



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Arkansas Ecological Service Field Office
110 South Amity Road, Suite 300
Conway, Arkansas 72032



June 7, 2022

Danielle Gosselin, Director
Office of Environmental Analysis
Surface Transportation Board
c/o Sydney Feldt
Vanasse Hangen Brustlin, Inc.
1355 Peachtree St, NE, Suite 100
Atlanta, Georgia 30309-3269

Re: Docket No. FD 36500, Canadian Pacific Railway Limited, et al. - Control of Kansas City Southern Railway, et al.; USFWS Informal Section 7 Consultation

Dear Ms. Gosselin:

The U.S. Fish and Wildlife Service (Service) has reviewed your assessment, determinations, and your written request for concurrence of OEA's determination of effects for the Proposed Acquisition on federally listed species, in accordance with Section 7(a)(2) of the Endangered Species Act (ESA) of 1973. We received your request on June 6, 2022.

Your letter stated the following (abbreviated):

Based on habitat-level field work, Office of Environmental Analysis (OEA) identified suitable roosting and foraging habitat within the existing ROW for the Northern Long-eared Bat (*Myotis septentrionalis*) and Indiana Bat (*Myotis sodalis*) at both planned capital improvements in Arkansas. The Applicants have proposed multiple measures to protect the Northern Long-eared and Indiana Bat during the construction of the planned capital improvements, as detailed in Attachment A to this letter. These measures include commitments to conduct tree clearing and work on structures that provide suitable roosting habitat outside of the active season (April 1 to October 31), as well as measures related to installing lighting. Based on the Applicants' voluntary commitments, OEA has determined that the Proposed Acquisition **may affect, but is not likely to adversely affect** the Northern Long-eared Bat and Indiana Bat.

The following species do not have suitable habitat within the rail ROW at any of the planned capital improvement locations: Arkansas Fatmucket (*Lampsilis powelli*), Eastern Black Rail (*Laterallus jamaicensis*), Gray Bat (*Myotis grisescens*), Missouri Bladderpod (*Physaria filiformis*), Monarch Butterfly (*Danaus plexippus*), Ozark Big-eared Bat (*Corynorhinus townsendii ingens*), Ozark Cavefish, (*Amblyopsis rosae*), Piping Plover (*Charadrius melodus*),

Rabbitsfoot (*Quadrula cylindrica cylindrica*), Red Knot (*Calidris canutus*), and Red-cockaded Woodpecker (*Leuconotopicus borealis*). Therefore, OEA has determined that the Proposed Acquisition would have **no effect** on these species. There is no critical habitat within any of the planned capital improvement locations in Arkansas. If you agree with these recommended determinations, please send your written concurrence.

The Service concurs with the "no effect" determinations for the listed species identified. No further consultation for this project is required for these species. Furthermore, due to the location of the area being affected occurring immediately adjacent to the existing railway, limited and poor habitat located immediately adjacent to the action area, ongoing constant noise and disturbance, inactive season only clearing restrictions for suitable habitat and bridges, commitment to perform bridge inspections prior to construction, the distance to known species locations, and the implementation of voluntary mitigation measures, the Service concurs with your determination of "may affect, but is not likely to adversely affect" the Indiana Bat and Northern Long-eared Bat. This concurrence concludes your ESA Section 7 responsibilities for this action.

The Service recommends that your agency contact the Arkansas Ecological Services Field Office or re-evaluate this key in IPaC if: 1) the scope, timing, duration, or location of the proposed project changes, 2) new information reveals the action may affect listed species or designated critical habitat; and 3) a new species is listed or critical habitat designated. If any of the above conditions occurs, additional consultation with the Arkansas Ecological Services Field Office should take place before project changes are final or resources committed.

For further assistance or if you have any questions, please contact Lindsey Lewis at (501) 513-4489 or lindsey_lewis@fws.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Melvin L. Tobin', with a stylized flourish at the end.

Melvin L. Tobin
Field Supervisor

cc: Project File

Read File

Filename: [C:\Users\lilewis\Documents\PROJECTS\FY2022\ARDOT\CPKCS Merger, STB Docket No. FD 36500\20220607_Ltr_CPKCS_USFWS Informal Consultation_Concurrence Letter.docx](#)