



USFWS INFORMATION MEMORANDUM



DATE: November 22, 2024

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SUBJECT: Update: Interim Consultation Framework for the Northern Long-eared Bat

Bottom Line Up Front

This memorandum is intended to serve as proactive notification to Field Offices and federal agencies issued streamlined biological opinions under the Interim Consultation Framework (ICF) for the northern long-eared bat (*Myotis septentrionalis*; NLEB). Absent any reinitiation of consultation on these actions, the take exemptions issued through incidental take statements provided with biological opinions under the ICF could lapse with the expiration of the ICF on November 30, 2024. This memorandum clarifies that agencies that have not completed the projects by November 30, 2024, do not need to contact the Service if the only change to their project is that it will continue after November 30, 2024. It also outlines the process to follow if reinitiation is needed based on reinitiation criteria described at 50 CFR 402.16 or below, such as exceeding the amount of take.

Biological opinions can still be issued under the ICF until November 30, 2024; however, we are already past the deadline the Service committed to deliver streamlined biological opinions under the ICF, which was 15 days. If federal agencies have already submitted the streamlined BA, we can issue those biological opinions, but individual ICF biological opinions issued after the date of this memorandum must be need to be coordinated with Karen Herrington (karen_herrington@fws.gov) to ensure they do not exceed the impacts contemplated in the standing analysis.

Please share this memorandum with your respective field offices so they can share it with federal agencies who received a biological opinion under the ICF.

Background

On April 8, 2024, the Service updated the ICF, including an analysis of the impacts that federal actions implemented through November 30, 2024, would likely have on the NLEB. This “standing analysis” addressed anticipated effects to the species from forest management, permanent habitat removal, prescribed fire, and other activities throughout the species’ range. In the analysis, the Service found that the activities would not be likely to jeopardize the continued existence of the species, based on (1) the anticipated magnitude and extent of their effects across the species’ range during the twenty-month period of analysis and (2) implementation of certain avoidance and minimization measures.

Completion of the standing analysis allowed the Service and its partners to use a streamlined formal consultation process for projects within its scope. The standing analysis and forms for completing a biological assessment and biological opinion (BO) were appended to the guidance for the Interim

Consultation Framework (ICF) and posted to the Service’s website. To be eligible for the streamlined consultation procedure, projects must adhere to the avoidance and minimization measures included in the standing analysis.

Relationship between April 2024 and March 2023 Standing Analyses

The April 2024, standing analysis was an update to an analysis completed in March 2023, which addressed federal actions and their effects to the species anticipated to occur between March 31, 2023, and April 1, 2024. In the March 2023 analysis, the Service used the best available information to estimate the extent to which the focal activities would be implemented over the 12-month period of analysis and found that the activities would not be likely to jeopardize the species.

When developing the updated analysis in April 2024, the Service found that it had overestimated the extent of those activities and, thus, the magnitude of their likely impact to the NLEB (Table 1). The best available information, however, still indicated in April 2024 that activities occurring through November 30, 2024, could be implemented at the magnitude assumed in the March 2023 standing analysis (Table 1). We anticipated any additional effects to the NLEB and any resulting incidental take would remain lower than the impacts analyzed in the original (March 2023) standing analysis. Therefore, we extended the Interim Consultation Framework and Standing Analysis through November 30, 2024.

Table 1. Estimated extent of activities potentially adverse to the northern long-eared bat (1) analyzed in the standing analysis for the period April 2023 – November 2024 and (2) covered under individual consultations completed under the ICF.

Activity	Amount of Activity Anticipated in the Standing Analysis (Acres)	Amount of Activity Included in ICF Consultations (Acres, April 2023 – November 2024)
Forest Management	250,000	24,194
Permanent Habitat Removal	260,000	657
Prescribed Fire	325,000	79,358

Implementation of Interim Consultation Framework, April – November 2024

In the standing analysis, the Service found that the anticipated magnitude of activities that agencies would propose and have covered by consultations completed under the ICF (Table 1) would have only a negligible impact on the NLEB. The estimated probability of impacting >1% of NLEB maternity colonies rangewide was <0.01% for each of the major activities analyzed (i.e., forest management, prescribed fire, and habitat removal).

As of November 2024, the extent of activities covered under the ICF remains much below levels that the Service anticipated – levels that it found would not be likely to jeopardize the species.

In addition to the impacts from the major categories analyzed, additional harm was anticipated for unquantified effects from “other” activities that may affect the NLEB such as bridges and culverts and military activities. We did not quantify the effects due to the programmatic nature of the standing analysis; however, we do not expect the additional impacts to substantially increase the number of individuals affected or number of maternity colonies affected due to the low likelihood of activities impacting multiple maternity colonies (NLEB occupancy rates are typically <5%) and the widely dispersed nature of activities across the landscape.

Implementation of the Interim Consultation Framework after November 30, 2024

When extending the ICF for an additional eight-month period in April 2024, the Service made it clear that it would apply only until November 30, 2024. The incidental take statements that the Service issued under the ICF included the following statement:

The Standing Analysis and ICF only consider and address the effects of covered actions that are expected to occur from March 31, 2023, until November 30, 2024. In other words, the Standing Analysis and ICF do not consider any effects of the covered actions that may occur after November 30, 2024. Therefore, after November 30, 2024, any action agency that was issued an individual BO that relied on this Standing Analysis and ICF will need to reinitiate consultation if its continuing, discretionary action is expected to affect the NLEB. If the action agency fails to reinitiate consultation on or before November 30, 2024, its individual BO will no longer be based on the best available information, which means the action agency's section 7 compliance and incidental take exemptions provided by section 7(o)(2) may lapse.

As we approach November 30, we understand that some actions covered under BOs and incidental take statements (ITS) developed under the ICF are incomplete and are still reasonably certain to cause incidental take of NLEBs after that date. Absent any reinitiation of consultation on these actions, the take exemptions issued through incidental take statements provided with biological opinions under the ICF could lapse with the expiration of the ICF. To streamline the process, this document proactively addresses the need for reinitiation after November 30, 2024, for projects issued a BO and ITS under the ICF that are not yet completed by that date.

This streamlined approach to reinitiate consultations on these actions is warranted because the extent of potentially adverse activities covered by individual ICF consultations is far less than anticipated and analyzed in the Service's standing analysis (Table 1). Activities subject to this reinitiation will not include any additional effects or incidental take of the NLEB (Table 1) but will simply be carried out later than originally anticipated – i.e., after November 30, 2024. In addition, we are not aware of any new information that suggests the NLEB would be affected by the activities described in the ICF BOs in a manner or to an extent not considered in the standing analysis.

Therefore, the completion of unfinished projects addressed in ICF BOs and in incidental take statements provided with those BOs would be consistent with the conclusions of the standing analysis that the activities would not be likely to jeopardize the continued existence of the NLEB. No further consultation is needed for these unfinished projects provided none of the criteria for reinitiation of consultation are met (see 50 CFR 402.16 and next section).

We recommend project proponents implement these voluntary conservation measures, to the extent possible, while completing unfinished activities:

1. Avoid removing suitable roost trees within 0.25-mile of a known NLEB hibernaculum entrance(s) during spring staging and fall swarming.
2. Avoid removing known roost trees and suitable roost trees during the pup season.
3. For activities in Year-Round Active Zone 1, avoid removing known roost trees and suitable roost trees between December 15 and February 15.

Process to Determine if Reinitiation is Necessary

To ensure that consultation is reinitiated for actions consulted on under the ICF between April 2023 and November 30, 2024, that are not yet completed as of November 30, 2024, the Service is hereby notifying agencies that were issued a BO and ITS under the ICF that they do not need to contact us to reinitiate consultation under the ICF if its continuing, discretionary Federal action is expected to affect the NLEB after November 30, 2024, and does not meet any of the reinitiation criteria at 50 CFR 402.16:

1. The amount or extent of taking specified in the incidental take statement is exceeded (e.g., the amount or extent if timber harvest, habitat removal, or prescribed fire is greater than that described in the ICF consultation for the action);
2. New information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
3. The identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence;
or
4. A new species is listed or critical habitat designated that may be affected by the identified action.

To be clear, agencies do not need to contact the Service if the only change to their project is that it will continue after November 30, 2024. In the previous section, we clarified why this specific change to actions consulted on under the ICF is not likely to jeopardize the NLEB.

If a project does require reinitiation of consultation due to meeting any of the four reinitiation criteria describe under number 1, above, request reinitiation by contacting the Service field office that issued the biological opinion. This request for reinitiation should include the following:

- a. The project name and the IPaC¹ Project Code.
- b. A brief explanation of the activities likely to adversely affect the NLEB that will remain uncompleted as of November 30, 2024. (See the table in the project's Biological Opinion and Incidental Take Statement Form for Project-Level Consultation under the ICF for the NLEB.)
- c. An estimated date when those activities will be completed.
- d. A statement describing how the incomplete activities differ, if at all, from the scope of activities described in the Biological Assessment Form for Project-Level Consultation under the ICF for the NLEB.
- e. Any other information that has prompted the need for reinitiation.

Effects to the Northern Long-Eared Bat

The Service articulated a basis for its finding of 'not likely to jeopardize' for actions eligible for coverage under the ICF in its April 8, 2024, standing analysis and this finding still holds (see **Implementation of the Interim Consultation Framework after November 30, 2024**, above). No new information that has become available since that time would indicate that the NLEB would be affected in a manner or to an extent not considered at that time.

In its standing analysis, the Service found that actions expected to be covered by formal consultations implemented under the ICF would likely cause adverse effects to the species, but the likelihood that these actions would affect the species survival and recovery would be negligible. This finding was based on an

¹ IPaC is the U.S. Fish and Wildlife Service's Information, Planning and Consultation Program. For more information, see: <https://ipac.ecosphere.fws.gov/>.

analysis that assumed implementation of those activities at a magnitude that turned out to greatly exceed what has actually been proposed and covered under the ICF (Table 1).

The incidental take caused by any activities for which consultation has already been completed under the ICF but that will occur after November 30, 2024, will not represent additional effects or incidental take of the NLEB. All the incidental take, which is mostly tracked by using acres of activities as a surrogate for take of individual NLEBs, is summarized in Table 1. The only change is that the take that is anticipated to result from these activities will simply occur later in time than originally anticipated.