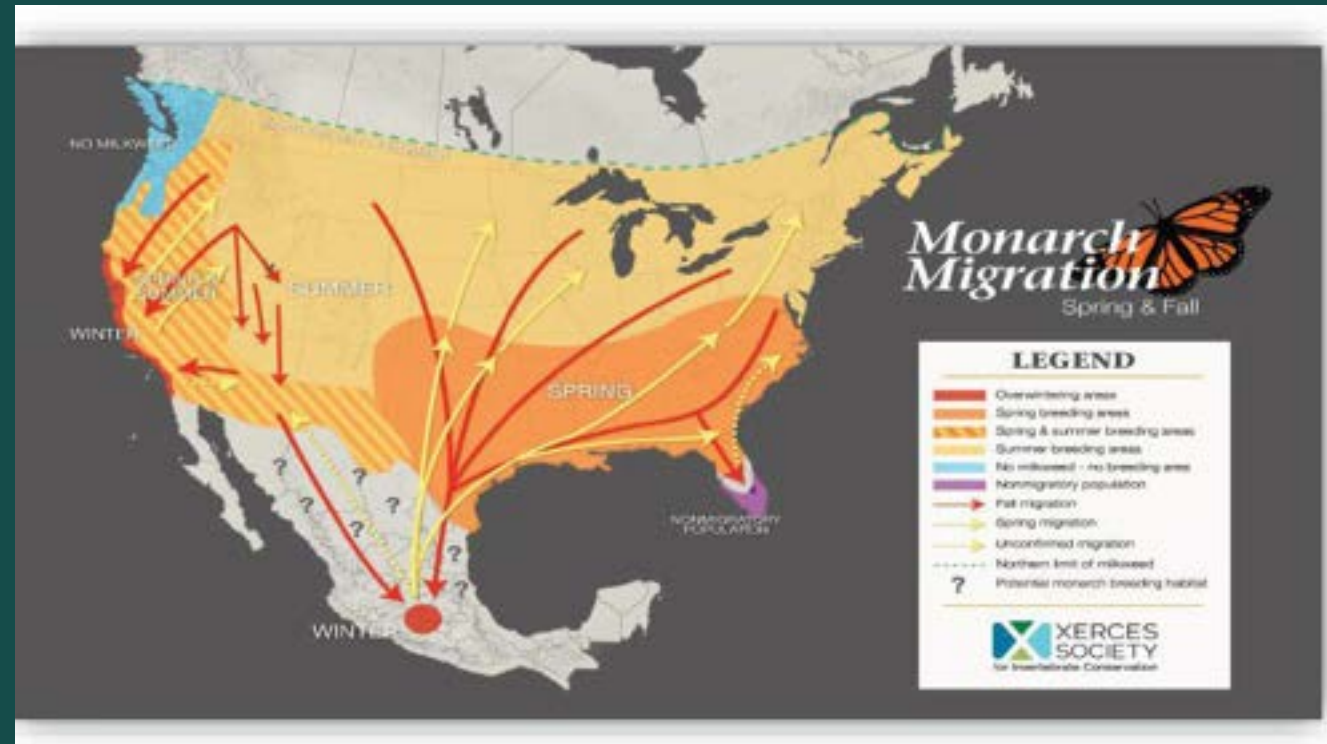
Major Threats:

- Loss of habitat from land conversion
- exposure to chemicals
- impacts to overwintering habitat
- climate change



Monarch (cont.)

- The Eastern Population is one of the two migratory populations in the United States
 - Summer months are spent in the northeastern and Midwestern United States
 - Population overwinters in Mexico
- Michigan is part of the Eastern Monarch Population Range
 - Summer breeding range
- Monarchs require milkweed for breeding and reproduction, but individuals also require nectar from flowering plants



Tricolored bat (Eastern pipistrelle) (*Perimyotis subflavus*)

- Cave hibernating bat with severe white-nose syndrome (WNS)-related declines
- Michigan distribution: Primarily found in the UP in fall/winter, scattered LP records; historically rare in MI pre-WNS and is exceedingly rare post-WNS. With very few exceptions, the species has not been observed in Michigan in the summer, and no maternity colonies have been documented, despite repeated and extensive mist netting and other survey efforts in suitable summer habitat.
- September 13, 2022, Proposed Rule listing tricolored as Endangered (87 FR 56381)



USFWS Photo



Northern long-eared bat

- Final rule reclassifying as endangered published November 30, 2022 (87 FR 73488), with an effective date of January 30, 2023.

Salamander mussel (*Simpsonaias ambigua*)

- Michigan distribution: Clinton River watershed and Belle, Pine, and Black Rivers (St. Clair HUC)
- Proposed endangered (August 22, 2023) with proposed designated Critical Habitat
- Public comment period is open through October 23, 2023



Round hickorynut (*Obovaria subrotunda*)

- Status: Threatened (May 2023)
- Michigan distribution: Pine, Belle and Black Rivers watersheds



Upcoming ESA Species Status Reviews

- **Little Brown Bat:** Discretionary review, SSA in progress, decision expected 2024
- **Lake Sturgeon:** Petitioned to list in 2018, settlement agreement to complete 12-month finding by June 20, 2024; SSA ongoing
- **Blanding's, Spotted, and Wood Turtles:** Petitioned to list in 2012, SSA in progress, 12-month finding next FY



photo courtesy of James Harding, MSU

Resources and links: Beta version of IPAC (for testing): <https://ipacb.ecosphere.fws.gov/>

- For assistance with All Species Michigan Determination key or questions about an IPAC-generated letter: MIFO_Dkey@fws.gov
- Section 7 Technical Assistance Page (to consult outside of Dkey): <https://www.fws.gov/office/midwest-region-headquarters/midwest-section-7-technical-assistance>
- IPAC website <https://ipac.ecosphere.fws.gov/>
- Detailed IPAC instructions (Michigan): [Instructions for https://www.fws.gov/media/mifo-ipac-instructions in MI](https://www.fws.gov/media/mifo-ipac-instructions-in-MI);
- Video Demo, All Species Michigan Dkey: <https://www.youtube.com/watch?v=FfcerNCiL0IDkey>
- Michigan Dkey Standing Analysis: <https://www.fws.gov/media/michigan-endangered-species-determination-key-standing-analysis>
- Michigan bat project design guidelines: <https://www.fws.gov/media/michigan-bat-project-design-guidelines>
- Learn more about wildlife friendly erosion control: <https://www.fws.gov/initiative/protecting-wildlife/make-change-wildlife-friendly-erosion-control-products>
- Dkey Document Library: <https://www.fws.gov/library/collections/michigan-determination-key-d-keyDkey>
- ESA Consultation Handbook: <https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>
- Regulations for Interagency Cooperation (8/27/2019): <https://www.federalregister.gov/documents/2019/08/27/2019-17517/endangered-and-threatened-wildlife-and-plants-regulations-for-interagency-cooperation>
- Michigan Mussel mapper (for access to stream groups maps): <https://mnfi.anr.msu.edu/resources/michigan-mussels>
& Michigan Freshwater Mussel Survey Protocols and Relocation Procedures for Rivers and Streams: <https://fws.gov/media/michigan-freshwater-mussel-survey-protocols-and-relocation-procedures-rivers-and-streams>

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