

NEPA Process & Local Agency Projects



Threatened & Endangered Species Process

May 27, 2021

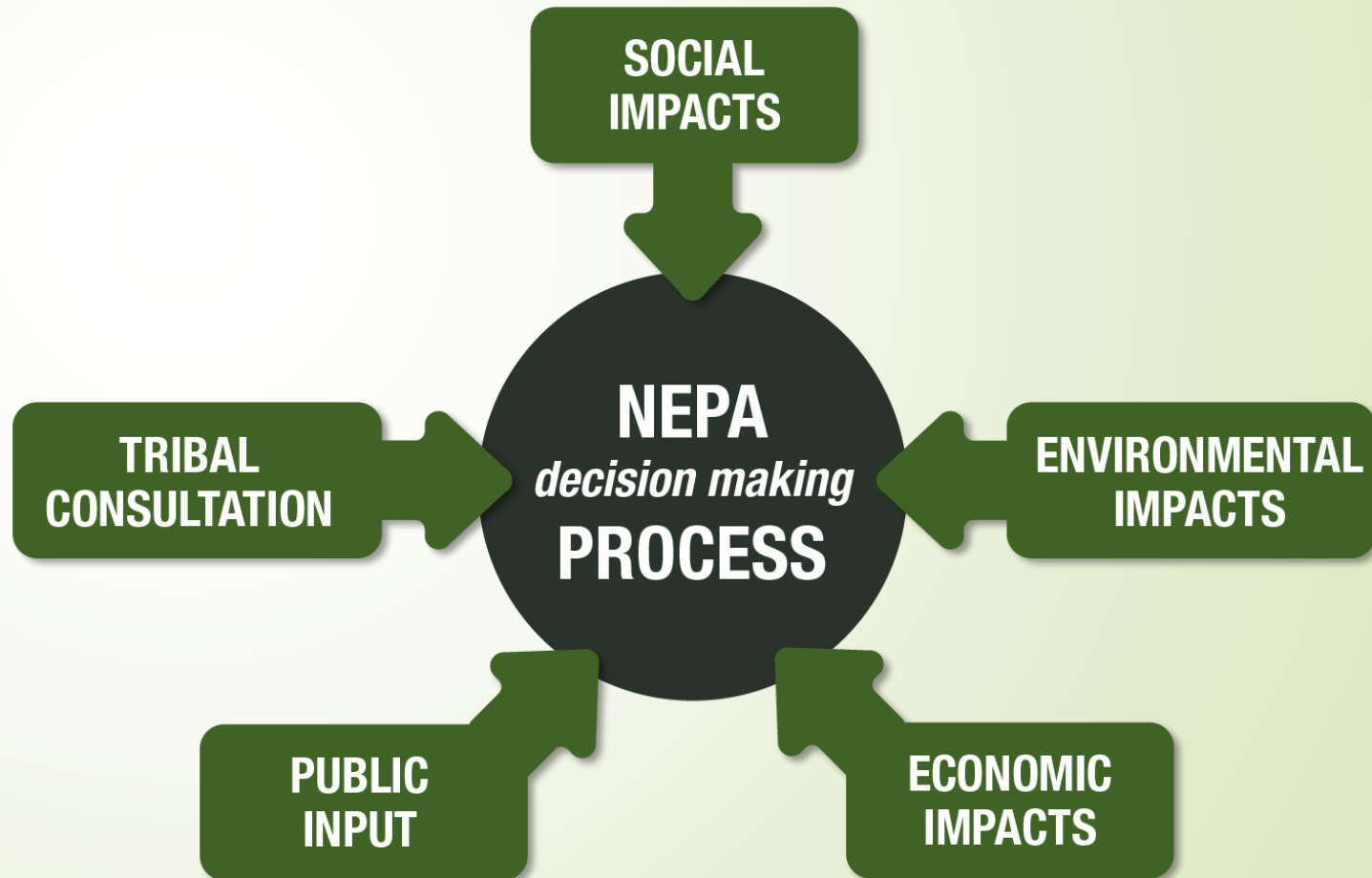


Outline

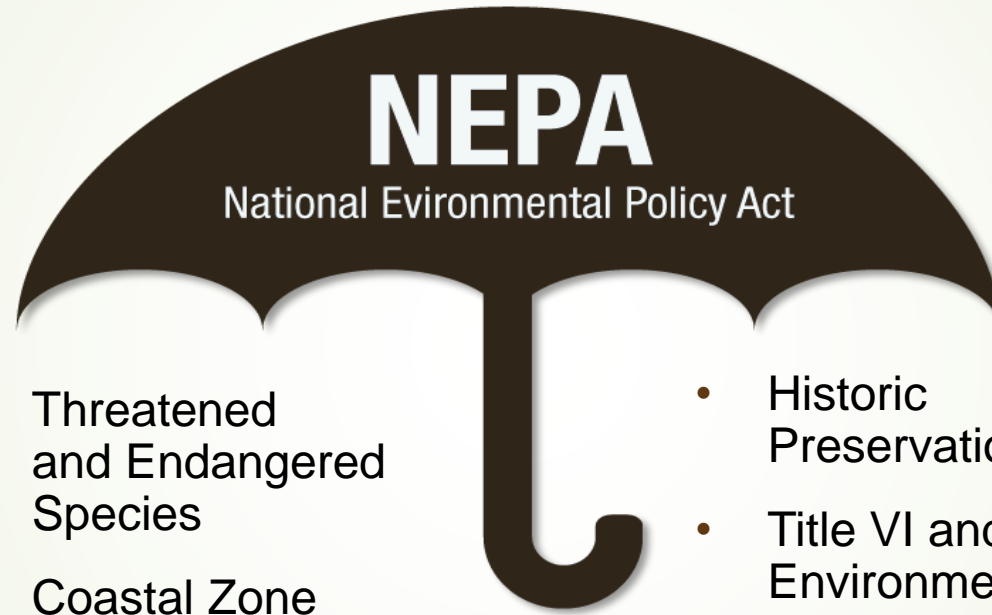
- NEPA & MDOT Local Agency Projects
- Threatened and Endangered Species Review Process
- Endangered Species Act (ESA)
- Section 7 of the ESA
- Determination keys

National Environmental Policy Act (NEPA)

- 1. Environmental Policy Act of 1969
- 2. Federal Funds
- 3. Federal Rules (FHWA)



The NEPA Umbrella



- Public Involvement
- Wetland and Floodplain Permits
- Farmland Protection
- Water Quality Protection
- Threatened and Endangered Species
- Coastal Zone Consistency
- Air Quality Conformity
- Historic Preservation
- Title VI and Environmental Justice
- Recreation Area Protection
- Noise Abatement
- Sustainable Development
- Community Impact Assessment

Environmental Clearance Form (5323)

- Prior to October 2019 – MDOT would **concur** with the Local Agency's environmental classification.
- After October 1, 2019 (FY 2020) – MDOT is required to **approve** the Local Agency's environmental classification.
 - More documentation is required (maps, follow-up questions, permits, supporting documentation)
 - Will require more time for review and approval – NEPA review will need to be completed much earlier in the process (2-6 months prior to Gi Submittal).

NEPA 5323 Form - Sections

- National Wild & Scenic Rivers & State Designated Natural Rivers
- Commercially Navigable River or Stream
- Coastal Zones
- Wetlands
- 100 Year Floodplain
- Water Quality
- Threatened and Endangered Species
- Historic Properties & Districts
- Section 4(F) Public Parks, Recreation, Refuge
- Section 6(F) Grant Funded Public Park, Recreation, Refuge
- Agricultural Properties
- Hazardous & Toxic Materials
- Traffic Impacts
- Noise Impacts
- Air Quality
- Public Controversy

MDOT FORM 5323 SUBMITTAL

Local Agency Programs (LAP) FY 2022 Project Planning Guide May 2022

	SUBMIT NEPA DOCUMENTATION (MDOT FORM 5323) TO LAP, 2-6 MONTHS BEFORE GI SUBMITTAL. DATES SHOWN HERE ARE APPROXIMATELY 4 MONTHS PRIOR TO GI SUBMITTAL DATES	FOR BRIDGE PROJECTS, SUBMIT TYPE, SIZE, AND LOCATION (TS&L) DOCUMENTS TO LAP		SUBMIT ACCEPTABLE GRADE INSPECTION PACKAGE TO LAP	APPROXIMATE GRADE INSPECTION MEETING DATE		SUBMIT FINAL ROW CERTIFICATION (ATTACHMENT B) TO LAP	SUBMIT FINAL DOCUMENTS TO LAP	LAP FORWARDS FINAL SUBMITTAL TO SPECS & ESTIMATES	LETTING DATE
LA begins Project Design. Prepare NEPA Form 5323, and forward to MDOT LAP between 2 and 6 months before GI submittal.	03/08/21 M	06/01/21 M	LA places GI documents in ProjectWise, including Requests for design exceptions or variances, Diagonal parking study and analysis, Diagnostic Safety Team Review for rail crossings, and similar documentation, and notifies LAP staff engineer.	05/03/21 M	06/02/21 W	LA addresses SHPO and NEPA review and GI comments; prepares final plans, special provisions, and cost estimates; obtains property, permits, and approvals; and forwards all documents to LAP	07/02/21 F	07/16/21 F	08/06/21 F	10/01/21 F
	04/12/21 M	07/06/21 T**		06/07/21 M	07/07/21 W		08/06/21 F	08/20/21 F	09/10/21 F	11/05/21 F
	05/11/21 M	08/02/21 M		07/06/21 T**	08/04/21 W		09/03/21 F	09/17/21 F	10/08/21 F	12/03/21 F
	06/07/21 M	08/30/21 M		08/09/21 M	09/08/21 W		10/08/21 F	10/22/21 F	11/12/21 F	01/07/22 F
	07/06/21 T**	09/27/21 M		09/07/21 T**	10/06/21 W		11/05/21 F	11/19/21 F	12/10/21 F	02/04/22 F
Also begin utility notification and coordination, coordination with railroads if applicable, coordination with MDOT for traffic and pedestrian signal work, permit application, property acquisition, etc.	08/09/21 M	11/01/21 M		10/04/21 M	11/03/21 W		12/03/21 F	12/17/21 F	01/07/22 F	03/04/22 F
	09/07/21 T**	11/29/21 M		11/01/21 M	12/01/21 W		01/03/22 M**	01/14/22 F	02/04/22 F	04/01/22 F
	10/04/21 M	12/27/21 M		12/06/21 M	01/05/22 W		02/04/22 F	02/18/22 F	03/11/22 F	05/06/22 F
	11/08/21 M	01/31/22 M		01/03/22 M	02/02/22 W		03/04/22 F	03/18/22 F	04/08/22 F	06/03/22 F
	12/06/21 M	02/28/22 M		01/31/22 M	03/02/22 W		04/01/22 F	04/15/22 F	05/06/22 F	07/01/22 F
	01/10/22 M	04/04/22 M		03/07/22 M	04/06/22 W		05/06/22 F	05/20/22 F	06/10/22 F	08/05/22 F
	02/07/22 M	05/02/22 M		04/04/22 M	05/04/22 W		06/03/22 F	06/17/22 F	07/08/22 F	09/02/22 F
				05/09/22 M	06/08/22 W		07/08/22 F	07/22/22 F	08/12/22 F	10/07/22 F
				06/06/22 M	07/06/22 W		08/05/22 F	08/19/22 F	09/09/22 F	11/04/22 F

MDOT – LAP Website

MDOT
Michigan Department of Transportation

Search

Roads and Travel
Public Transportation
Rail
Bridges and Structures
News and Information
Projects and Programs
Maps
Reports, Publications and Specs
About MDOT
Doing Business
Forms
Contractor Services
Vendor/Consultant Services
Local Agency Program

MDOT / DOING BUSINESS / LOCAL AGENCY PROGRAM

Local Agency Program
FY 2021 Project Planning Guide
Fiscal Year Obligation Reports
Annual Local Agency Force Account Report

News and Policy Changes
Local Bridge Program Public Meeting Announcements
Local Agency Program (LAP) Advisories

Guidance Documents
National Environmental Policy Act (NEPA) Guidance and Information
Real Estate Guidance and Information

FHWA Emergency Relief
----- Select from the List **GO**

LAP Podcasts & Presentations
----- Select from the List **GO**

Contact Us
----- Select from the List **GO**

Quick Links
• Title VI Nondiscrimination
• Tribal Governments
• Twitter Facebook YouTube
• Mi Drive
• State Map

LAP Links
• LAP Construction
• LPA Stakeholder Partnering
• RTF Program

[Roads and Travel](#)[Public Transportation](#)[Rail](#)[Bridges and Structures](#)[News and Information](#)[Projects and Programs](#)[Maps](#)[Reports, Publications and Specs](#)[About MDOT](#)[Doing Business](#)[Forms](#)[Contractor Services](#)[Vendor/Consultant Services](#)[Local Agency Program](#)[Urban Road Program](#)[Rural Road Program](#)[Bridge Program](#)[Transportation Alternative Program](#)[Safety Program](#)[Passenger Transportation](#)[Aeronautics](#)[MDOT](#) / [DOING BUSINESS](#) / [LOCAL AGENCY PROGRAM](#)

National Environmental Policy Act (NEPA) Guidance and Information

The National Environmental Policy Act (NEPA) established a national environmental policy and goals for the protection, maintenance and enhancement of the environment. It requires agencies like MDOT to assess the environmental effects of their proposed actions prior to making decisions. Using the NEPA process, MDOT evaluates the environmental and related social and economic effects of their proposed actions.

News and Advisories

[Eastern Massasauga Rattlesnake - Frequently Asked Questions](#) 

Forms

[Local Agency Environmental Clearance Form 5323](#) 

Environmental Assessment Information

[Environmental Assessment Checklist for Local Agency Projects](#) 

Documents and Guidance

[LAP NEPA Webinar Announcement](#) [LAP Tribal Consultation Guide for Categorical Exclusions](#) [Threatened and Endangered Species Review Process](#) [LAP and Public Involvement](#) [Road Diets - FHWA Guidance - June 2018](#) 

Use information below to determine the presence/absence of threatened/endangered species within a project:

[Michigan Natural Features Inventory \(MNFI\) Mussel Map](#)[LAP and Mussel Protocol - Updated June 2019](#) [Threatened & Endangered Mussels locations Alger thru Crawford Counties](#) [Threatened & Endangered Mussels locations Delta thru Jackson Counties](#) [Threatened & Endangered Mussels locations Kalamazoo thru Ottawa Counties](#) [Threatened & Endangered Mussels locations Presque Isle thru Wexford Counties](#) [Best Management Practices - Eastern Massasauga Rattlesnake](#) 

Section 106 - National Historic Preservation Act of 1966

[Section 106 Application Tips, including FHWA and MDOT Contact Information](#) [State Historic Preservation Office \(SHPO\)](#)[MDOT LAP Section 106 Delegated Authority, with FHWA Letter](#) [Local Agency Section 106 Exemptions](#) 

Quick Links

- [Title VI Nondiscrimination](#)
- [Tribal Governments](#)
- [Twitter Facebook YouTube](#)
- [Mi Drive](#)
- [State Map](#)

Revised LA Threatened & Endangered Species Review Process

- Is the project exempt based on scope of work?
- Multiple work types and not **all** are listed, project is not exempt
- Change from previous process: exempt projects **ONLY** require an IPaC species listing. A state species listing from EGLE is not required for exempt projects
- If the project is not exempt, you need an IPaC **and** an EGLE species list
- Multiple segments – select entire county in IPaC if the project is exempt



IPaC resource list

This report is an automatically generated list of species and other resources such as critical habitat (collectively referred to as *trust resources*) under the U.S. Fish and Wildlife Service's (USFWS) jurisdiction that are known or expected to be on or near the project area referenced below. The list may also include trust resources that occur outside of the project area, but that could potentially be directly or indirectly affected by activities in the project area. However, determining the likelihood and extent of effects a project may have on trust resources typically requires gathering additional site-specific (e.g., vegetation/species surveys) and project-specific (e.g., magnitude and timing of proposed activities) information.

Below is a summary of the project information you provided and contact information for the USFWS office(s) with jurisdiction in the defined project area. Please read the introduction to each section that follows (Endangered Species, Migratory Birds, USFWS Facilities, and NWI Wetlands) for additional information applicable to the trust resources addressed in that section.

Location

Oakland County, Michigan



Local office

Michigan Ecological Services Field Office

☎ (517) 351-2555

📠 (517) 351-1443

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

<http://www.fws.gov/midwest/EastLansing/>



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Michigan Ecological Services Field Office

2651 Coolidge Road Suite 101

East Lansing, MI 48823-6360

Phone: (517) 351-2555 Fax: (517) 351-1443

<http://www.fws.gov/midwest/EastLansing/>

In Reply Refer To:

March 31, 2021

Subject: Updated list of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The attached species list identifies any federally threatened, endangered, proposed and candidate species that may occur within the boundary of your proposed project or may be affected by your proposed project. The list also includes designated critical habitat if present within your proposed project area or affected by your project. This list is provided to you as the initial step of the consultation process required under section 7(c) of the Endangered Species Act, also referred to as Section 7 Consultation.

Section 7 of the Endangered Species Act of 1973 requires that actions authorized, funded, or carried out by Federal agencies not jeopardize federally threatened or endangered species or adversely modify designated critical habitat. To fulfill this mandate, Federal agencies (or their designated non-federal representative) must consult with the Fish and Wildlife Service if they determine their project may affect listed species or critical habitat.

There are several important steps in evaluating the effects of a project on listed species. Please use the species list provided and visit the U.S. Fish and Wildlife Service's Region 3 Section 7 Technical Assistance website at <http://www.fws.gov/midwest/endangered/section7/s7process/index.html>. This website contains step-by-step instructions to help you determine if your project may affect listed species and lead you through the section 7 consultation process.

Under 50 CFR 402.12(e) (the regulations that implement section 7 of the Endangered Species Act), the accuracy of this species list should be verified after 90 days. You may verify the list by visiting the ECOS-IPaC website (<http://ecos.fws.gov/ipac/>) at regular intervals during project planning and implementation and completing the same process you used to receive the attached list.

State Species List

EGLE **MiWaters** Water Resources Information and Forms

+

SITE

abc

Home

Dashboard

Notifications

Details

Contacts List

Apps, Requests and Reports

Permits

Evaluations

Violations

Compliance and Enforcement Actions

Environmental Projects

Financials

Documents

Authorized Users

Start a New Form

View All Apps, Requests and Reports

Find and submit a new application or service request

Part 325 - Application For Bottomland Conveyance	Application For Bottomland Conveyance (Part-325)	Resources
Part 325 - Application For Conveyance For Offshore Lighthouse	Application For Conveyance For Offshore Lighthouse (Part-325)	Resources
Part 339 - Application For St. Clair Flats Deed	Application For St. Clair Flats (Saint Clair Flats) Deed (Part-339)	Resources
Part 761 - Application For Permit To Recover Abandoned Property From The Great Lakes	This information is required under Part 761, Act 451, P.A. of 1994, as amended, to apply for a permit	Resources
Part 91 Agency Audit Questionnaire	Part 91 Agency Audit Questionnaire <i>This form can only be submitted by a user account that is an approved certifier for the site under which it is submitted.</i>	NPDES
Permit Application for Port Operations and Ballast Water Discharges	Permit Application for Port Operations and Ballast Water Discharges	NPDES
Pre-Application Meeting Request Part 353 (Critical Dune Area)	Part 353 Pre-application Meeting Request	Resources
Pre-Application Meeting Request Part 301 (Inland Lakes and Streams), Part 303 (Wetlands Protection)	Part 301, 303 Pre-application Meeting Request	Resources
Report of Discharge (CSO\SSO\RTB)	Use this form to report a discharge event related to CSO\SSO\RTB.	NPDES
Select Water Treatment Additive Request Form	Select Water Treatment Additive Request Form	NPDES
Standard/Expedited Permit Application for Wastewater Systems (Part 41)	The standard/expedited application for construction, alteration, addition or improvement of required under the authority of Part 41, Act 451, PA 1994 as amended	Part 41
Transportation Service Request – T&E Species Map/Data Review (Preliminary Desktop Review)	Request a desktop review for the occurrence of threatened & endangered species and other items of concern such known contamination and proximity to Section 10 waters. Transportation project that use federal funds and require T&E clearance can submit this	Resources



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY

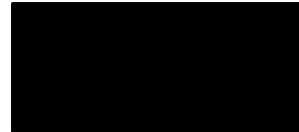
LANSING



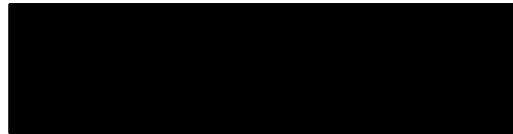
LIESL EICHLER CLARK
DIRECTOR

April 22, 2021

VIA E-MAIL



SUBJECT:



This letter provides the results of the Transportation Preliminary Database Search that was requested on April 8, 2021, for the above subject project. The Transportation Preliminary Map/Database Review includes a database search for the following concerns within 500-feet of the project location:

- Historical occurrences of state-listed threatened or endangered (T&E) species within the MNFI database*
- Tier 1 Eastern Massasauga Rattlesnake (EMR) designated habitat
- Michigan Mussel Protocol Group 1/Group 2 (state) and Group 3 (federal) T&E Mussels
- Known contamination locations
- State-regulated 303 wetlands
- Section 10 regulated waterways

Mapped 303 regulated wetlands are listed in the database as having been observed within 500 feet of your project area at the following location:

- Proposed pathway route from the vicinity of the International Transmission Company's overhead electrical lines extending west through a wooded area for approximately 430 LF.

The database did not indicate the presence of the Northern long-eared bat or the Indiana bat which are federally listed as an endangered species. Indiana bats, however, are considered potentially present wherever suitable habitat exists within their range. Your project location is within the range of the Indiana bat in Michigan. You should consult with the United States Fish and Wildlife Service (USFWS) prior to performing work or applying for permits

The database search did not indicate any occurrences for state-listed T&E species, EMR habitat,

- If project is not exempt, then determine:
 - Are any of the listed species and/or habitats are present in the project area?
 - Will the project have any impacts on species/habitat?
 - Field surveys, USFWS/IPaC, MNFI review

Table 1: Occurrences of threatened & endangered species within 1.5 miles of RSR #2630

ELCAT	SNAME	SCOMNAME	USESA	SPROT	G_RANK	S_RANK	FIRSTOBS	LASTOBS
Animal	<i>Pyganodon subgibbosa</i>	Round lake floater		T	G1Q	S1	187?	1930
Animal	<i>Rallus elegans</i>	King rail		E	G4	S2	1894	1894-06-13
Animal	<i>Clonophis kirtlandii</i>	Kirtland's snake		E	G2	S1	1976	1976-08-09
Plant	<i>Zizania aquatica</i>	Wild rice		T	G5	S2S3	1910	1910-08-04

Comments for Table 1:

No concerns. Records are Historic and far removed from project site.

MNFI Review

Pitcher's Thistle (*Cirsium pitcheri*)

Fact Sheet
pdf version

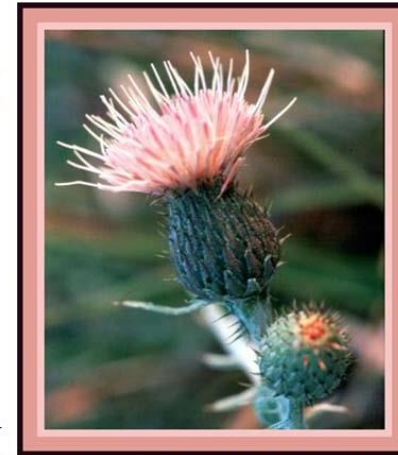
Pitcher's thistle is a *threatened species*. Threatened species are animals and plants that are likely to become endangered in the foreseeable future. *Endangered species* are animals and plants that are in danger of becoming extinct. Identifying, protecting and restoring endangered and threatened species is the primary objective of the U.S. Fish and Wildlife Service's endangered species program.

What is the Pitcher's thistle?

Scientific Name - *Cirsium pitcheri*
Range - The Pitcher's thistle is a native thistle that grows on the beaches and grassland dunes along the shorelines of Lakes Michigan, Superior, and Huron. It is now found in Indiana, Michigan, and Wisconsin and in Ontario Canada. Pitcher's thistle was extirpated from Illinois but has been reintroduced in Lake County.

Appearance - The Pitcher's thistle grows for five to eight years before it flowers. Its non-flowering form is a rosette or cluster of silvery leaves and its flowering form typically has one stem with many branches. The entire flowering plant may grow 3 feet tall. Cream or pink flowers grow at the end of branches and from the leaf axils. Leaves are finely and deeply lobed and may be one foot long. The stems and leaves of both the flowering and non-flowering forms are covered with white hairs that give the plant a woolly white or silvery appearance. These hairs are an adaptation to its beach environment and help the plant retain water and reflect the sun's strong rays. Spines are found along the edges of leaves near the base and at the tips of some of the lobes. Both non-flowering and flowering plants have a long taproot, up to 6 feet long.

Habitat - Pitcher's thistle grows on the open sand dunes and low open beach ridges of the Great Lakes' shores. It is most often found in near-shore plant communities but it can grow in all nonforested areas of a dune system.



USFWS Website

Qualification Interview

1. Is the project within the range of the Indiana bat^[1]?

[1] See [Indiana bat species profile](#)

Automatically answered

Yes

2. Is the project within the range of the Northern long-eared bat^[1]?

[1] See [Northern long-eared bat species profile](#)

Automatically answered

Yes

3. Which Federal Agency is the lead for the action?

A) *Federal Highway Administration (FHWA)*

4. Are *all* project activities limited to non-construction^[1] activities only? (examples of non-construction activities include: bridge/abandoned structure assessments, surveys, planning and technical studies, property inspections, and property sales)

[1] Construction refers to activities involving ground disturbance, percussive noise, and/or lighting.

No

5. Does the project include *any* activities that are **greater than** 300 feet from existing road/rail surfaces^[1]?

[1] Road surface is defined as the actively used [e.g. motorized vehicles] driving surface and shoulders [may be pavement, gravel, etc.] and rail surface is defined as the edge of the actively used rail ballast.

No

6. Does the project include *any* activities **within** 0.5 miles of a known Indiana bat and/or NLEB hibernaculum^[1]?

[1] For the purpose of this consultation, a hibernaculum is a site, most often a cave or mine, where bats hibernate during the winter (see suitable habitat), but could also include bridges and structures if bats are found to be hibernating there during the winter.

No

7. Is the project located **within** a karst area?



No



IPaC Determination Key

- Can the project avoid ALL impacts to species/habitat?
- Can the project minimize impacts to species/habitat?



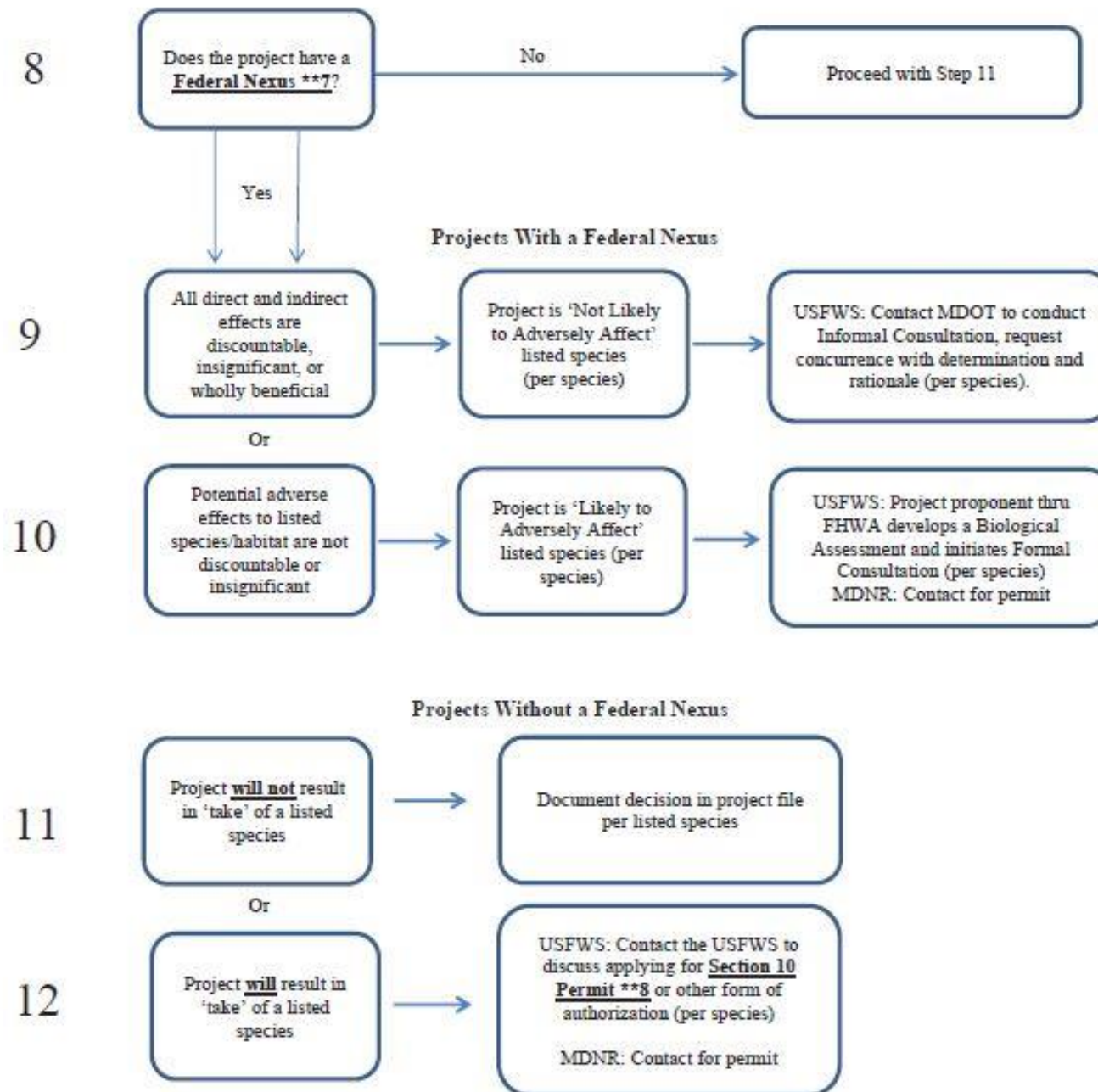
Photo Credit: The County Press,
<https://thecountypress.mihomepaper.com/>

- 
- 
- Federal Nexus: funded, authorized, or carried out by a federal agency
 - Are all direct and indirect effects discountable, insignificant or wholly beneficial?
 - Not Likely to Adversely Affect
 - Ensure concurrence from USFWS and document to file
 - If potential adverse effects to any listed species/habitat, then contact USFWS for formal consultation

- 
- 
- If no federal nexus, then you must determine if there is take of a listed species
 - "The term '**take**' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."
 - Harm and Harass have additional definitions

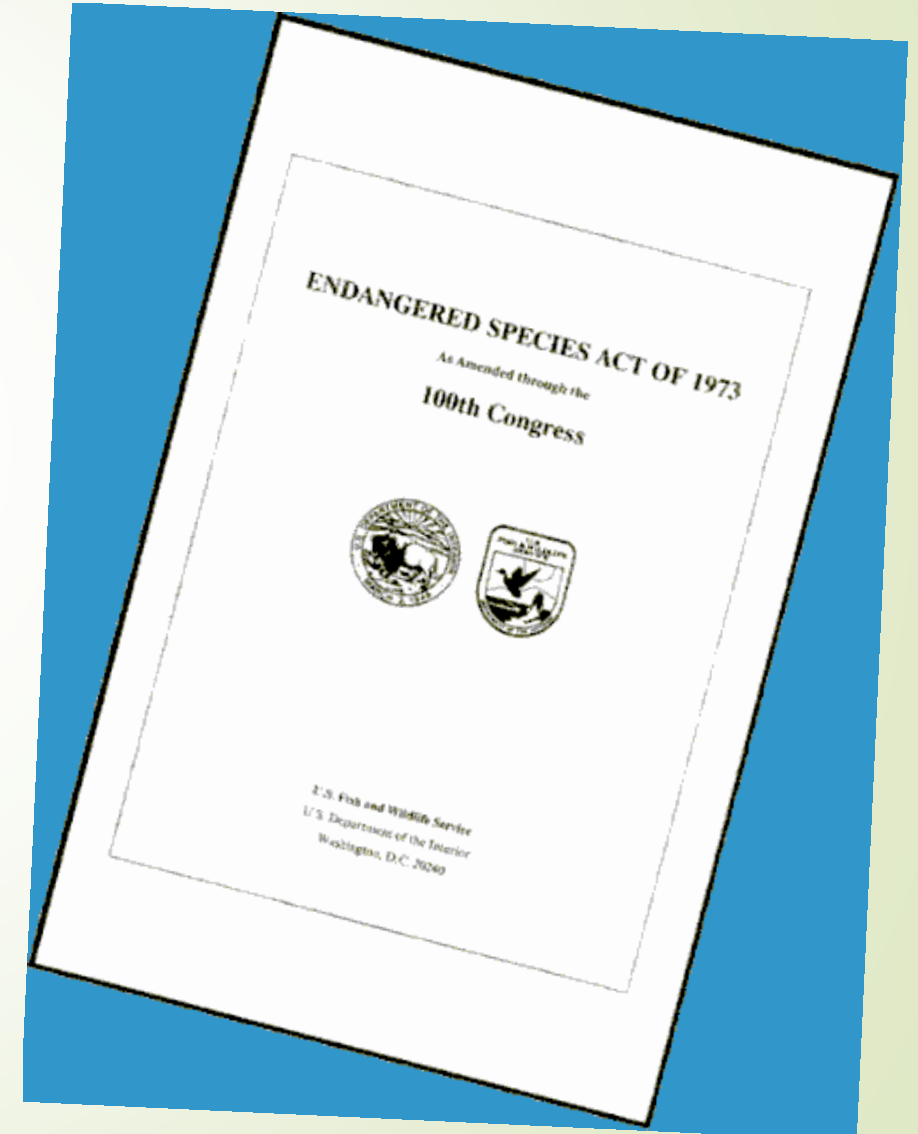
Section 7

Section 10



The Endangered Species Act of 1973

- Congress passed the Endangered Species Act (ESA) in 1973
 - Recognized that our rich natural heritage is of "esthetic, ecological, educational, recreational, and scientific value to our Nation and its people."
 - Expressed concern that many of our nation's native plants and animals were in danger of becoming extinct
- The purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend
 - Fish and Wildlife Service is responsible for terrestrial and freshwater species
 - National Marine Fisheries Service is responsible for marine and anadromous species (e.g., salmon)



Sections of the ESA

- Section 2: Findings, Purpose, and Policy
- Section 3: Definitions
- Section 4: Determination of Endangered Species and Threatened Species (Listing, Critical Habitat Designation, Recovery, Monitoring)
- Section 5: Land Acquisition
- Section 6: Cooperation with the States
- Section 7: Interagency Cooperation
- Section 9: Prohibited Acts
- Section 10: Exceptions (Permits)
- Section 11: Penalties and Enforcement



Section 7 – Interagency Cooperation

- Section 7 outlines Federal agencies role in conserving listed species
 - Section 7(a)(1) - Requires that Federal Agencies utilize their authority by carrying out programs for the conservation of listed species
 - Section 7(a)(2) - Ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat
 - Commonly referred to as “section 7 consultation” or “consultation”
- The above sections prioritize the ESA in Federal actions and require agencies to address the impacts of their actions on listed species.
 - The same level of effort is not required for non-federal projects.
 - Regulations at 50 CFR 402 defines the consultation process

Section 7 – Interagency Cooperation

➤ Jeopardy

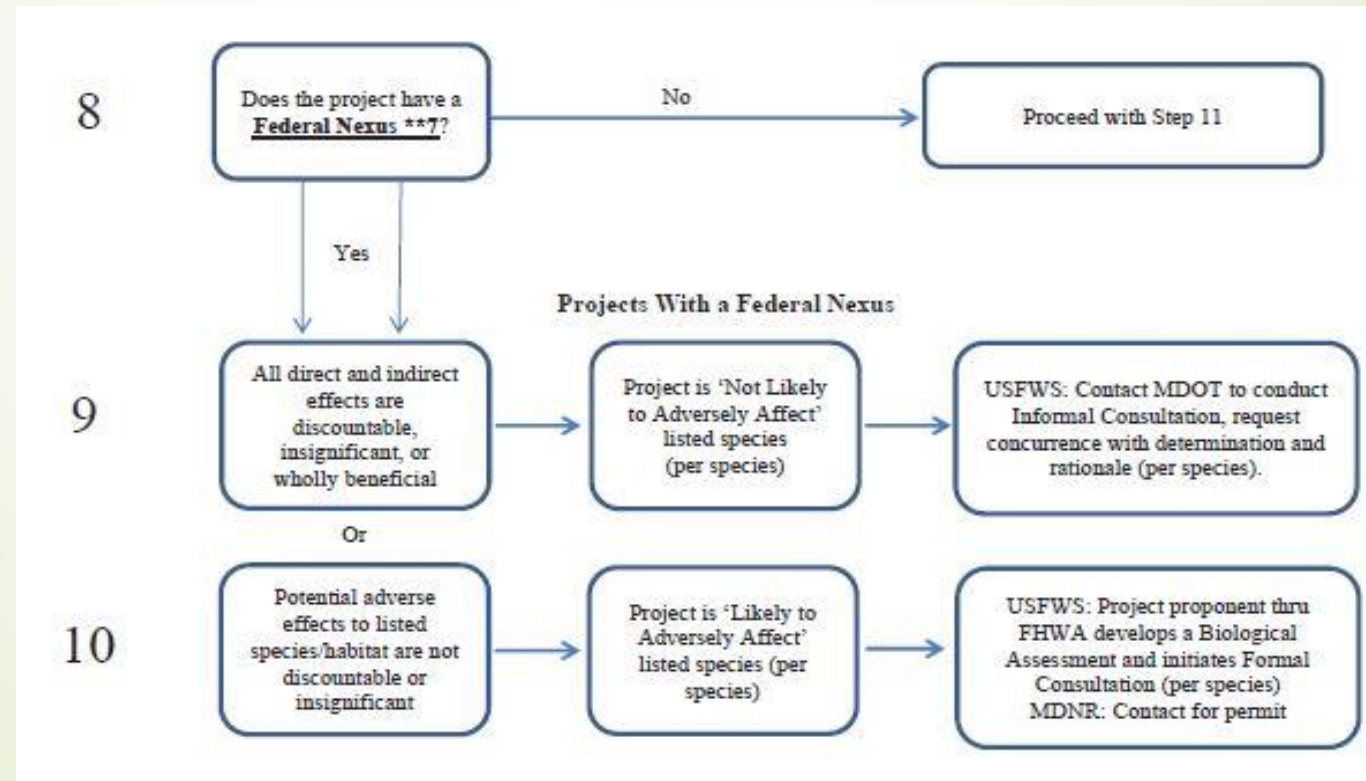
- In this case not a popular game show
- *Jeopardize the continued existence of* means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution.

➤ Adverse Modification

- *Destruction or adverse modification* means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

When is Section 7 Consultation Required?

- If an agency action may affect a listed species or critical habitat
 - Private entities have a section 7 obligation when their action needs a Federal permit or funding
 - May Affect threshold is based on the individual



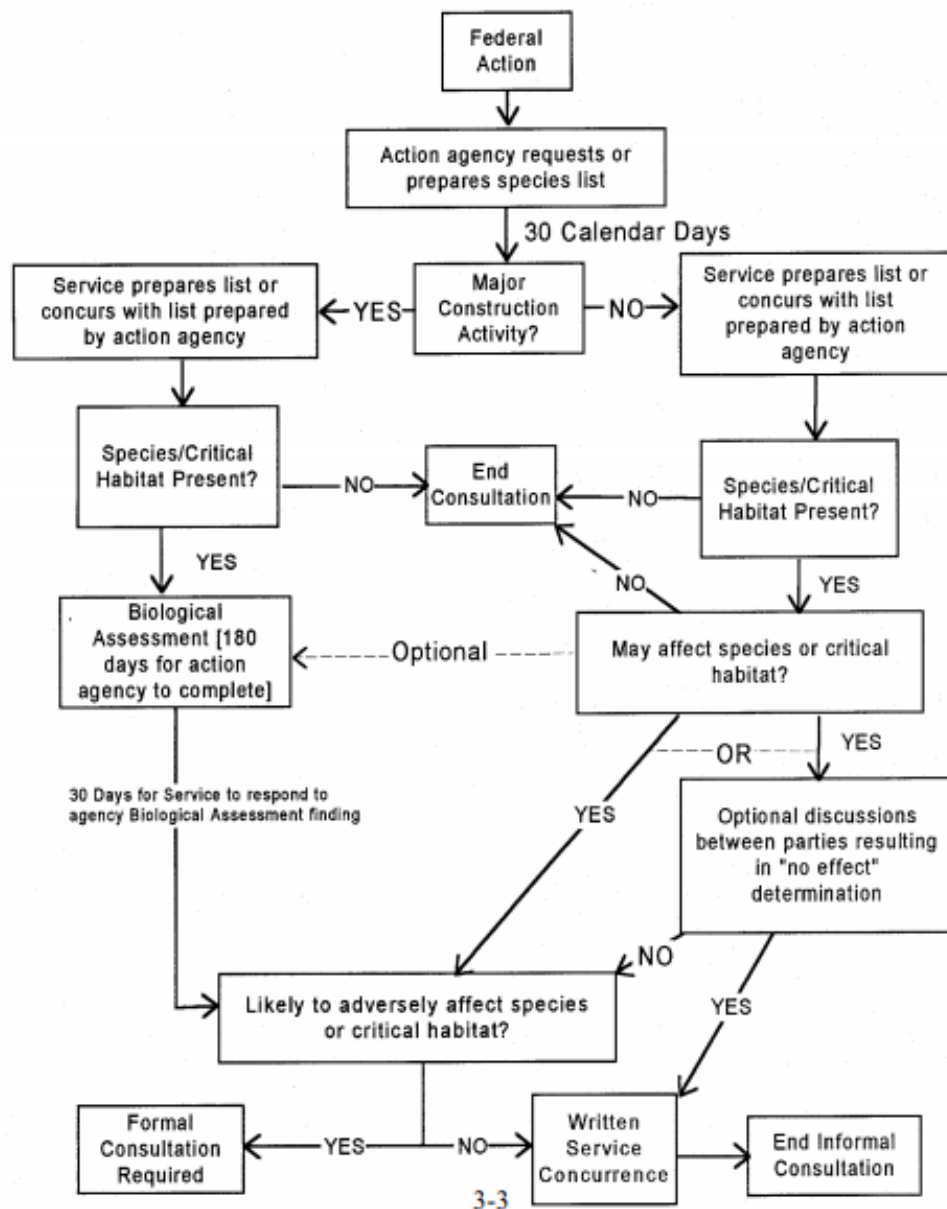
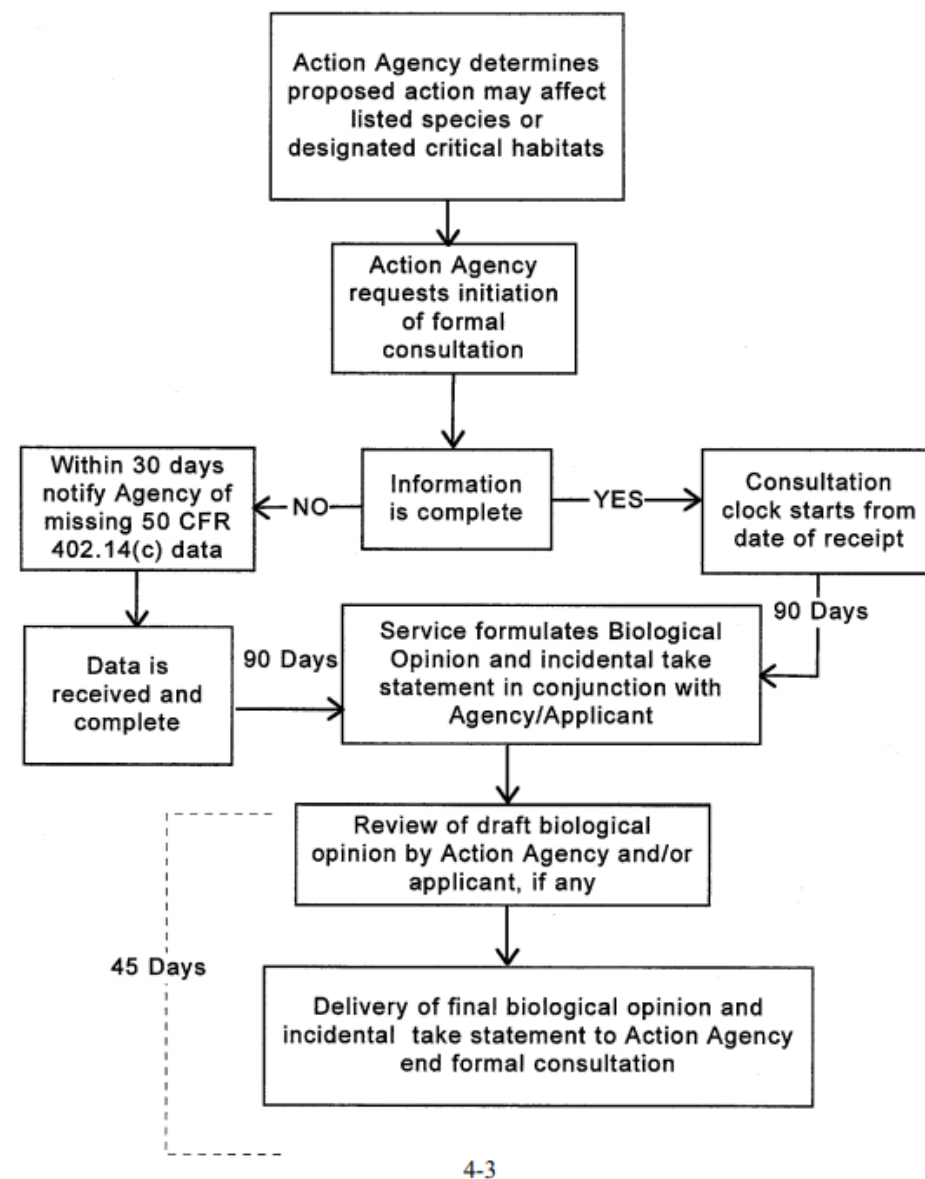


Figure 4-1. Formal consultation process.





How to Initiate Section 7 Consultation

- Methods for completing consultation
 - Traditional section 7 consultation
 - Develop a Biological Assessment (BA)
 - Send an email requesting consultation to EastLansing@fws.gov
 - Utilize a determination key within IPaC website
 - Determination keys are a streamlined approach to consultation based on an existing analysis
- General section 7 consultation timelines
 - Informal Consultation: 60 days
 - Formal Consultation: 135 days
 - Determination Keys: 0 - 30 days

***Please note timelines start when we receive all required information to complete consultation**

USFWS: Contact MDOT to conduct Informal Consultation, request concurrence with determination and rationale (per species).

USFWS: Project proponent thru FHWA develops a Biological Assessment and initiates Formal Consultation (per species)
MDNR: Contact for permit



Biological Assessment Outline

Introduction

- Purpose of the document and general project goals

Project description

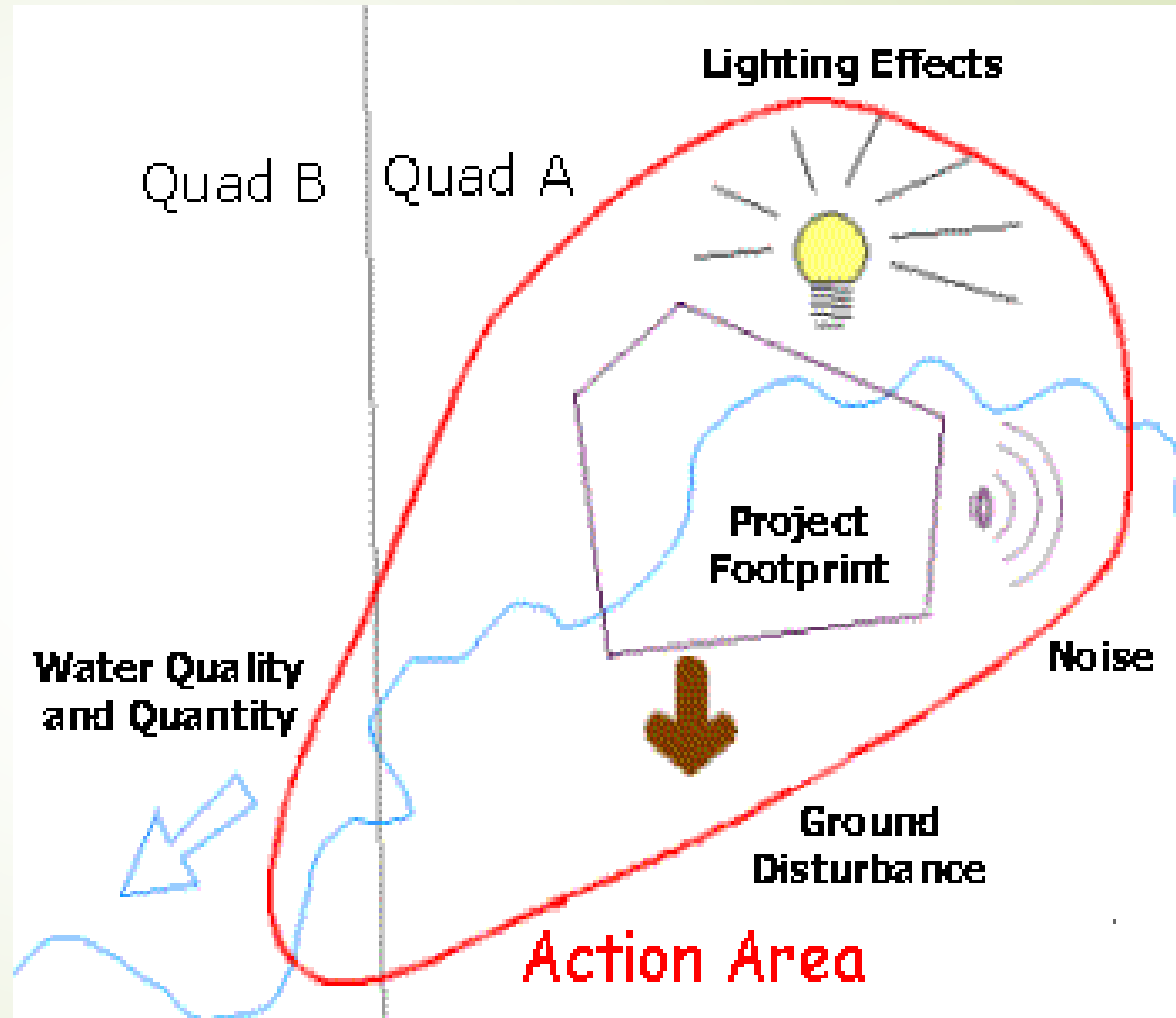
- Describe what needs to happen in order to reach the final goal
 - “When, where, and how”
- It may be necessary to break the project down into steps or phases
- Identify any conservation measures that will be applied to the project
 - Also called Best Management Practices (BMPs), Avoidance and Minimization Measures (AMMs), Project design Features (PDFs)

Action Area

- The areas that will be impacted directly or indirectly by the project
- The Action Area is also determined by the “effects of the Action”
- The action area also includes areas used to help offset project impacts

Action Area

- The effects include all consequences to listed species and/or critical habitat that are caused by the proposed Action
 - This includes the consequences of other activities that are caused/facilitated by the Action
 - ...“but for” the action





Components of a Biological Assessment

Species and Critical Habitat Considered

- Describe the species or critical habitat that occur within your action area
- Provide any information on known occurrences, surveys, and suitable habitat distribution

Effects Analysis

- Describe how the different elements/phases of the project interact with the species, suitable habitat, or critical habitat and anticipated response

Conclusion and Effects Determination

- Use the rationale provided in the above sections to determine the overall effect of the project on each species and critical habitat

Components of a Biological Assessment

- Effect determinations
 - No effect
 - Zero effect, no exposure / no response
 - May affect, not likely to adversely affect (NLAA)
 - Insignificant, discountable, or beneficial
 - May affect, likely to adversely affect (LAA)
 - Adverse effects likely, take or prohibited acts may occur

These determinations are made for each specie(s) and critical habitat(s) that may be present in the action area

Consultation Outcomes

- No effect
 - Does not require concurrence from the Service
 - Document rationale and keep in project record
 - At the discretion of the applicant
- May affect, no likely to adversely affect (NLAA) – 60 days
 - Requires written concurrence from the Service (Concurrence Letter)
- May affect, likely to adversely affect (LAA) – 135 days
 - Requires formal consultation and development of a Biological Opinion

Other Useful Information

- No “After the Fact” consultations (with some exceptions)
 - Emergency Consultation – If there are response activities that must be taken to prevent imminent loss of human life or property
 - Predictable events usually do not qualify as emergencies
 - 7(d) Letters - irreversible or irretrievable commitment of resources
- Habitat v. Critical Habitat
 - Critical Habitat is designated through the species listing process
 - Habitat is a biological term describing a suite of biotic and abiotic conditions required by an organism to meet essential needs
 - Habitat can exist even if it is not within a designated critical habitat boundary
- Consultation for Candidate Species
 - No requirement to consult for effects to candidate species

Determination Keys

- Streamlined way to meet consultation requirements
- All keys are based on an already completed analysis
- Some projects may not be consistent with the existing analysis
- Only one key can be used per consultation
- **Please do not use the Consultation Package Builder option**

Name of key available in MI	Species covered	Types of projects that the key covers	Types of projects that do not qualify
Michigan Endangered Species Dkey	All species in MI	Routine, small scale projects in some areas of Michigan may be able to get automatic concurrence if the projects contain certain conservation measures for some species.	Wind energy development, purposeful take, communication towers over 200 ft. tall, aerial or other broad application of chemicals
FHWA, FRA, FTA Programmatic Consultation for Transportation Projects	Indiana bat and northern long-eared bat (NLEB)	Federal transportation projects with potential effects to covered bats. Note that this key does not cover any other Federally listed species that may be affected by project activities. Therefore, additional consultation or coordination may be necessary for other species.	Projects other than Federally funded or authorized transportation projects
NLEB Consultation and 4(d) Rule Consistency	Northern long-eared bat (NLEB)	Projects with potential effects (e.g., tree clearing) to NLEB. Note that this key does not cover other Federally listed species that may be affected by project activities. Therefore, additional consultation or coordination may be necessary for other species.	Projects that fall within an area containing a known NLEB roost tree or hibernaculum

Which Key Should I Use?

NLEB Consultation and 4(d) Rule*

- If the only species you are consulting on is NLEB

FHWA, FRA, FTA's Programmatic Consultation

- Project is funded by FHWA, FRA, or FTA **AND** consulting on are NLEB and Indiana bat

Michigan Determination Key

- Project is in the state of Michigan **AND** consulting on more species than NLEB and Indiana bat
- Can be use for both federally and non-federally funded projects

Please note applicants are only allowed to use one determination key

- You can always go back

I've Completed the Key Now What?

- NLEB Consultation and 4(d) Rule*
 - No further action needed
- FHWA, FRA, and FTA's Programmatic Consultation
 - If you are issued a not likely to adversely affect verification letter, please submit to LAP for review
 - If you receive a May Affect Likely to Adversely Affect letter, please submit to shaughn_galloway@fws.gov and LAP
- Michigan Determination Key - 30-day verification period
 - No Effect – Consistency letter shows the applicant has met all consultation requirements
 - Not Likely to Adversely Affect – Verification letter (if federal agency) or consistency letter (if non-federal representative)
 - May Affect – We need more information to make an effect determination for the project
 - Carefully review the language in letter to determine next steps

What if my consultation is not consistent with a determination key?

- Some projects may not be consistent with a given determination key due to complexity or type of action
- FHWA, FRA, and FTA Programmatic
 - May receive letter stating that the project actions are not covered under analysis and to contact your local FWS office
- Michigan Determination Key
 - If you receive a May Affect determination, follow the steps in the letter
 - If we determine that your project does not fit the key, then use the standard section 7 process
 - We will also send you a letter with detailed instructions



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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



March 12, 2021

Dear Project Planner:

Thank you for using the Michigan Determination key (Dkey) to streamline the project review process. The U.S. Fish and Wildlife Service (Service) Michigan Ecological Services Field Office (MIFO) has reviewed the Dkey output letter your project and understands that you received a "may affect" determination for at least one species or designated critical habitat (refer to your Dkey output letter for species details).

If this is a Federal action (including funding or permitting), you will need to assess whether the species/critical habitat will be affected by the action and complete the ESA consultation process. This assessment must also include any effects of other activities that are caused by the proposed action, including those that will occur later in time. Consider the following in assessing affects and making your determination:

- Affects to the species directly (e.g., disturbance, injury, etc.).
- Affects to the species' habitat or other resources by conducting a two-part assessment:
 - characterize how the habitat or the resource will respond to the proposed action (for example, changes in habitat quality, quantity, availability or distribution), and;
 - assess how the species is expected to respond to the effects to its habitat or other resources.
- For critical habitat analyses, focus on how the proposed action will affect the physical and biological features of the critical habitat in the action area.

A proposed action warrants a "may affect, not likely to be adversely affect" finding when its effects are wholly beneficial, insignificant, or discountable. If there will be only beneficial effects, or if all effects of the action are expected to be insignificant or discountable, conclude "may affect, not likely to adversely affect" and submit your determination and supporting rationale to the MIFO and request concurrence. Please visit the Service's *Midwest Section 7 Consultation Technical Assistance* website (<https://www.fws.gov/midwest/endangered/section7/index.html>) for an example letter and request for concurrence template. Another helpful resource can be found at https://www.fws.gov/midwest/EastLansing/te/pdf/MIFO_IPAC_instructions_v1_Jan2021.pdf.

If you conclude that the effects of the action "may affect, and is likely to adversely affect" given that listed resources are likely to be exposed to the action or its environmental consequences and will respond in a negative manner to the exposure, formal consultation with the Service will be required. The *Midwest Section 7 Consultation Technical Assistance* website listed above has additional guidance for engaging in formal consultation with the Service.

Please note that when a project requires consultation under section 7 of the Act, the Service must consult directly with the Federal action agency unless that agency formally designates a non-Federal representative (50 CFR 402.08). Non-Federal representatives may prepare analyses or conduct

Michigan Determination Key Notes

- The determination key was created to assess simple low impact projects and streamline their consultation
- May Affect Determinations
 - Some projects may need to have additional screening due to level of complexity
 - These projects will go through standard consultation process
 - Important to review the letter for next steps
- The determination key is very general, site specific information may warrant a different conclusion
- Project auditing does occur, and a Service biologist may contact you for additional information
 - If your letter says submit it to mifo_dkey@fws.gov please do so



Determination Key Audits

- All Michigan determination key submissions are audited by FWS staff
 - This is done to help ensure that the determination key is working as anticipated
 - You may be contacted to provide additional information
- How to make the audit process go smoother
 - Please carefully review the determination key questions and output letters for next steps
 - Please respond to inquiries in a timely manner
 - Please provide a complete project description

Example Outputs

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

Threatened eastern massasauga rattlesnake (*Sistrurus catenatus*)

Endangered rayed bean (*Villosa fabalis*)

Endangered Poweshiek skipperling (*Oarisma poweshiek*)

Experimental population whooping crane (*Grus americana*)

Endangered Indiana bat (*Myotis sodalis*)

Threatened northern long-eared bat (*Myotis septentrionalis*)

Determination

May Affect

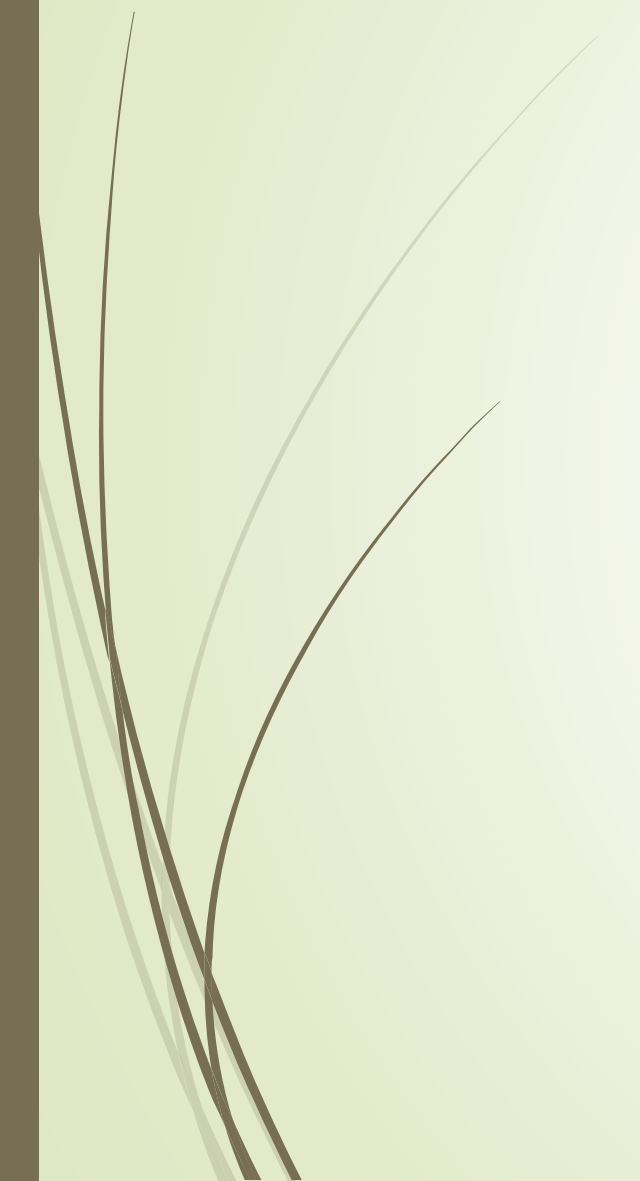
No Effect

May Affect

May Affect

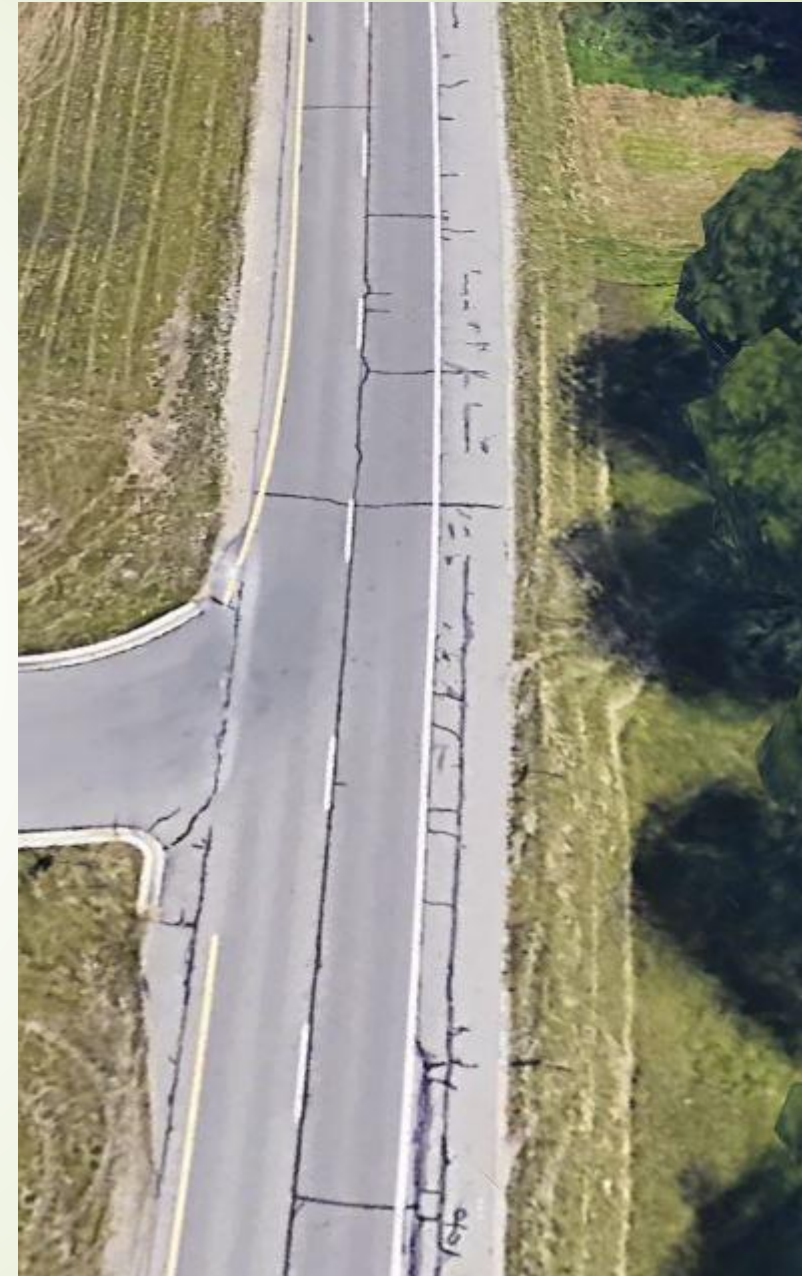
No Effect

No Effect



Michigan Determination Key Common Questions

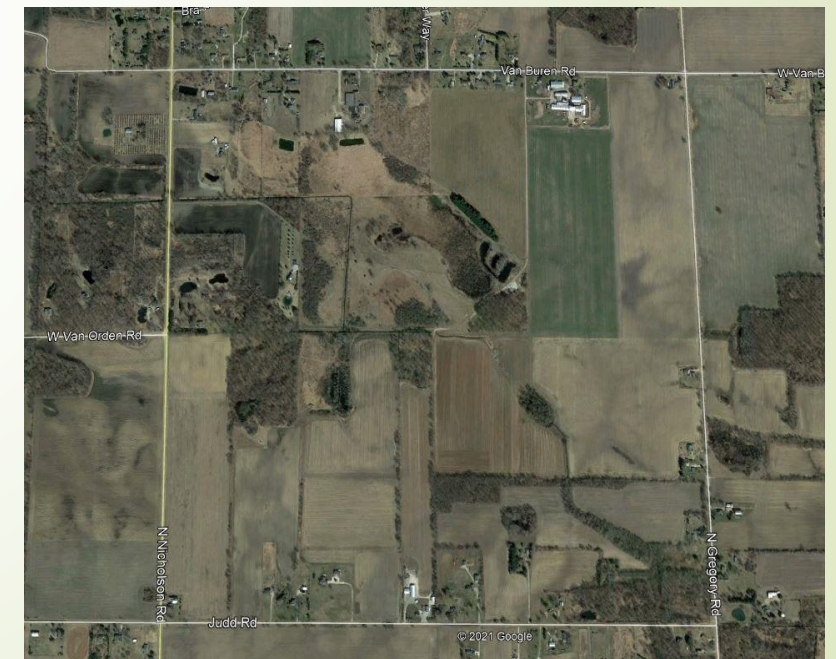
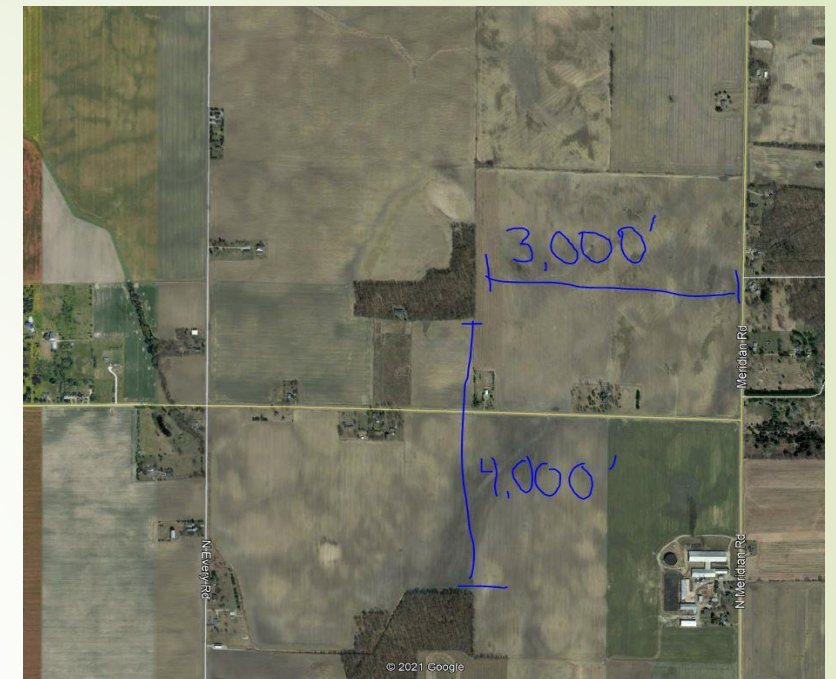
Is my project in an already developed area?



Bats and Snakes

➤ Bats

- Lack of records does not indicate lack of species
- Habitat is a driver to determine effects
- Timing of project
- Bridges and culverts
- Isolated patches
- % of habitat removed



Bat Surveys

- ▶ Local Agency should complete and submit a bat survey prior to conducting activities:
 - ▶ Projects involve deck repair, expansion joint maintenance/replacement, bridge removal, structure demolition, culverts, impacts to piers, and/or other actions that could impact roosting areas.
 - ▶ Check below the deck surface, expansion joints, other cracks or crevasses
 - ▶ Consider doing bat inspections at time of structure assessment



Bats hanging from cracks along support beams



Staining on underside of expansion joint from bat use



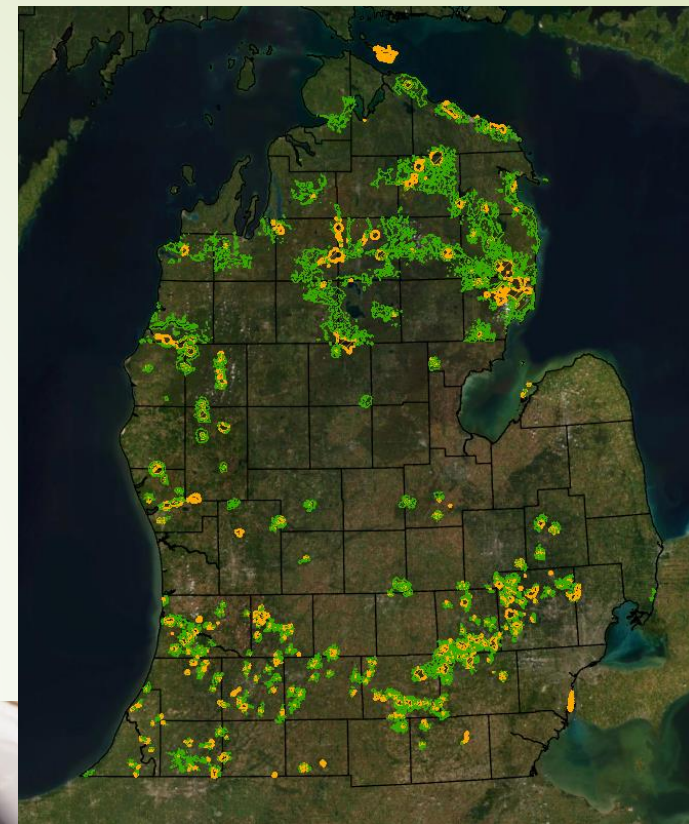
Open concrete joint used by bats



Guano visible from bridge deck

Bats and Snakes

- Eastern Massasauga Rattlesnake
 - Difficulty of blanket conservation measures
 - “Voluntary BMPs”
 - Wildlife Safe Materials
 - 60-Second Video
 - Report Observations
 - Hydrology questions are a big one
 - What do we mean by change in hydrology?



General Determination Key Reminders

- Read the questions thoroughly as there can be a lot of questions
- Make sure to provide a complete a project description in the project description box
 - You should have the same information available to you as described in the Biological Assessment slides, we are just forgoing the writing
- You can always modify answers and resubmit keys
 - You are responsible for the content you provide
- Pop-up windows
 - In the IPaC determination keys there is additional information provided in pop-up windows

Useful Links

- Midwest Section 7 Website
 - <https://www.fws.gov/midwest/endangered/section7/index.html>
- Biological Assessment Guidelines
 - https://www.fws.gov/midwest/endangered/section7/ba_guide.html
- Michigan Determination Key User Guide
 - https://www.fws.gov/midwest/EastLansing/te/pdf/MIFO_IPAC_instructions_v1_Jan2021.pdf
- FHWA, FRA, and FTA Programmatic Website
 - <https://www.fws.gov/midwest/endangered/section7/fhwa/index.html>
- IPaC Website
 - <https://ecos.fws.gov/ipac/>



Questions?

- Monica Uribe – Michigan Department of Transportation
 - UribeM1@michigan.gov
- Lane Masoud – Michigan Department of Transportation
 - MasoudL@michigan.gov
- Shaughn Galloway – U.S. Fish and Wildlife Service
 - shaughn_galloway@fws.gov