



United States Department of the Interior

FISH AND WILDLIFE SERVICE
 Illinois - Iowa Field Office
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July 28, 2022
 Electronic Mail

Danielle Gosselin
 Director
 Surface Transportation Board
 Office of Environmental Analysis

Dear Ms. Gosselin,

This transmits the U.S. Fish and Wildlife Service's (Service) concurrence for your "may affect, but not likely to adversely affect" determinations for the northern long-eared bat (*Myotis septentrionalis*) and Indiana bat (*Myotis sodalis*), as described in your memo received June 6, 2022. The project (Docket No. FD 36500) includes the proposed merging of Canadian Pacific Railway Limited and Kansas City Southern Railway to form the Canadian Pacific Kansas City system (CPKC).

The purpose of the proposed project is to combine America's two smallest but fastest-growing Class I railroads to build a more efficient and more competitive rail network. The proposed project would cause rail traffic to increase on certain rail lines within the CPKC network. To accommodate for the projected increase in rail traffic, capital improvements within the existing rail right-of-way (ROW) in both Illinois and Iowa are proposed. In Illinois, the improvements would be located within a previously disturbed area and would not result in any new impacts to habitats, plants, or wildlife. However, suitable roosting and foraging habitat within the existing ROW for the northern long-eared bat and Indiana bat were identified at seven of the eight proposed capital improvement locations in Iowa within the cities of Guttenberg, Bellevue, Clinton, Letts, Washington, Ottumwa, and Moravia.

These improvements include the addition of five new passing sidings and the extension of four existing sidings. This would involve tree clearing, grading, and filling within the existing rail ROW. Additionally, replacement or extension of the existing railroad bridges and culverts is proposed to accommodate the new or extended sidings. This informal consultation addresses potential effects to the species in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.) and 50 CFR § 402 of our interagency regulations governing section 7 of the Act.

Threatened and Endangered Species

As described in your memo, nine federally listed species in addition to the northern long-eared bat and Indiana bat have ranges overlapping the project area. These species include the Eastern massasauga (*Sistrurus catenatus*), eastern prairie fringed orchid (*Platanthera leucophaea*), Higgins eye pearlymussel (*Lampsilis higginsii*), Iowa pleistocene snail (*Discus macclintocki*), northern wild monkshood (*Aconitum noveboracense*), prairie bush-clover (*Lespedeza leptostachya*), sheepsnose mussel (*Plethobasus cyphus*), spectaclecase (*Cumberlandia monodonta*), and western prairie fringed orchid (*Platanthera praeclara*), in addition to one candidate species, the monarch butterfly (*Danaus plexippus*). You made "may affect, but not likely to adversely affect" determinations for the northern long-eared bat and Indiana bat. Due to the lack of suitable habitat within the project area, you made "no effect" determinations for the remaining

species in the above list. The Illinois-Iowa Ecological Services Field Office has no regulatory or statutory authority for concurring with "no effect" determinations. However, we recommend you maintain a written record of your "no effect" determination and include it in your decision record.

Bats

The project, as proposed, includes the removal of potential northern long-eared bat and Indiana bat habitat and hibernaculum. As described in your memo dated June 6, 2022, all tree removal will occur outside the maternity roosting season, between October 1 and March 31. In addition, voluntary mitigation measures are proposed that include limiting tree removal where practical, conducting culvert and bridge removal or alterations outside of the roosting period when practical, conducting presence/absence surveys prior to culvert and bridge removal or alterations if required during the active season and coordination with OEA and Service if presence is found, directing temporary lighting away from suitable habitat during the active season, and using downward-facing full cut-off lens lights if permanent lighting is required. As a result of the conditions and conservation measures described above, we concur that the project as proposed "may affect, not likely to adversely affect" the northern long-eared bat and Indiana bat.

Migratory Birds and Eagles

The Service removed bald eagles from protection under the Endangered Species Act on August 8, 2007. However, they remain protected today under the Migratory Birds Treaty Act and the Bald and Golden Eagle Protection Act (Eagle Act). The Eagle Act prohibits take, which is defined as, "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb" (50 CFR 22.3). Disturb is defined in regulations as, "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, or 2) decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior." In accordance with the avoidance measures described in the Eagle Act (16 U.S.C. 668-668c), any activities resulting in potential disturbance should be restricted within 660-ft of any identified active eagle nest to dates outside of the nesting season. Please contact the Region 3 Migratory Bird Office (<https://www.fws.gov/midwest/eagle/contactus.html>) should activities that have the potential to result in take or disturbance of eagles or their nests.

Conclusion

The above comments are provided in accordance with the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.). This precludes the need for further action on this project as required under Section 7 of the Endangered Species Act of 1973, as amended. If project plans change or portions of the proposed project were not evaluated, consultation should be reinitiated. Thank you for the opportunity to provide comments. If you have any questions regarding these comments, please feel free to contact me at the email address below.

Thank you,

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