



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Chesapeake Bay Field Office
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June 12, 2024

Steven Swarr
Johnson, Mirmiran & Thompson, Inc.
13454 Sunrise Valley Drive, Suite 500
Herndon, VA 20171

RE: Northern Long-Eared Bat and Tricolored Bat Coordination for I-95 Express Toll Lanes Northbound Extension Section 200 – Phase II, Harford County, Maryland

Dear Mr. Swarr:

The U.S. Fish and Wildlife Service (Service) has received your request to reinitiate consultation for the I-95 Express Toll Lanes Northbound Extension Section 200 – Phase II project. The project is currently under construction and when completed will extend the two-lane I-95 northbound express toll lane by approximately 6 miles from the Winters Run Road overpass to the MD 136 / S. Calvary Road overpass. In addition to lane extensions, the project will construct new noise walls and two park and ride facilities and replace or rehabilitate seven bridges and culverts. Prior coordination between the Service and the Maryland Transportation Authority (MDTA) determined the project is consistent with the Final 4(d) Rule and Interim Consultation Framework for northern long-eared bat (*Myotis septentrionalis*). However, the 4(d) rule became obsolete with the reclassification of northern long-eared bat from threatened to endangered, and the interim framework will become obsolete when final tools and guidance becomes effective. In addition, the Service proposed listing tricolored bat (*Perimyotis subflavus*) as endangered on September 13, 2022, and a final rule is anticipated in summer 2024. Reinitiation under Section 7 of the Endangered Species Act was requested by MDTA to address anticipated expiration of the Interim Consultation Framework for northern long-eared bat and to conference for tricolored bat. Conference is a process of interagency coordination to determine a project's adverse effects on proposed species and to develop conservation measures to avoid and minimize those effects before listing becomes effective.

The Service has reviewed the updated project information including the *Northern Long-eared Bat Habitat Assessment and Acoustic Survey for the I-95 Northbound Extension Program, Harford County, Maryland* dated November 2023, *Bridge / Structure Bat Assessment Forms*, completed during spring 2024, and the project's limits of disturbance and remaining forest clearing areas. The Service has also conducted desktop analysis of suitable habitat present and reviewed known and modeled occurrences for the project action area to evaluate potential effects



to northern long-eared bat and tricolored bat. The following comments are provided in accordance with Section 7 of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

Northern long-eared bat (NLEB):

The I-95 Express Toll Lanes Northbound Extension Section 200 – Phase II project is divided into six separate contracts. Three contracts (= KH 3030, KH 3040, and KH 3046) are currently under construction and forest clearing activities was previously completed consistent with the final 4(d) rule or Interim Consultation Framework for NLEB. No additional forest clearing or removal of suitable habitat is planned under these contracts. Several of the remaining contract activities may be stressors to bats including traffic and construction related noise disturbance, artificial lighting, water quality impacts to streams and wetlands, and bat-vehicle collisions but are not expected to increase substantially above existing baseline conditions. Therefore, the direct and indirect effects of these contracts are insignificant and may affect but is not likely to adversely affect NLEB.

Construction has not yet started for the remaining three contracts (= KH 3020, KH 3021, KH 3043). The combined contracts will require 59.7 acres of forest clearing, and MDTA will adhere to a forest clearing time-of-year restriction to avoid the NLEB active season which starts on April 1 and ends on September 30. Forest clearing will remove potential summer roost, but additional habitat is present nearby and contiguous with the limits of disturbance, so available habitat will not be significantly reduced or fragmented. Other activities potentially causing stressors to bats include traffic and construction related noise disturbance, artificial lighting, water quality impacts to streams and wetlands, and bat-vehicle collisions but are not expected to increase substantially above existing baseline conditions. Therefore, the direct and indirect effects of these contracts are insignificant and may affect but is not likely to adversely affect NLEB.

Tricolored bat (TCB):

As a proposed species, TCB receives no Federal protections under the Endangered Species Act. However, as soon as a final listing rule becomes effective, Section 9 prohibitions against jeopardy or adverse modification to designated critical habitat applies regardless of the project's stage of completion. Adopting the following conservation measures will avoid conflicts after the listing becomes effective. Forest clearing activities will not occur from April 1 through September 30, and will avoid effects to TCB. Forest clearing will remove potential summer roost, but additional habitat is present nearby and contiguous with the limits of disturbance, so available habitat will not be significantly reduced or fragmented. Other activities potentially causing stressors to bats include traffic and construction related noise disturbance, artificial lighting, water quality impacts to streams and wetlands, and bat-vehicle collisions but are not expected to increase substantially above existing baseline conditions. Therefore, the direct and indirect effects of the project are insignificant and may affect but is not likely to adversely affect TCB.

The Service appreciates the opportunity to provide these comments related to threatened and endangered species in the project action area. If you have any questions or concerns about these comments, please feel free to contact Raymond Li at ray_li@fws.gov.

Sincerely,

Genevieve LaRouche
Field Supervisor

cc: Julie McCarthy (MDTA)
Alex Bienko (FHWA)