NDDOT Process for using FHWA/USFWS Programmatic Biological Assessment for Northern Long-Eared Bat

Federal Highway Administration (FHWA), Federal Railway Administration (FRA) and the U.S. Fish and Wildlife Service (USFWS) have jointly developed a programmatic Endangered Species Act (ESA) Section 7 Consultation (Programmatic Biological Assessment or PBA) for common types of transportation actions. The intent of this PBA is to streamline the informal consultation process for the northern long-eared bat (NLEB) (*Myotis septentrionalis*). Programmatic consultations provide a standardized framework for conducting efficient ESA Section 7 Consultations through consistent project reviews. Since virtually every NDDOT project requires review for the NLEB, ETS is beginning to implement the PBA for routine projects.

Under the terms of the PBA, FHWA and/or State DOTs will submit project level information to the appropriate USFWS Field Office (except for No Effect determinations) prior to commencement of a project. FHWA and/or state DOTs will ensure that all submitted projects are within the scope of work, and adhere to the criteria of the PBA. Upon receipt, USFWS may check for consistency and request additional information. USFWS will have two weeks to notify FHWA or state DOTs if they determine that a particular project does not adhere to the parameters of the PBA, otherwise FHWA and/or State DOTs will proceed under the programmatic agreement.

FHWA/FRA and/or State DOTs may identify a small number of proposed projects that require additional site-specific information to determine if they conform to this consultation. Such projects will require FHWA and/or State DOTS to coordinate with the appropriate USFWS Field Offices in order to make a final determination of no effect or not likely to adversely affect, or alternately may affect, likely to adversely affect (see User Guide at link below). If a project "may affect" any other federally-listed or proposed species, additional consultation (or conference if applicable) is required.

A user's guide and project submittal form have been developed in conjunction with the PBA. See following link to access these documents for reference and for further clarification. The documents have also been placed on the NDDOT website (references and forms section of the Design Manual). Keep in mind that these documents may be updated periodically by FHWA/USFWS, so be sure to use most current version(s).

http://www.fws.gov/midwest/endangered/section7/fhwa/index.html

Documentation Process for using the PBA for NDDOT Projects with FHWA Involvement

The following section provides a description of how to implement the user's guide for using the PBA for NDDOT projects. Any questions on how to proceed with using the PBA should be directed to NDDOT – ETS Division (Greg Schonert – gschonert@nd.gov – 701-328-2592).

For a specific project or group of similar projects (if they are combined into one environmental document - signing projects, bridge paintings, etc); determine the work activities that require FHWA review for the NLEB according to the Affect determination table (i.e. work involving the removal of trees or buildings, ground disturbance in areas with caves, mines, and rock crevices, or work on structures- (bridges, buildings, large diameter culverts, cattle passes, sheds, etc). Once the activities are identified

for a project that may have an effect to the NLEB, see provided examples within this guidance document on how to work through the process of using the PBA.

If the NLEB is the only species that requires FHWA for a project; the standard routine of completing a Section 7 Affect determination package with supporting documentation for a No Effect determination for the NLEB no longer applies. Determine the work activities that trigger FHWA review for the bat and refer to the User's Guide on how to proceed with implementing the PBA. Step by step examples for highly repetitive work activities are given below. The provided examples will provide guidance for a majority of scenarios for the bat in regards to NDDOT projects. Some actions such as replacing a bridge with documented bat use during the active season, or work that requires caves/mines to be impacted, etc., will not be covered under this PBA and will require separate consultation.

**Note- If other species also require FHWA review, a Section 7 Affect Determination Package will still need to be prepared for those species. The PBA can still be used for the NLEB in these cases, particularly for May Affect determinations, just attach associated documentation for the NLEB to the Section 7 Package. Only one T&E table should be used, unless multiple counties are involved).*

USFWS Suitable Habitat Definition:

Suitable summer habitat for NLEB consists of a wide variety of forested/wooded habitats where they roost, forage, and travel and may also include some adjacent and interspersed non-forested habitats such as emergent wetlands and adjacent edges of agricultural fields, old fields and pastures. This includes forests and woodlots containing potential roosts (i.e., live trees and/or snags ≥3 inches dbh that have exfoliating bark, cracks, crevices, and/or cavities), as well as linear features such as fencerows, riparian forests, and other wooded corridors. These wooded areas may be dense or loose aggregates of trees with variable amounts of canopy closure. Individual trees may be considered suitable habitat when they exhibit characteristics of suitable roost trees and are within 1,000 feet of other forested/wooded habitat. NLEB has also been observed roosting in human-made structures, such as buildings, barns, bridges, and bat houses; therefore, these structures should also be considered potential summer habitat. NLEBs typically occupy their summer habitat from mid-May through mid-August each year and the species may arrive or leave some time before or after this period.

EXAMPLE #1- Tree removals – No Effect

A project requires tree removals, but will not remove suitable habitat for the NLEB (i.e. removals only include isolated trees, single tree rows, shelterbelts, urban plantings, etc. – see USFWS definition for suitable habitat for the NLEB above). A T&E table should be filled out accordingly to the county(ies) the project is in. Since FHWA review would only be required for the bat, *"Yes"* should be checked in the NLEB row for "FHWA Review Required"; *"No Effect"* should be checked in the Determination column; and in the "Additional Documentation Included Column" the following should be added *"Additional Documentation Attached (USFWS/FHWA Programmatic BA)".* May need to shrink text so format of table does not change.

The attached documentation will be the project submittal form, found at the following link; as well as supporting documentation such as maps or photos. The project submittal form can also be found on the NDDOT website (references and forms section of the Design Manual).

http://www.fws.gov/midwest/endangered/section7/fhwa/pdf/ProjectSubmittalForm062315.pdf

1) After T&E table is complete, fill out project submittal form. This form is fairly self-explanatory. For "No Effect" determinations, only numbers 1-8 should be filled out. For requesting agency (#3), NDDOT should be placed in box. The following information can be placed in the boxes associated with #3 (requesting agency – NDDOT – Greg Schonert – Biologist – 701-328-2592 – gschonert@nd.gov). For consultation code (#4) state: "*N/A - No Effect Determination. No USFWS coordination/consultation required"*.

   For #6, include a short description of the project, why the bat requires FHWA review, and why a "No Effect" determination (i.e. lack of suitable habitat due to projects location in urbanized area, etc.). In this case for #8 on the project submittal form, the second box should be checked (No effect- project inside species range, but no suitable summer habitat). After #8 is reached the form is complete.

2) Since it was determined no suitable habitat was present, in order to document this; include an aerial imagery map(s) that shows the project area and 1-2 mile vicinity to show lack of suitable habitat, and where tree removals would occur. May need several maps to document this.

3) The final documentation should include: a properly filled out T&E table, project submittal form, and aerial map(s) (in that specific order). A signature line should be left on the T&E table for ETS to sign. This final documentation should be included as an Appendix in the environmental document. *FHWA will not need to concur/review the "No Effect" determination.*

EXAMPLE #2- Tree removals – May Affect, Not Likely to Adversely Affect or May Affect, but Not Fully Analyzed

A project requires the removal of potentially suitable NLEB habitat (riparian trees, forest, wooded draws, and other natural wooded areas).

A desktop analysis should be performed to initially screen for presence of potential NLEB habitat. Unfortunately, with very little data on bats within the state of North Dakota; there is no cut and dried method on how to clearly identify suitable habitat for the NLEB at this point in time. If potential habitat is observed via aerial imagery, a field visit should be conducted to confirm/deny if suitable habitat is present (i.e. Does the wooded habitat identified on aerial imagery contain trees or snags with 3 inches DBH or greater which contain loose bark, cavities/cracks/crevices? -or- Does the wooded habitat identified on aerial imagery connect large patches of wooded habitat?).

In some cases, a field visit may not be necessary as aerial imagery may be enough of an indication that suitable NLEB habitat is present (i.e wooded areas within the Missouri river corridor, badlands, turtle mountains, etc.). If there are questions on whether or not a field visit is necessary to determine potential habitat for the NLEB, contact the NDDOT ETS Division. For questionable areas, a follow up field visit to confirm/deny suitable habitat presence may need to be performed to potentially omit restrictions on tree removals or to flag/mark trees for removal.

If field visits confirm that there is suitable habitat present, tree removal restrictions will apply (cannot remove trees between April 1 to September 30). If field visits confirm that suitable habitat is not present, there are no restrictions on tree removals (i.e young healthy trees with no characteristics that meet

suitable habitat criteria, or areas dominated by shrubs that appeared to be trees via aerial imagery, etc.). In either case, representative photos should be taken to document the field visit. The person(s) performing the field visit should coordinate with the NDDOT ETS Division in order to determine if the trees need to be enumerated/identified to species level, and/or flagged/marked.

If there are a large number of trees to be removed, an estimate of acreage and species composition can be used instead of a direct count. There are no requirements on tree mitigation for removal of potential NLEB habitat, although it can be performed as a conservation measure if tree mitigation is required for other reasons. There is also no requirement to perform a physical stem count of trees that are considered suitable habitat for the NLEB. In many cases, contracts are awarded in early spring, which does not give the contractor ample time to mobilize and perform the removals before April 1.

Therefore, NDDOT District personnel may need to perform the removals depending on the quantity to be removed. If there are too many, a separate contract may need to be issued to perform tree removals for a project. In either case, marking boundaries of tree removal extent or marking individual trees as well as providing a physical count or accurate estimate will provide NDDOT District staff or a contractor ample information to be able to remove the identified trees without taking out more than what is needed to implement the project.

If the project contains suitable habitat for the NLEB, and no bat surveys (acoustic monitoring, mist-netting) have been conducted; under the guidelines of the PBA, the transportation agency will assume presence of the NLEB.

For projects that remove suitable summer habitat (just trees, see following examples for structures) for the NLEB, the following process should be used. Refer to User's Guide for further clarification, or contact NDDOT ETS Division. Note, these steps are only to be used if suitable habitat is identified. If field visits confirm that suitable habitat is not present, see steps outlined in Example 1 for a "No Effect" determination.

1) A T&E table should be filled out accordingly to the county(ies) the project is in. Since FHWA review would only be required for the bat, *"Yes"* should be checked in the NLEB row for "FHWA Review Required"; add "May Affect" in the "No Effect" portion of Determination column; and in the "Additional Documentation Included Column" the following should be added *"Additional Documentation Attached (USFWS/FHWA Programmatic BA)".* May need to shrink text so format of table does not change.

2) After T&E table is complete, fill out project submittal form. Since a May Affect determination is warranted; Section 3.0 of the Users Guide will need to be used (will need to access the Information for Planning and Conservation – IPaC – website, http://ecos.fws.gov/ipac/) in order to receive a consultation code to be used on the project submittal form (#4 on form). See User's Guide for further details. Using the IPaC website helps the USFWS document and track projects that fit under the PBA within a data management system. Once a request has been submitted in IPaC, a confirmation email will be sent, and a follow up email will be sent with an attached official species list, an attached GIS file of project location, appropriate field office contact information, and the consultation code associated with the species list.

   Project submittal form should be filled out as mentioned in the previous example, however, the consultation code from the USFWS email should be provided in #4 on the form. A short project

description should be added and what is triggering use of the PBA (in this case it would be tree removals). Number 8 should have no boxes checked since a no effect determination can't be used. For # 9, trees would be the affected resource/habitat type. For #10, if the tree removals are within 100 feet of existing road surface, check that box. Will also want to check the box to verify that all tree removals will occur in the inactive season (October 1st – March 31st). If tree removals cannot occur during those periods, the PBA cannot be used and separate consultation will be needed.

If tree removals must occur over 100 feet from the existing road surface, additional consultation with the USFWS may be necessary to make a final effect determination on these types of projects. The informal consultation (PBA) does not initially apply, although it may upon further review from the USFWS. In most cases, if a project requires tree removals further than 100 feet from the road surface and the removals are performed outside of the summer maternity season for the bat, a May Affect Not Likely to Adversely Affect (MANLTAA) determination can be achieved.

Will also want to document the timing the tree clearings would occur, and amount of trees to be removed (acreage estimates or physical counts). Since this example is just for tree removals, #11 would be left blank.

3) In order to be able to fulfill Section 7 requirements for the bat using the PBA, the following avoidance/minimization measures (AMMs) must be used if applicable. ***Note, the Time-of-year restriction must be adhered to***.

4) In most cases all four of these AMMs can be used for a project. AMM 3 may or may not be applicable, depending on the project.

    - ***Tree Removal AMM 1.*** Modify all phases/aspects of the project (e.g., temporary work areas, alignments) to avoid tree removal in excess of what is required to implement the project safely. *Note: Tree Removal AMM 1 is an avoidance measure. If this cannot be applied, projects may still be NLAA as long as removal is in winter and avoids known roosts.*

    - ***Tree Removal AMM 2.*** Apply time of year (TOY) restrictions for tree removal when bats are not likely to be present.

    - ***Tree Removal AMM 3.*** Ensure tree removal is limited to that specified in project plans. Install bright orange flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits. Ensure that contractors understand clearing limits and how they are marked in the field.

    - ***Tree Removal AMM 4.*** Do not cut down documented Indiana bat or NLEB roosts (that are still suitable for roosting) or documented foraging habitat any time of year. ***Note-*** At this point in time, there are NO documented NLEB roosts or foraging habitat In North Dakota.

5) All projects that result in one acre or more of ground disturbance require that a storm-water pollution prevention plan (SWPPP) be prepared. Therefore, all AMMs associated with water

quality and wetland/stream protection spelled out in the programmatic agreement are already included in the storm-water permits for projects that require them. Because the language that is written in the AMMs for water quality and wetland/stream protection within the programmatic agreement may contradict what is included in permits that are required to be followed by state and federal law, none of these measures should be checked, unless otherwise notified for a specific project. If applicable, the lighting AMMs and dust control AMM should be applied.

6) After the project submittal form is finalized, it must be sent to NDDOT ETS for review to ensure the project adheres to the scope and criteria of the PBA and that the appropriate AMMs are selected. If the project falls within the parameters of the PBA, NDDOT ETS will formally submit to USFWS. The USFWS has 14 days to evaluate the project submittal package. If the USFWS concurs with the information provided in the project submittal package, in most cases; although not required, the USFWS will send a short letter or email to document that the project has been reviewed and that it fits within the guidelines of the PBA.

If no response is received from the USFWS after 14 days, consultation is complete, and the project may proceed as planned. The USFWS may also request some additional documentation for certain projects. Upon the receipt of additional information, or implementation of additional site-specific AMMs, the project is determined by the USFWS to be Not Likely to Adversely Affect and the NDDOT and FHWA proceed under the PBA. However there may be instances where adverse effects cannot be avoided and separate consultation may be required. *Note- any avoidance/minimization measures that are selected using the PBA must be adhered to. These are environmental commitments that must be placed in the design plans.*

7) The final documentation should include: a properly filled out T&E table, project submittal form, and aerial map(s), as well as any documentation from USFWS (in that specific order). A signature line should be left on the T&E table for ETS to sign. This final documentation should be included as an Appendix in the environmental document. *FHWA will not need to concur/review the "May Effect" determination.*

EXAMPLE #3- Bridge Maintenance, Alteration, or Demolition of Bridge/Structures – No Effect

A project requires maintenance, alteration, or demolition/removal of a bridge/structure, but no suitable summer habitat is located within 1.5 miles of the bridge or structure (1.5 miles is the estimated foraging distance for NLEBs), or the bridge/structure is located in an urban area with no natural wooded habitat present in the vicinity. Structures include: cattle passes, large diameter culverts (5 feet or over), buildings and sheds.

Note- Although there may be forested/wooded habitat within 1.5 miles of a structure, there must be some habitat connectivity (i.e. tree rows, wooded draws, riparian areas, etc.) that leads up to near the structure. Research has shown that the NLEB does not cross large open areas void of wooded habitat. If unsure potential habitat is located near a project, contact NDDOT ETS Division for assistance.

1) A T&E table should be filled out accordingly to the county(ies) the project is in. Since FHWA review would only be required for the bat, *"Yes"* should be checked in the NLEB row for "FHWA Review Required"; check "No Effect" within the Determination column; and in the "Additional

Documentation Included Column" the following should be added *"Additional Documentation Attached (USFWS/FHWA Programmatic BA)".*

2) After T&E table is complete, fill out project submittal form. For "No Effect" determinations, only numbers 1-8 should be filled out. For requesting agency (#3), NDDOT should be placed in box. The following information can be placed in the boxes associated with #3 (requesting agency – NDDOT – Greg Schonert – Biologist – 701-328-2592 – gschonert@nd.gov). For consultation code (#4) state: "N/A - No Effect Determination. No USFWS coordination/consultation required".

   For #6, include a short description of the project, why the bat requires FHWA review, and why a "No Effect" determination (i.e. lack of suitable habitat due to projects location in urbanized or non-forested area.). In this case for #8 on the project submittal form, the second box should be checked (No effect- project inside species range, but no suitable summer habitat). After #8 is reached the form is complete.

4) Since it was determined no suitable habitat was present, in order to document this; include an aerial imagery map(s) that shows the project area and vicinity to show lack of suitable habitat within 1.5 miles of project. May need several maps to document this.

5) The final documentation should include: a properly filled out T&E table, project submittal form, and aerial map(s) (in that specific order). A signature line should be left on the T&E table for ETS to sign. This final documentation should be included as an Appendix in the environmental document. *FHWA will not need to concur/review the "No Effect" determination.*

EXAMPLE #4- Bridge Maintenance, Alteration, or Demolition of Bridge/Structures – No Effect, May Affect, Not Likely to Adversely Affect, or May Affect, but Not Fully Analyzed.

A project requires maintenance, alteration, or demolition/removal of a bridge/structure and suitable summer habitat is located within 1.5 miles of the bridge or structure (1.5 miles is the estimated foraging distance for NLEBs). Note- Although there may be forested/wooded habitat within 1.5 miles of a structure, there must be some habitat connectivity (i.e. tree rows, wooded draws, riparian areas, etc.) that leads up to near the structure. Research has shown that the NLEB does not cross large open areas void of wooded habitat. If unsure potential habitat is located near a project, contact NDDOT ETS Division for assistance.

Bridge alteration/removal- Active Season (April 1 – September 30). If bridge alteration/removal must be conducted during these time periods, the following information will walk through the process to fulfill requirements of Section 7 for the NLEB.

- Altering or removing bridges/structures when occupied by NLEBs is expected to result in adverse effects. ***Bridge alteration refers to any bridge repair, retrofit, maintenance, and/or rehabilitation work activities that modifies the bridge so that it is no longer suitable for roosting.*** Work items such as road paving, wing wall work, work above that does not drill down to underside of the deck, some abutment, beam end, scour or pier repair, normal cleaning and routine maintenance is not expected to bother roosting bats in any way. If proposed work for a bridge/structure will be limited to the surface of the bridge and/or does not modify the potential roosting sites underneath the bridge, no inspections will be necessary). Examples

include: guardrail work, approach slab work, deck overlays (not full depth reclamations), etc. If unsure a proposed work activity for a bridge/structure may affect roosting sites underneath the structure, contact NDDOT ETS Division for further assistance.

- Bridge maintenance/repair activities that affect roosting areas underneath the bridge, or bridge demolitions can kill or injure bats if work activities are conducted during the active season. Bridge demolitions/replacements, full depth deck reclamations, or any work activity that involves modifying or drilling down to the substructure of a bridge will require an inspection of the bridge structure to examine for the presence of bats if potential habitat is located nearby.

1) If potential habitat for the NLEB is present near a structure, an initial field visit must be conducted by a biologist to determine if the structure has evidence of bat use. See Appendix B of the PBA for Bat Inspection Guidelines for Bridges/Structures at the following link.

   http://www.fws.gov/Midwest/Endangered/section7/fhwa/pdf/BridgeGuidanceAppB_BA.pdf

   Due to the transitory nature of bat use, a negative result in one year does not guarantee that bats will not use that particular structure in subsequent years. Therefore, no more than 7 days prior to initiating work at each bridge/structure location, another survey must be conducted in order to verify that bats have not begun to use the bridge/structure if construction commences in a different year than the original inspection. If no signs of bat usage observed, project may proceed as planned and the initial "No Effect" determination remains valid. If bat use observed prior to construction commencement, further analysis will be necessary and additional surveys may be required to determine species of bat. Discovering bat use after an initial inspection is unlikely; however in order to use the PBA, follow up surveys must be conducted before construction commences. *This follow up survey will need to be made as an environmental commitment in the design plans.*

   The form found within the bridge guidance should be used for each structure that needs to be surveyed for bats. Instructions on how to fill out the form are explained within the form itself. After forms are filled out, they should be sent to NDDOT ETS Division initially as part of Section 7 evaluation as well as for final documentation for the follow up survey(s). In addition to the form(s), pictures from field visits (regardless whether or not bat use was observed) need to be submitted as an attachment.

2) A T&E table should be filled out accordingly to the county(ies) the project is in. Since FHWA review would only be required for the bat, *"Yes"* should be checked in the NLEB row for "FHWA Review Required"; check "No Effect or May Affect – See below" within the Determination column; and in the "Additional Documentation Included Column" the following should be added *"Additional Documentation Attached (USFWS/FHWA Programmatic BA)".*

3) After T&E table is complete, fill out project submittal form.

   For "No Effect" determinations (i.e. no bat use observed from field visits):

   - Only numbers 1-8 should be filled out. For requesting agency (#3), NDDOT should be placed in box. The following information can be placed in the boxes associated with #3 (requesting agency – NDDOT – Greg Schonert – Biologist – 701-328-2592 – gschonert@nd.gov). For

consultation code (#4) state: "N/A - No Effect Determination. No USFWS coordination/consultation required".

- For #6, include a short description of the project, why the bat requires FHWA review, description of bridge/structure(s) and work activities, and why a "No Effect" determination (i.e. no bat use observed) In this case for #8 on the project submittal form, the third box should be checked (No effect- from maintenance, alteration, or demolition of bridges/structures- results of inspection surveys indicate no signs of bats). After #8 is reached the form is complete.

- Since no bat use was observed, in order to document this; include an aerial imagery map(s) that shows the project area and vicinity as well as photos from field visit of each respective structure that was surveyed. Photos should include an overall picture of the entire structure, as well as multiple shots from various angles underneath the structure.

- The final documentation should include: a properly filled out T&E table, project submittal form, aerial map(s), structure inspection forms, and photos from field visit (in that specific order). A signature line should be left on the T&E table for ETS to sign. This final documentation should be included as an Appendix in the environmental document. *FHWA will not need to concur/review the "No Effect" determination.*

  Keep in mind that at this point Section 7 is complete for the NLEB; however, a follow up survey must be conducted no more than 7 days prior to commencement of construction to ensure that bats have not begun to use the structure(s). If evidence of bats is observed prior to construction; additional studies will be necessary and the project may be delayed.

For "May Affect" determinations (i.e. bat use observed from field visits):

- If field visits confirm evidence of bats on a structure, the programmatic BA may or may not be applicable; depending on the scope of the project (i.e. what type of work is required for the structure), and whether or not the associated AMMs can be applied. If bats are observed during bridge inspections, contact the NDDOT as soon as practicable.

- The entire project submittal form should be filled out with the appropriate AMMs. For requesting agency (#3), NDDOT should be placed in box. The following information can be placed in the boxes associated with #3 (requesting agency – NDDOT – Greg Schonert – Biologist – 701-328-2592 – gschonert@nd.gov). Since a May Affect determination is warranted; Section 3.0 of the Users Guide will need to be used (will need to access the Information for Planning and Conservation – IPaC – website, http://ecos.fws.gov/ipac/) in order to receive a consultation code to be used on the project submittal form (#4 on form). See User's Guide for further details.

  Once a request has been submitted in IPaC, a confirmation email will be sent, and a follow up email will be sent with an attached official species list, an attached GIS file of project location, appropriate field office contact information, and the consultation code associated with the species list.

- Project submittal form should be filled out as mentioned in the previous example for a May Effect determination (tree removal example). The consultation code from the IPaC website should be provided in #4 on the form. A short overall project description along with description of each structure and work activities involved should be added and what is triggering use of the PBA (in this case it would be work on a structure with identified bat use). Number 8 should have no boxes checked since a no effect determination can't be used. For # 9, Bridge - or - Other Non-Tree Roosting Structure (e.g. building, culvert, cattle pass, etc.) would be the affected resource/habitat type. For #10, nothing should be checked, unless removal of suitable wooded habitat is also required for the project (see Example 2).

  Number 11 should be filled out accordingly. Proposed work activities, timing of work, and evidence of bat activity should be documented. If applicable, (d or e) should be checked. One or more of the following AMMs must be used if evidence of bat use is observed on a structure with a proposed work activity that could have potential adverse effects to the NLEB.

  - **Bridge AMM 1.** Perform any bridge repair, retrofit, maintenance, and/or rehabilitation work during the winter hibernation period (October 1 – March 31). If bridge repair, retrofit, maintenance, and/or rehabilitation work must be performed outside of the winter hibernation period, then consider one of the other Bridge AMMs.

  - **Bridge AMM 2.** If construction activity is planned during the active season, perform a final inspection of the bridge no more than 7 days prior to the start of construction activity to ensure bats have not started to use the area of the bridge proposed for work after the original inspection.

  - **Bridge AMM 3.** Bridge repair, retrofit, maintenance, and/or rehabilitation work outside of pup season (June 1- July 31) will occur in the evening while the bats are feeding, starting one hour after sunset, and ending one hour before daylight excluding the hours between 10 p.m. and midnight and keep the light localized.

  - **Bridge AMM 4.** If bridge repair, retrofit, maintenance, and/or rehabilitation work alters the bridge during the inactive season then ensure suitable roosting sites remain after the work. Suitable roosting sites may be incorporated into the design of the new bridge.

  - **Structure AMM 1.** If the goal of the project is to exclude bats, coordinate with your local Service field office and follow upcoming Acceptable Management Practices for Bat Control Activities in Structures guidance document.

  - **Structure AMM 2.** Perform maintenance and/or repair work during the winter hibernation period (October 1 – March 31).

  - **Structure AMM 3.** If maintenance and/or repair work will be performed outside of the winter hibernation period, determine if work will occur in an area with roosting

bats. If so, coordinate with your local Service field office. If there is observed bat activity (or signs of frequent bat activity), the transportation agency will avoid maintenance activity bat exclusions or similar structure alteration during the active season unless there are concerns about human health/safety/property. The agency will coordinate with a nuisance wildlife control officer and the local Service field office.

Note- If it is not feasible to implement any of the above measures to avoid adverse effects, separate consultation may be needed as the project will not fit the scope of the PBA. Contact NDDOT ETS Division for further clarification.

4) All projects that result in one acre or more of ground disturbance require that a storm-water pollution prevention plan (SWPPP) be prepared. Therefore, all AMMs associated with water quality and wetland/stream protection spelled out in the programmatic agreement are already included in the storm-water permits for projects that require them. Because the language that is written in the AMMs for water quality and wetland/stream protection within the programmatic agreement may contradict what is included in permits that are required to be followed by state and federal law, none of these measures should be checked, unless otherwise notified for a specific project. If applicable, the lighting AMMS and dust control AMM should be applied.

5) Since bat use was observed, in order to document this; include an aerial imagery map(s) that shows the structure location and surrounding vicinity (1-2 mile radius) as well as photos from field visit of each respective structure that was surveyed that has evidence of bat use. Photos should include an overall picture of the entire structure, as well as multiple shots from various angles underneath the structure.

6) After the project submittal form is finalized, it must be sent to NDDOT ETS for review to ensure the project adheres to the scope and criteria of the PBA and that the appropriate AMMs are selected. If the project falls within the parameters of the PBA, NDDOT ETS will formally submit to USFWS. The USFWS has 14 days to evaluate the project submittal package. If the USFWS concurs with the information provided in the project submittal package, in most cases; although not required, the USFWS will send a short letter or email to document that the project has been reviewed and that it fits within the guidelines of the PBA.

If no response is received from the USFWS after 14 days, consultation is complete, and the project may proceed as planned. The USFWS may also request some additional documentation for certain projects. Upon the receipt of additional information, or implementation of site-specific AMMs, the project is determined by the USFWS to be Not Likely to Adversely Affect and the NDDOT and FHWA proceed under the PBA. However there may be instances where adverse effects cannot be avoided and separate consultation may be required. *Note- any avoidance/minimization measures that are selected using the PBA must be adhered to. These are environmental commitments that must be placed in the design plans.*

7) The final documentation should include: a properly filled out T&E table, project submittal form, aerial map(s), and photos from field visit (in that specific order). A signature line should be left on the T&E table for ETS to sign. This final documentation should be included as an Appendix in the environmental document. *FHWA will not need to concur/review the "May Effect" determination.*

The provided examples should help work through the process of using the PBA for the most routine types of activities conducted for NDDOT projects in which FHWA review is required for the NLEB. If unsure if your project will fit under the guidelines of the PBA, reference the PBA and/or User's Guide for further information, or contact NDDOT ETS Division (Greg Schonert – 701-328-2592 – gschonert@nd.gov).