Programmatic Biological Assessment Project Submittal Package - Page 1

Project Number/PCN:	**Submitted By:**
	Date:
Roadway and Project Limits:	**Legal Description (Township/Range):**
Year of Construction and Approximate Duration:	**County (or Counties):**

*If more room is needed for any of the above information, add to project description on Page 2.

Threatened and Endangered Species/Designated Critical Habitat Occurrence

- ☐ Whooping Crane
- ☐ Black-Footed Ferret
- ☐ Pallid Sturgeon
- ☐ Gray Wolf
- ☐ Poweshiek Skipperling
- ☐ Piping Plover
- ☐ Western Prairie Fringed Orchid
- ☐ Dakota Skipper
- ☐ Rufa Red Knot
- ☐ Northern Long-Eared Bat
- ☐ Piping Plover Designated Critical Habitat
- ☐ Dakota Skipper Designated Critical Habitat
- ☐ Poweshiek Skipperling Designated Critical Habitat

☐ Dakota skipper or Poweshiek skipperling critical habitat is located within 0.6 mile of the project (see links below)

☐ Piping plover critical habitat is located within 0.5 mile of the project (see links below)

A county list of threatened and endangered species (and critical habitat) can be found within the PBA or at the following link:

https://www.fws.gov/northdakotafieldoffice/SEtable.pdf

Maps of piping plover critical habitat units can be found at the following link:

https://gis.dot.nd.gov/external/ge_html/?viewer=ext_wildlifemap

Maps of Dakota skipper/Poweshiek skipperling critical habitat units can be found at the following link:

https://gis.dot.nd.gov/external/ge_html/?viewer=ext_wildlifemap

Shapefiles of critical habitat units can be found and downloaded at the following link:

http://ecos.fws.gov/ecp/report/table/critical-habitat.html

The following web application to search for critical habitats in relation to project locations:

http://gis.dot.nd.gov/external/ge_html/?viewer=wildlifemap

Programmatic Biological Assessment Project Submittal Package - Page 2

Will Work Stay Within Existing ROW:?

☐ Yes ☐ No

Permanent / Temporary ROW Acreage:

Wetland Mitigation Required?

☐ Yes: On-Site ☐ Yes: Off-Site ☐ No

Off-Site Location:

Temporary Bypass Required? (If yes, show location on map)

☐ Yes ☐ No

SWPPP Plan Required? (Note if ground disturbance is 1 or more acres, a SWPPP plan is necessary).

☐ Yes ☐ No

Amount of Ground Disturbance in Acres:

Level III/IV Ecoregion:

Project Description (attach maps of project):

Programmatic Biological Assessment Project Submittal Package - Page 3

Project Description (attach maps of project):

Programmatic Biological Assessment Project Submittal Package - Page 4

Project Description Continued:

Programmatic Biological Assessment Project Submittal Package - Page 5

Applicable Conservation Measures:

☑ **CM 1:** The contractor will notify the Project engineer immediately in the event any threatened or endangered species is identified within one mile of the proposed action. The Project engineer will cease all construction activities, establish at least a 0.5 mile avoidance area, and immediately coordinate with the USFWS, FHWA, and NDDOT Environmental and Transportation Services. The contractor will not resume work within the avoidance area until the Project engineer has confirmed with the agencies that work may proceed (either species have left the area or approved minimization measures have been implemented). ***This conservation measure must be used for all projects using the programmatic biological assessment.*** Note- For all projects that use the programmatic biological assessment for Section 7 compliance, a threatened and endangered species poster or pamphlet will be provided on all job sites.

Piping Plover / Rufa Red Knot

☐ **CM 2:** *Construction activities shall be avoided within 0.5 miles of suitable habitat (between Station X and Station X) for the piping plover between the dates of April 15 and August 15. Note– Suitable habitat for the piping plover and rufa red knot include all designated critical habitat for the piping plover and other known nesting areas.*

☐ **CM 3:** If construction occurs during the piping plover breeding season (April 15 – August 15), an initial field survey will be conducted within suitable habitat located inside a 0.5 mile buffer area of construction activities. The survey will occur two days before beginning construction to identify suitable habitat (e.g. islands, sandbars, or exposed shoreline).

No Habitat Present: If no suitable habitat is identified during the initial survey, surveys will be conducted weekly to identify any new habitat uncovered by the river. End surveys July 15 if no suitable nesting habitat, nesting pairs, or nests have been identified. Construction can resume without surveys on July 16 if it has been determined no active nests are located within 0.6 miles of any construction activities. Note– On alkali lakes and wetlands, if no suitable habitat is identified during the initial visit, weekly surveys would not be required as it would be highly unlikely water levels would fluctuate enough to reveal suitable habitat.

Habitat Present: If suitable habitat has been identified and construction activities will take place within 0.5 miles of the habitat, 2 surveys will be conducted daily:

1) The first survey will be conducted for 2 hours during daylight before starting construction activities for that day.
2) The second survey will be conducted for 1 hour beginning after work has stopped for that day. Construction activities will stop early enough to allow for the survey to be completed no later than 30 minutes after sunset.

If nests, an individual, or pair of birds are detected during surveys, the Engineer will be notified, construction activities will cease, and at least a 0.5 mile avoidance area will be established. The Engineer will contact USFWS, FHWA, and NDDOT ETS Division to determine methods to be implemented to avoid adverse effects to the species. If active nests are discovered construction activities will be prohibited within 0.5 mile of the active nest. Construction activities will not resume within the avoidance area until one of the following has been fulfilled: daily surveys show that the birds have vacated the area, mitigation measures determined by the contacted agencies have been implemented, or September 1 has been reached.

Note: Surveys will be conducted only until July 15 as nest establishment is not anticipated to occur past this date. However, if active nests or individuals/pairs are discovered on July 15 or earlier, surveys must resume until the fate of the nest has been determined (abandoned, destroyed, hatched, fledged), and/or the birds have left the area.

Whooping Crane

☐ **CM 4:** Line markers (bird diverters) will be placed along the segment(s) of overhead utilities to be raised, lowered, and/or moved within 1 mile of whooping crane stopover habitat to reduce the risk of flight collisions.

Pallid Sturgeon

☐ **CM 5:** If environmental conditions vary greatly from the hydro-acoustic noise monitoring study conducted in 2015, additional monitoring may be required to ensure exposure levels do not exceed accumulated and peak threshold levels for the pallid sturgeon and that adverse effects do not occur. The hydro-acoustic noise monitoring study can be found as an appendix in the programmatic biological assessment.

Western Prairie Fringed Orchid

☐ **CM 6:** A survey for western prairie fringed orchids shall be conducted prior to construction for projects occurring within Ransom and Richland Counties that require ground disturbing activities. In order to detect the species, surveys would need to be conducted in late June to mid July. Contact the U.S. Forest Service, Dakota Prairie Grasslands: Sheyenne Ranger District (701-683-4342) for appropriate timing of surveys for a specific year.

Dakota Skipper / Poweshiek Skipperling

☐ **CM 7:** Conduct a vegetation inventory for all areas identified as potential untilled native prairie to be directly impacted by construction activities to determine the presence of Type A or Type B Dakota skipper habitat. Note- these commitments are meant for areas outside of designated critical habitat units. See Dakota skipper critical habitat section for further information on critical habitat areas. Note - If suitable habitat is identified, a presence/absence survey for the Dakota skipper must be conducted by qualified individuals. If Dakota skippers are not detected during surveys, the project may proceed under the PBA, depending on the scope of work activities. If Dakota skippers are detected during surveys, separate consultation would be required.

Northern Long-Eared Bat

In order for this species to be covered under the programmatic biological assessment, the following conservation measures must be used if the project requires tree removals, bridge/box culvert work, structure removals, or night construction.

Lighting

☐ **CM 8:** Direct temporary lighting away from suitable habitat during the active season (April 15—October 31).

Tree Removal

The word “trees” as used in the following conservation measures refers to trees that are suitable habitat for the NLEB (see Section 5.1.11 in the PBA for definition).

☐ **CM 9:** Conduct tree removal activities outside of the northern long-eared bat pup season (June 1 to August 15) and/or the active season (April 15—October 31).

☐ **CM 10:** Ensure tree removal is limited to that specified in project plans. Install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits.

☐ **CM 11:** Do not cut down documented NLEB roosts or trees within 0.25 miles of roosts, or documented foraging habitat during any time of year. Note- North Dakota currently does not have documented NLEB roosts or foraging habitat at this point in time. Should these types of features be identified in the future, this measure may need to be implemented to avoid adverse effects.

Bridges/Box Culverts

☐ **CM 12:** To completely avoid direct effects to roosting bats, perform any bridge repair, retrofit, maintenance, and/or rehabilitation work during the winter hibernation period (November 1—April 14).

See following page for further conservation measures for this species.

Northern Long-Eared Bat Continued

Bridges/Box Culverts Continued

☐ **CM 13:** If construction is planned during the active season, perform a bridge assessment for the presence of bats. See Appendix I of the programmatic biological assessment. If bats are not observed, no further action is required. If bats are observed, see conservation measure below.

The following work activities may be conducted without performing a bridge assessment for the presence of bats:

- Above deck work that does not drill down to the underside of the deck or include percussives (vibrations) or noise levels above general traffic (e.g. road paving, wing-wall work, work above that does not drill down to the underside of the deck).
- Below deck work that is conducted away from roosting bats and does not involve percussives or noise levels above general traffic (e.g., some abutment, beam end, scour, or pier repair).

☐ **CM 14:** If bridge assessment for bats suggests presence of a small number of bats (5), conduct bridge repair, retrofit, maintenance, and/or rehabilitation work (including activity with percussives) outside of pup season (June 1—August 15) and keep light localized 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. Note– This measure is in regards to day roosts. If a structure is identified as a night roost only, conduct all work on bridge in the day or evening (excluding the hours between 10 p.m. and midnight (peak night roosting hours). Note– If a large number of bats are observed, further action will be required.

Structures

Structures include but are not limited to, rest areas, offices, sheds, outbuildings, and barns.

☐ **CM 15:** Perform structure removal during the winter hibernation period (November 1—April 14).

☐ **CM 16:** If structure cannot be removed during the winter hibernation period, perform an inspection of the structure for signs of bat activity.

Note- If no signs of bat activity/use is observed, structure may be removed at any time.

Piping Plover Critical Habitat

☐ **CM 17:** Clearly mark limits of construction within or adjacent to boundaries of designated critical habitat.

☐ **CM 18:** Fueling or staging areas are not to be placed directly adjacent to or within the boundaries of critical habitat.

Dakota Skipper and Poweshiek Skipperling Critical Habitat

☐ **CM 19:** Clearly mark limits of construction within or adjacent to boundaries of designated critical habitat.

☐ **CM 20:** Fueling or staging areas are not to be placed directly adjacent to or within the boundaries of critical habitat.

☐ **CM 21**: For Dakota skipper critical habitat units 5, 6, and 9: any ground disturbing activities prior to June 10—July 25 shall be avoided.

Programmatic Biological Assessment Project Submittal Package - Page 8

Standard Conservation Measures:

- Disturb the smallest footprint possible.
- Reclaim disturbed areas upon project completion.
- Utilize downcast and/or shielded lighting.
- Implement a Storm Water Pollution Prevention Plan (SWPPP). Employ and maintain erosion control measures (i.e. fiber rolls, straw wattles, erosion mats, silt fence, and/or turbidity barriers, etc.) throughout the duration of a project and until vegetation is established.
- If required, implement a Spill Prevention Control and Countermeasure Plan (SPCC).
- Employ dust control measures.
- Spot-spray herbicides rather than broadcast application on invasive/noxious weeds ○ *Note- herbicide use is typically not conducted as part of roadway construction projects, but rather as part of routine maintenance operations.*
- In accordance with state and federal laws, properly contain and dispose of any contaminated materials discovered during construction activities.
- Employ mufflers on all combustion engines.
- Properly contain and dispose of garbage/trash generated as a result of construction activities.

Additional Conservation Measures (must be approved by FHWA, NDDOT, and USFWS):

Programmatic Biological Assessment Project Submittal Package - Page 9

Gray Wolf Affect Determination:

☑ The gray wolf may be found throughout the entire state of North Dakota; however, no known populations exist. The state functions as dispersal habitat between two separate populations and confirmed sightings are rare. The highest quality habitat for this species occurs in the Turtle Mountains and Pembina Gorge areas in northern North Dakota. Since the project occurs in a rural area of North Dakota there is a potential for direct or indirect effects to this species. Given the avoidance habits of gray wolves, wide ranging ability of species, abundance of agriculture land and lack of preferred habitat, any potential adverse effects are highly unlikely. With the implementation of standard conservation measures, including the cease of work activities if a gray wolf was to be observed near a construction site, the project would have ***no effect*** to the gray wolf.

Black-Footed Ferret Affect Determination:

☑ Species is not known to exist in North Dakota at this time. Until more information becomes available for this species in North Dakota, no project-specific review is required and a ***no effect*** determination can be made.

Northern Long-Eared Bat (NLEB) Affect Determination:

☐ Due to presence of suitable habitat within close proximity to the project and scope of work activities (tree removals, structure work), this species may be exposed to direct or indirect effects. With the implementation of standard and species-specific conservation measures, adverse effects are highly unlikely; therefore, the project ***may affect, but is not likely to adversely affect*** the NLEB.

☐ Although the NLEB may be present in the counties identified in this project submittal package, the scope of work activities meets one or more of the criteria outlined below. Therefore, there will be ***no effect*** to the northern long-eared bat.

- No suitable habitat is located within 1,000 feet the project (i.e. naturally occurring forested/wooded areas or other treed habitat that directly links to forested/wooded areas). Urban areas are extremely unlikely to contain suitable habitat for this species.
- No tree removals would be required. Tree removals only refers to suitable habitat. Single trees, planted shelterbelts, urban plantings, are typically not suitable habitat unless there are naturally forested/wooded areas in close proximity.
- No structure work would be required (i.e. bridges/box culverts or buildings, barns, sheds, etc.) ***or*** structure work would remain on the surface of the bridge with no potential for drilling down to the underside of the deck and noise/vibrations would be similar to daily traffic ***or*** below deck work that is conducted away from potential roosting area (some abutment, beam end, and scour repair).
- Structure work would be required and suitable habitat is located near the project; however, a survey has been completed for the presence of bats and no indications of bat use (acoustic monitoring, guano accumulations, staining, etc.) were identified.

*Note– Species may occur throughout the state of North Dakota.

Programmatic Biological Assessment Project Submittal Package - Page 10

Pallid Sturgeon Affect Determination:

☐ Due to in-water work within the Missouri River (including reservoirs) and Yellowstone River systems (or direct tributary within 0.5 mile of these systems) this species may be exposed to direct or indirect effects. With the implementation of standard and species-specific conservation measures, adverse effects are highly unlikely; therefore, the project ***may affect, but is not likely to adversely affect*** the pallid sturgeon.

☐ Although the pallid sturgeon may be present in the counties identified in this project submittal package, the project would not require in-water work within the Missouri River (including reservoirs) and Yellowstone River systems (or direct tributary within 0.5 mile of these systems); therefore, no direct or indirect effects would occur to this species. As a result, the project would have ***no effect*** to the pallid sturgeon.

☐ **No Effect**—Species not present in project area.

Whooping Crane Affect Determination:

☐ Due to presence of suitable habitat (cropland/wetland associations) within a half mile of the project, this species may be exposed to direct or indirect effects. With the implementation of standard and species-specific conservation measures, adverse effects are highly unlikely. Therefore, the project ***may affect, but is not likely to adversely affect*** the whooping crane.

☐ Although the whooping crane may be present in the counties identified in this project submittal package, there is no suitable habitat for this species within 0.5 mile of the project (i.e. project location in highly developed or urban area or no cropland/wetland associations) ***or*** the project is localized in a rural area (i.e. standalone bridge projects or ITS/signing projects); therefore, no direct or indirect effects would occur to this species. As a result, the project would have ***no effect*** to the whooping crane.

*Note– Species may occur throughout the state of North Dakota, but sightings occur primarily in the whooping crane migration corridor. See programmatic biological assessment for map of primary migration corridor.

Poweshiek Skipperling Affect Determination:

☐ Although currently presumed to be extirpated in North Dakota, due to ground disturbing activities outside of previously disturbed ROW in high quality prairie, this species may be exposed to direct or indirect effects (i.e. habitat loss/degradation, establishment of noxious weeds, etc.). With the implementation of standard and species-specific conservation measures, adverse effects are highly unlikely; therefore, the project ***may affect, but is not likely to adversely affect*** the Poweshiek skipperling.

☐ Although the Poweshiek skipperling may be present in the counties identified in this project submittal package, there will be no ground disturbing activities in high quality native prairie; therefore, no direct or indirect effects would occur to this species. As a result, the project would have ***no effect*** to the Poweshiek skipperling.

☐ **No Effect**—Species not present in project area.

Programmatic Biological Assessment Project Submittal Package - Page 11

Piping Plover Affect Determination:

☐ Due to work within 0.5 mile of designated critical habitat (including Missouri River and reservoirs), or known nesting areas (e.g. Yellowstone River); this species may be exposed to direct or indirect effects. With the implementation of standard and species-specific conservation measures, adverse effects are highly unlikely; therefore, the project ***may affect, but is not likely to adversely affect*** the piping plover.

☐ Although the piping plover may be present in the counties identified in this project submittal package, there is no suitable habitat for this species within 0.5 mile of the project (i.e. project not located within 0.5 mile of designated critical habitat), therefore no direct or indirect effects would occur to this species. As a result, the project would have ***no effect*** to the piping plover.

☐ **No Effect**—Species not present in the project area.

Western Fringed Prairie Orchid Affect Determination:

☐ Due to ground disturbing activities within Ransom and Richland Counties within roadside ditches and native prairie, this species may be exposed to direct or indirect effects. With the implementation of standard and species-specific conservation measures, adverse effects are highly unlikely; therefore, the project ***may affect, but is not likely to adversely affect*** the western fringed prairie orchid.

☐ Although the western fringed prairie orchid may be present in the counties identified in this project submittal package, no ground disturbing activities would occur, and all work activities would remain on the surface of the roadway. As a result, the project would have ***no effect*** to the western fringed prairie orchid.

☐ **No Effect**—Species not present in the project area.

Dakota Skipper Affect Determination:

☐ Due to ground disturbing activities in high quality prairie, this species may be exposed to direct or indirect effects (i.e. habitat loss/degradation, establishment of noxious weeds, etc.). With the implementation of standard and species-specific conservation measures, adverse effects are highly unlikely; therefore, the project ***may affect, but is not likely to adversely affect*** the Dakota skipper.

☐ Although the Dakota skipper may be present in the counties identified in this project submittal package, there will be no ground disturbing activities in high quality native prairie; therefore, no direct or indirect effects would occur to this species. As a result, the project would have ***no effect*** to the Dakota skipper.

☐ **No Effect**—Species not present in the project area.

Programmatic Biological Assessment Project Submittal Package - Page 12

Rufa Red Knot Affect Determination:

☐ Due to work within 0.5 mile of the designated critical habitat for the piping plover (including Missouri River and reservoir) or known nesting areas for the piping plover (both species use similar habitats), this species may be exposed to direct or indirect effects. With the implementation of standard and species-specific conservation measures, adverse effects are highly unlikely; therefore, the project ***may affect, but is not likely to adversely affect*** the rufa red knot.

☐ Although the rufa red knot may be present in the counties identified in this project submittal package, there is no suitable habitat for this species within 0.5 mile of the project (i.e. project not located within 0.5 mile of designated critical habitat); therefore, no direct or indirect effects would occur to this species. As a result, the project would have ***no effect*** to the rufa red knot.

☐ **No Effect**—Species not present in the project area.

Programmatic Biological Assessment Project Submittal Package - Page 13

Piping Plover Critical Habitat Affect Determination:

☐ Due to work activities directly adjacent to or within critical habitat unit boundaries, critical habitat may be exposed to direct or indirect effects. With the implementation of standard and habitat-specific conservation measures, adverse effects are highly unlikely; therefore, the project ***may affect, but is not likely to adversely affect*** piping plover critical habitat. If the primary constituent elements of piping plover critical habitat are adversely affected, separate consultation would be required.

☐ Although designated critical habitat may be present in the counties identified in this project submittal package, the project would not require in-water work within critical habitat or ground disturbing activities directly adjacent to critical habitat (Missouri River (including reservoirs) and Yellowstone River systems and designated alkali lakes/wetlands); therefore, no direct or indirect effects would occur to the habitat. As a result, the project would have ***no effect*** to piping plover designated critical habitat.

☐ **No Effect**—Critical habitat not present in the project area.

Dakota Skipper Critical Habitat Affect Determination:

☐ Due to ground disturbing activities directly adjacent to critical habitat (within 0.6 mile) or within existing ROW within critical habitat unit boundaries, critical habitat may be exposed to direct or indirect effects. With the implementation of standard and habitat-specific conservation measures, adverse effects are highly unlikely. Therefore, the project ***may affect, but is not likely to adversely affect*** Dakota skipper critical habitat. If the primary constituent elements of Dakota skipper critical habitat are adversely affected, separate consultation would be required.

☐ Although Dakota skipper critical habitat is present in the counties identified in this project submittal package, the project is not located adjacent to / within the boundaries of critical habitat ***or*** all work activities would remain on the surface of the roadway through areas of designated critical habitat. As a result, the project would have ***no effect*** to Dakota skipper critical habitat.

☐ **No Effect**—Critical habitat not present in the project area.

Poweshiek Skipperling Critical Habitat Affect Determination:

☐ Due to work activities directly adjacent to critical habitat (within 0.6 mile) or within ROW within critical habitat unit boundaries, critical habitat may be exposed to direct or indirect effects. With the implementation of standard and habitat-specific conservation measures, adverse effects are highly unlikely; therefore, the project ***may affect, but is not likely to adversely affect*** Poweshiek skipperling critical habitat. If the primary constituent elements of Poweshiek skipperling critical habitat are adversely affected, separate consultation would be required.

☐ Although Poweshiek skipperling critical habitat is present in the counties identified in this project submittal package, the project would not require ground disturbing activities within or adjacent to the boundaries of critical habitat. As a result, the project would have ***no effect*** to Poweshiek skipperling critical habitat.

☐ **No Effect**—Critical habitat not present in the project area.

Programmatic Biological Assessment Project Approval Form

Summary of Effect Determinations

Project Number / PCN:				
Species / Critical Habitat	**No Effect**	**NLTAA**	**LAA**	**Conservation Measures**
Whooping Crane	☐	☐	N/A	
Black-Footed Ferret	☑	N/A	N/A	Species not known to exist in ND
Pallid Sturgeon	☐	☐	N/A	
Gray Wolf	☑	N/A	N/A	CM 1
Poweshiek Skipperling	☐	☐	N/A	
Piping Plover	☐	☐	N/A	
Western Prairie Fringed Orchid	☐	☐	N/A	
Dakota Skipper	☐	☐	N/A	
Rufa Red Knot	☐	☐	N/A	
Northern Long-Eared Bat	☐	☐	N/A	
Piping Plover Critical Habitat	☐	☐	N/A	
Dakota Skipper Critical Habitat	☐	☐	N/A	
Poweshiek Skipperling Critical Habitat	☐	☐	N/A	

NLTAA—May Affect, Not Likely to Adversely Affect
LAA– May Affect, Likely to Adversely Affect

The project submittal package (on-file at the NDDOT) has been reviewed for content and it has been determined that the scope of work activities associated with this project fit within the activities and sub-activities described in the deconstruction matrix of the programmatic biological assessment (PBA). The potential effects to listed resources that may occur from this project fit within the effects analysis within the PBA, fieldwork has been conducted (if required), and appropriate conservation measures have been selected. The conservation measures identified in this project submittal package must be included in the plan sheets as either environmental notes or special provisions. Should changes to the scope of work for this project occur, the additional work items will need to be reviewed for potential effects to listed species and critical habitat that may occur near or within the project area and the project submittal package will need to be revaluated. Provided no changes occur to this project, Section 7 Endangered Species Act requirements have been met under the PBA and programmatic concurrence from the USFWS.

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NDDOT Biologist