

**ATTACHMENT E**  
**SECTION 7 COORDINATION WITH USFWS**

**Franconia Third Track Project**  
**Categorical Exclusion**

## USFWS – ONLINE PROJECT REVIEW PROCESS, BY STEP

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**Background.** The Virginia Department of Rail and Public Transportation (DRPT), in coordination with the Federal Railroad Administration (FRA), the Virginia Department of Transportation (VDOT), CSX Transportation (CSXT), Amtrak, and Virginia Railway Express (VRE), is advancing the Washington, D.C. to Richmond Southeast High Speed Rail project (DC2RVA). DC2RVA includes additional track and other rail structural improvements plus additional passenger train service on the existing 123-mile rail corridor between Washington, D.C. and Richmond, Virginia. To date for DC2RVA, DRPT has completed a Tier II Environmental Impact Statement (EIS) and subsequent Record of Decision (ROD). In 2015, DRPT identified the need to advance a third mainline track approximately 8 miles from Franconia to just north of the Occoquan River, separate from but compatible with the ongoing longer term DC2RVA – the Franconia Third Track Project. Therefore, the ROD for DC2RVA provided clearance under NEPA for additional passenger service along the entire corridor and rail improvements for all but the approximate 8-mile portion of corridor between Franconia and Occoquan in Fairfax County, Virginia. DRPT is currently preparing a Categorical Exclusion for the Franconia Third Track Project. As part of that, DRPT is preparing this project review process for submittal to the US Fish and Wildlife Service (USFWS), per their online step-by-step guidance.<sup>1</sup> This documentation is prepared prior to their involvement.

The outcome of the Online Project Review Process is a **Species Conclusion Table (provided under separate cover)** and backup documentation to submit to the Virginia Field Office of USFWS for Section 7 Consultation.

**Project Description.** The Franconia Third Track Project will primarily add a third mainline track through approximately 8 miles of an existing two-track corridor and, within those limits, will: shift tracks to increase speed through curves; replace two existing two-track bridges and add two new adjacent rail bridges; and add a new passenger rail bypass with an elevated bridge to remove conflicts between freight and passenger trains. The Franconia-Springfield VRE Station, the Lorton VRE Station, and the Amtrak Auto Train Station are located within the 8-mile area proposed for a third mainline track. Additionally, north of the Franconia-Springfield Station, the proposed project will realign three existing tracks for approximately  $\frac{3}{4}$  of a mile to accommodate station improvements. The project does not include additional passenger rail service. **All project improvements are located within existing CSXT/VDOT right-of-way.**

The limits of the proposed improvements extend from approximately one mile north of the Franconia-Springfield VRE station to approximately 400 feet north of Furnace Road, just north of the Occoquan River in Fairfax County, Virginia, connecting to the DC2RVA project at each end.

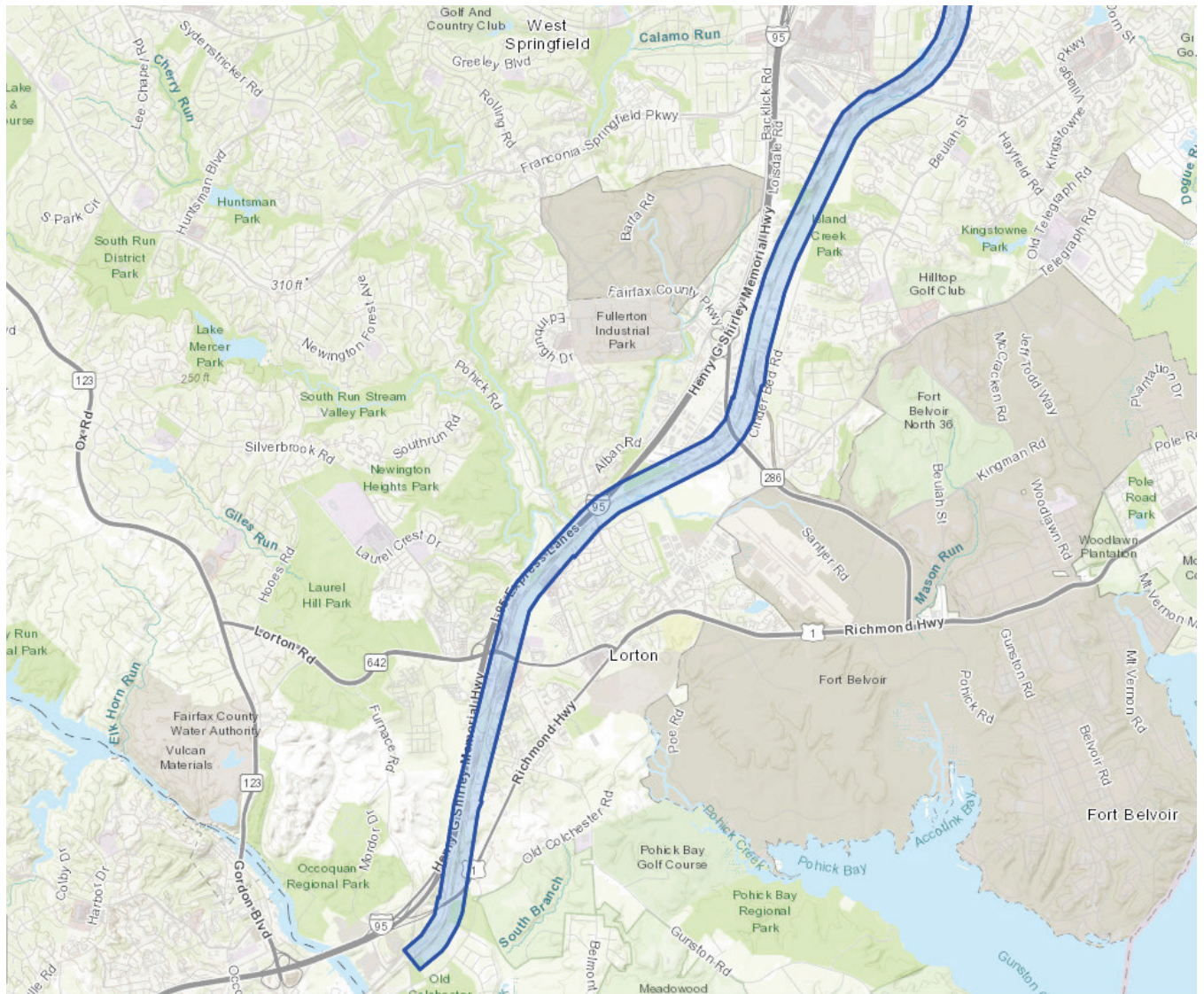
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<sup>1</sup> <https://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>

## STEP 1 - ACTION AREA

The action area for consultation under the Endangered Species Act for the Franconia Third Track Project encompasses a 1,000-foot linear corridor, centered on the existing rail alignment. In accordance with 50 CFR §402.02, this action area is not limited to the permanent limits of disturbance of the project improvements, but rather includes all areas to be potentially affected directly or indirectly by the action.

This action area is shown in the figure below (screenshot from the USFWS online system, see Step 2).



Action Area | Franconia Third Track Project

## STEP 2 – OFFICIAL SPECIES LIST

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Step 2 is using USFWS’s online Information, Planning and Consultation system (IPaC)<sup>2</sup> to determine if any listed, proposed or candidate species may be present in the defined action area. DRPT obtained an Official Species List from the IPaC system on February 5, 2020 for the Franconia Third Track action area, and was updated on May 14, 2020 and on August 18, 2020 with no change to species or critical habitat. Copies of all IPaC official species lists are included in the **Step 2 Attachment**.

The IPaC system provided species lists by:

Virginia Ecological Services Field Office  
6669 Short Lane  
Gloucester, VA 23061-4410  
(804) 693-6694

The official species list for the Franconia Third Track Project action area included the following 2 federally-listed threatened or endangered species. There were no proposed or candidate species identified.

Species	Status
Northern Long-eared Bat <i>Myotis septentrionalis</i>	Threatened
Small Whorled Pogonia <i>Isotria medeoloides</i>	Threatened
Critical Habitat	None

Additionally, this step of the Online Project Review Process notes 15 counties and 6 cities in Virginia that are in the historical range of the Rusty Patched Bumble Bee (*Bombus affinis* – Endangered). The Franconia Third Track Project is located in Fairfax County, which is included on this list. Accordingly, this species is included in subsequent Online Project Review Process steps for Areas 1, 2, and 6.

The Virginia Field Office encourages all agencies to fulfill their Section 7(a)(1) duties by carrying out voluntary conservation measures for the Rusty Patched Bumble Bee, which are listed in Step 2.

**DRPT commits to check IPaC every 90 days until the project is implemented, per USFWS guidance, to ensure that listed, proposed, or candidate species information for the action area is current. If any changes to the species list occur, DRPT will complete this process for the newly identified species.**

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<sup>2</sup> <https://ecos.fws.gov/ipac/>

### STEP 3 – STATE COORDINATION

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Data maintained by the Virginia Department of Game and Inland Fisheries (VDGIF) and the Virginia Department of Conservation and Recreation (VDCR) were reviewed, as documented in the “References” section below.

Results of this state data review are included in the suitable habitat determinations (see Step 4) and resulting determinations in the species conclusion table.



## STEP 4 – SUITABLE HABITAT

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Step 4 - Suitable Habitat of the Virginia Field Office Project Review Process is to determine whether listed/proposed/candidate species may occur based on the habitat present within the action area for each listed species. The following pages address whether suitable habitat for each of the nine species may be present within each area of the project corridor based on review of species habitat information and occurrence data maintained by the VDGIF and VDCR combined with review of aerial photography and land cover data. Habitat observations during prior field surveys (as documented in the Natural Resources Technical Report of the DC2RVA Tier II Draft EIS) are also noted, as appropriate.

Based on this information, the “Conclusion” column of the Species Conclusion Table was filled in for all identified species in each area, per the possible conclusions as listed in the Online Project Review Process:

Possible Conclusions
Species not present
No suitable habitat present
No critical habitat present
Suitable habitat present, species not present
Species present
Potential habitat present and no current survey conducted

### **Potential Presence for: Northern Long-eared Bat (*Myotis septentrionalis*)**

*Status:* Threatened

*Description:* Northern long-eared bat is a medium-sized (3 to 3.7 inches) bat generally associated with old-growth forests composed of trees 100 years old or older. It relies on intact interior forest habitat, with low edge-to-interior ratios (VDCR, 2014); however, it has been found within city limits. They are frequently found between the shrub layer and the canopy. Males and nonreproductive females tend to prefer caves, while reproductive females roost under tree bark in spring and summer (VDGIF, 2014). This species prefers to hibernate in very high humidity caves with little or no air flow (USFWS, 2015).

*Franconia Third Track Project:* the regulatory agencies generally agree that this species can be found throughout Virginia. However, the closest known hibernaculum or maternity roosts are more than 100 miles away from the project area (VDGIF, 2019b). Additionally, no hibernacula and/or roosting trees were observed during prior DC2RVA field surveys. DRPT commits to the voluntary conservation measures for this species (Step 7b).

Overall, the Project does not include purposeful taking of northern long-eared bats; will not affect caves or mines where the species are known to hibernate or alter the entrance or environment of a hibernaculum; and any tree removal associated with the Project will not remove a known occupied maternity roost tree or occur within 150 feet of a known occupied maternity roost tree, or within 0.25 mile of a known hibernaculum. DRPT utilized the assisted determination key for the NLEB 4(d) rule that is provided online in the IPaC regulatory review process for this species, and has received a consistency letter documenting no effect --- **see Step 7b.**

### **Potential Presence for: Rusty Patched Bumble Bee (*Bombus affinis*)**

*Status:* Threatened

*Description:* Historically, the rusty patched bumble bee was broadly distributed across the eastern United States, Upper Midwest, and southern Quebec and Ontario in Canada. Since 2000, this bumble bee has been reported from only 13 states and 1 Canadian province: Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, Wisconsin and Ontario, Canada (USFWS, 2020). Survival and successful recruitment require floral resources (for food) from early spring through fall, undisturbed nest sites in proximity to foraging resources, and overwintering sites for the next year's queens (USFWS, 2019).

*Franconia Third Track Project:* Historically, rusty patched bumble bee was documented in the Middle Potomac-Anacostia-Occoquan (02070010) and Lower Potomac (02070011) watersheds; however, this species is believed to now be extirpated within these watersheds (VDCR, 2020a). Currently, the rusty patched bumble bee is not known to occur outside of Bath, Clarke, Fauquier, Highland, and Loudoun counties (USFWS, 2020) – and the proposed project occurs in Fairfax County.

### **Potential Presence for: Small Whorled Pogonia (*Isotria medeoloides*)**

*Status:* Threatened

*Description:* Small whorled pogonia is a small (up to 12 inches tall) orchid, with five to six leaves in a whorl near the top of the stem, under greenish-yellow flowers that bloom from May, in the southern part of its range, to mid-June in the northern part of its range. It requires damp woods and is generally found on acidic, sloping, fragipan soils in 'second growth' or successional forest communities. This species can be found in deciduous and evergreen forests. Small whorled pogonia is listed as federally threatened, endangered in Virginia, and imperiled globally (VDCR, 2014). The small whorled pogonia occurs on upland sites in mixed-deciduous or mixed deciduous/coniferous forests that are generally in second- or third-growth successional stages. Characteristics common to small whorled pogonia sites include sparse to moderate groundcover in the species' microhabitat, a relatively open understory canopy, and proximity to features that create long persisting breaks in the forest canopy. Soils at most sites are highly acidic and nutrient poor, with moderately high soil moisture values. Light availability could be a limiting factor for this species (USFWS, 1992).

*Franconia Third Track Project:* There are records of this species occurring in the Accotink Creek-Gunston Cove (020700100402) and Accokeek Creek (020700110204) watersheds (VDCR, 2020b), which are crossed by the action area. However, the proposed improvements are located entirely within existing CSXT/VDOT right-of-way, which does not provide quality Small Whorled Pogonia habitat.

## STEP 5 – CRITICAL HABITAT

As documented in Step 5 of the USFWS Online Project Review Process, Federally Designated Critical Habitat occurs within: Bland, Lee, Scott, Smyth, Russell, Tazewell, Washington, Wise, and Wythe Counties in Virginia (as shown in the figure below).

As the project action area does not occur within these counties, it is determined ta no critical habitat is present and the project will have no effect on critical habitat.



*Critical Habitat in Virginia | Accessed 11 February 2020*  
<http://fws.maps.arcgis.com/apps/Viewer/index.html?appid=f6e84e675ba1461b8ae6a351adea1429>



## STEP 6 – BALD EAGLES

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The bald eagle (*Haliaeetus leucocephalus*) is protected by the Bald and Golden Eagle Protection Act. The bald eagle nesting (breeding) season in Virginia is from December 15 through July 15.

The Center for Conservation Biology (CCB) mapping portal<sup>3</sup> was used to determine the location of active bald eagles nests, roosts, and their buffers, using their aerial-based World Imagery (ESRI) mapping. Mapping from the CCB documenting this is provided in the **Step 6 Attachment**.

There are no bald eagle roosts and no active bald eagle nests, or their buffer zones, in the project action area.

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<sup>3</sup> <https://ccbbirds.org/maps/#eagles>. Accessed 04 March 2020.

## STEP 7a - DETERMINATIONS

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The example table provided in Step 7a (copied below) was used to complete the “ESA Section 7 Determination” column in the Species Conclusion Table, using the Conclusions from Step 4.

Per the Online Project Review Process directions, the “Notes/Documentation” column was used to explain rationale for determinations (particularly those that do not align with the below table), provide sources, and describe any measures proposed to avoid or minimize or mitigate potential impacts.

Possible Conclusions	→	ESA Section 7 Determination
Species not present	→	No effect
No suitable habitat present	→	No effect
No critical habitat present	→	No effect
Suitable habitat present, species not present	→	Not likely to adversely affect
Species present	→	May affect
Potential habitat present and no current survey conducted	→	May affect

## STEP 7b – Northern Long-eared Bat (NLEB) Determinations

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DRPT utilized the assisted determination key for the NLEB 4(d) rule that is provided online in the IPaC regulatory review process for this species and received a consistency letter for the Project under the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Northern Long-eared Bat. A copy of the consistency letter is provided in the **Step 7b Attachment**. This letter acknowledges no effect to the species, as indicated in the Species Conclusion Table.

Notwithstanding, DRPT commits to the voluntary conservation measures as described in Step 7b of the Online Project Review Process, as needed during the design and construction process for the project:

- Perform NLEB surveys according to the most recent summer survey guidelines.
- Conduct tree removal activities outside of the NLEB pup season (June 1-July 31) and/or the active season (April 15-September 15).
- Avoid clearing suitable spring staging and fall swarming habitat within a 5-mile radius of known or assumed NLEB hibernacula during the spring staging and fall swarming season (April 1-May 14 and August 16-November 15).
- Manage forests to ensure a continual supply of snags and other suitable maternity roosts trees.
- Conduct prescribed burns outside of the pup season (June 1-July 31) and/or the active season (April 1-October 31). Avoid high-intensity burns (causing tree scorch higher than NLEB roosting heights) during the summer maternity season to minimize direct impacts to NLEB.
- Perform bridge repair, retrofit, maintenance, and/or rehabilitation work outside of the NLEB active season (April 15-September 15) in areas where NLEB are known to roost on bridges or where such use is likely.
- Do not use military smoke and obscurants within forested suitable NLEB habitat during the pup season (June 1-July 31) and/or the active season (April 15-September 15).
- Minimize use of herbicides and pesticides. If necessary, spot treatment is preferred over aerial application.
- Evaluate the use of outdoor lighting during the active season and seek to minimize light pollution by angling lights downward or via other light minimization measures.
- Participate in actions to manage and reduce the impacts of WNS on NLEBs. Actions needed to investigate and manage WNS are described in a national plan the Service developed in coordination with other state and Federal agencies.

## STEP 8 – PROJECT REVIEW PACKAGE

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Since the ESA section 7 determination for all species, including the NLEB under the final 4(d) rule and critical habitat, is “no effect”, DRPT has printed the Self-Certification Letter (see the **Step 8 Attachment**). Per the guidance for non-federal agencies for the self-certification to be valid, DRPT submitted a copy of the letter and the project review package to the Virginia Field Office of USFWS on May 22, 2020.

A copy of this documentation and all referenced attachments is also retained in the project records for inclusion as an attachment to the CE.

## REFERENCES

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### United States Fish and Wildlife Service (USFWS).

1992. Small Whorled Pogonia (*Isotria medeoloides*) Recovery Plan–First Revision. November 13, 1992. New England Field Office, Concord, NH. [http://ecos.fws.gov/docs/recovery\\_plan/921113b.pdf](http://ecos.fws.gov/docs/recovery_plan/921113b.pdf).
2014. ECOS (Environmental Conservation Online System)–Species Profile: Small Whorled Pogonia (*Isotria medeoloides*). Accessed December 2014 and January 2015.
2015. Northern Long-eared Bat (*Myotis septentrionalis*) Fact Sheet. <https://www.fws.gov/midwest/Endangered/mammals/nleb/nlebFactSheet.html> Updated April 2015. Accessed February 13, 2020.
2019. Draft Recovery Plan for Rusty Patched Bumble Bee (*Bombus affinis*). September 2019.
2020. ECOS (Environmental Conservation Online System)–Species Profile: Rusty-patched Bumble Bee (*Bombus affinis*). <https://ecos.fws.gov/ecp/>. Accessed February 2020.

### Virginia Department of Conservation and Recreation (VDCR).

2014. Online Encyclopedia of Life–species search: Northern Long-eared Bat (*Myotis septentrionalis*), Small Whorled Pogonia (*Isotria medeoloides*). <http://explorer.natureserve.org/>. NatureServe Explorer: An online encyclopedia of life [web application]. Version 7.1. NatureServe, Arlington, VA. <http://explorer.natureserve.org/>. Accessed October 2014–January 2015. Last updated March 2014.
- 2020a. Online Encyclopedia of Life–species search: Rusty-patched Bumble Bee (*Bombus affinis*). NatureServe Explorer: An online encyclopedia of life [web application]. Version 7.1. NatureServe, Arlington, VA. <http://explorer.natureserve.org/>. Accessed February 2020. Last updated March 2019.
- 2020b. Nature Serve Explorer–Subwatershed Query–PL30 - Accotink Creek–Gunston Cove, PL48 - (Lower) Occoquan River–Belmont Bay, PL58 - Accokeek Creek. <http://explorer.natureserve.org/> Online search conducted February 13, 2020.

### Virginia Department of Game and Inland Fisheries (VDGIF).

2014. Virginia Fish and Wildlife Information Services (VaFWIS) Species Information Report (Occurrence, Habitat) – Northern Long-eared Bat (*Myotis septentrionalis*). [http://www.vafwis.org/fwis/?Menu=Home\\_By+Name](http://www.vafwis.org/fwis/?Menu=Home_By+Name). Accessed October 22, 2014.
- 2019a Wildlife Environmental Review Map Service (WERMS). Last updated 8/27/2019. Accessed February 2020.
- 2019b NLEB Roost and Hibernacula Map. Accessed February 2020. <https://dgif-virginia.maps.arcgis.com/apps/webappviewer/index.html?id=32ea4ee4935942c092e41ddcd19e5ec5>



## **Step 2 Attachment**

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### **Official IPaC Species Lists**



## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Virginia Ecological Services Field Office  
6669 Short Lane  
Gloucester, VA 23061-4410  
Phone: (804) 693-6694 Fax: (804) 693-9032  
<http://www.fws.gov/northeast/virginiafield/>

In Reply Refer To:

February 05, 2020

Consultation Code: 05E2VA00-2020-SLI-1868

Event Code: 05E2VA00-2020-E-05065

Project Name: Franconia 3rd Track

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

### To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Any activity proposed on National Wildlife Refuge lands must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered

species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan ([http://www.fws.gov/windenergy/eagle\\_guidance.html](http://www.fws.gov/windenergy/eagle_guidance.html)). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; <http://www.towerkill.com>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List
  - USFWS National Wildlife Refuges and Fish Hatcheries
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# Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

**Virginia Ecological Services Field Office**

6669 Short Lane

Gloucester, VA 23061-4410

(804) 693-6694

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## Project Summary

Consultation Code: 05E2VA00-2020-SLI-1868

Event Code: 05E2VA00-2020-E-05065

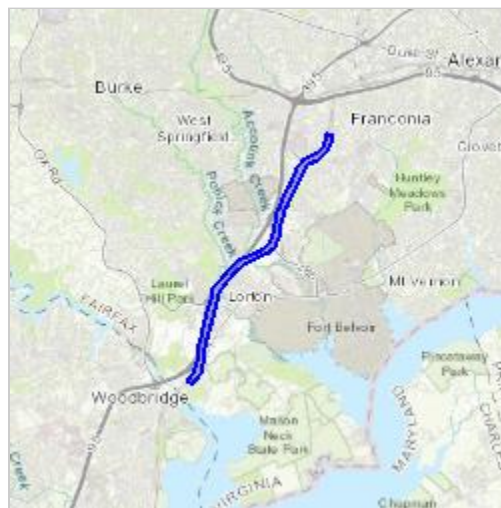
Project Name: Franconia 3rd Track

Project Type: TRANSPORTATION

**Project Description:** The proposed project will primarily add a third mainline rail track through 8 miles of an existing two-track corridor, as well as: shifting tracks to increase speed through curves; replacing two existing two-track bridges and adding two new adjacent rail bridges; and adding a new passenger rail bypass (flyover bridge) to remove conflicts between freight and passenger trains. The project does not include additional passenger rail service. On January 13, 2020, FHWA signed the NEPA Concurrence Form for preparation of a Categorical Exclusion for the Franconia 3rd Track Project.

**Project Location:**

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/38.72384444264843N77.20143946640115W>



Counties: Fairfax, VA

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## Endangered Species Act Species

There is a total of 2 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

## Mammals

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/9045">https://ecos.fws.gov/ecp/species/9045</a>	Threatened

## Flowering Plants

NAME	STATUS
Small Whorled Pogonia <i>Isotria medeoloides</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/1890">https://ecos.fws.gov/ecp/species/1890</a>	Threatened

## Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

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# USFWS National Wildlife Refuge Lands And Fish Hatcheries

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS OR FISH HATCHERIES WITHIN YOUR PROJECT AREA.

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## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Virginia Ecological Services Field Office  
6669 Short Lane  
Gloucester, VA 23061-4410  
Phone: (804) 693-6694 Fax: (804) 693-9032  
<http://www.fws.gov/northeast/virginiafield/>



In Reply Refer To:

May 14, 2020

Consultation Code: 05E2VA00-2020-SLI-1868

Event Code: 05E2VA00-2020-E-10653

Project Name: Franconia 3rd Track

Subject: Updated list of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

### To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Any activity proposed on National Wildlife Refuge lands must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered

species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan ([http://www.fws.gov/windenergy/eagle\\_guidance.html](http://www.fws.gov/windenergy/eagle_guidance.html)). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; <http://www.towerkill.com>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List
  - USFWS National Wildlife Refuges and Fish Hatcheries
-

# Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

**Virginia Ecological Services Field Office**

6669 Short Lane

Gloucester, VA 23061-4410

(804) 693-6694

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## Project Summary

Consultation Code: 05E2VA00-2020-SLI-1868

Event Code: 05E2VA00-2020-E-10653

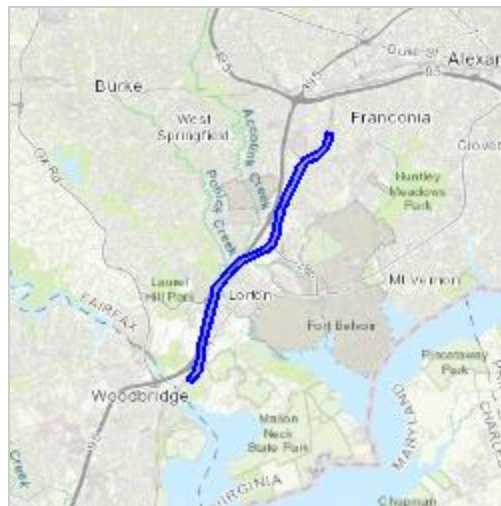
Project Name: Franconia 3rd Track

Project Type: TRANSPORTATION

**Project Description:** The proposed project will primarily add a third mainline rail track through 8 miles of an existing two-track corridor, as well as: shifting tracks to increase speed through curves; replacing two existing two-track bridges and adding two new adjacent rail bridges; and adding a new passenger rail bypass (flyover bridge) to remove conflicts between freight and passenger trains. The project does not include additional passenger rail service. All project improvements are located within existing CSXT/VDOT right-of-way. On January 13, 2020, FHWA signed the NEPA Concurrence Form for preparation of a Categorical Exclusion for the Franconia 3rd Track Project.

**Project Location:**

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/38.72384444264843N77.20143946640115W>



Counties: Fairfax, VA

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## Endangered Species Act Species

There is a total of 2 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

- 
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

## Mammals

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/9045">https://ecos.fws.gov/ecp/species/9045</a>	Threatened

## Flowering Plants

NAME	STATUS
Small Whorled Pogonia <i>Isotria medeoloides</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/1890">https://ecos.fws.gov/ecp/species/1890</a>	Threatened

## Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

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# USFWS National Wildlife Refuge Lands And Fish Hatcheries

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS OR FISH HATCHERIES WITHIN YOUR PROJECT AREA.

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## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Virginia Ecological Services Field Office  
6669 Short Lane  
Gloucester, VA 23061-4410  
Phone: (804) 693-6694 Fax: (804) 693-9032  
<http://www.fws.gov/northeast/virginiafield/>



In Reply Refer To:

August 18, 2020

Consultation Code: 05E2VA00-2020-SLI-1868

Event Code: 05E2VA00-2020-E-15532

Project Name: Franconia 3rd Track

Subject: Updated list of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

### To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Any activity proposed on National Wildlife Refuge lands must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered

species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan ([http://www.fws.gov/windenergy/eagle\\_guidance.html](http://www.fws.gov/windenergy/eagle_guidance.html)). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; <http://www.towerkill.com>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List
  - USFWS National Wildlife Refuges and Fish Hatcheries
-



# Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

**Virginia Ecological Services Field Office**

6669 Short Lane

Gloucester, VA 23061-4410

(804) 693-6694

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## Project Summary

Consultation Code: 05E2VA00-2020-SLI-1868

Event Code: 05E2VA00-2020-E-15532

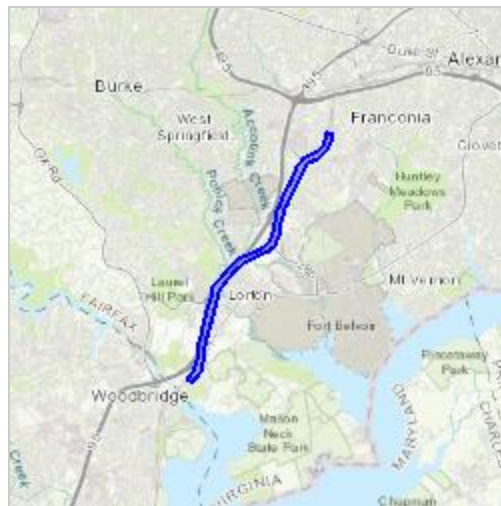
Project Name: Franconia 3rd Track

Project Type: TRANSPORTATION

**Project Description:** The proposed project will primarily add a third mainline rail track through 8 miles of an existing two-track corridor, as well as: shifting tracks to increase speed through curves; replacing two existing two-track bridges and adding two new adjacent rail bridges; and adding a new passenger rail bypass (flyover bridge) to remove conflicts between freight and passenger trains. The project does not include additional passenger rail service. All project improvements are located within existing CSXT/VDOT right-of-way. On January 13, 2020, FHWA signed the NEPA Concurrence Form for preparation of a Categorical Exclusion for the Franconia 3rd Track Project.

**Project Location:**

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/38.72384444264843N77.20143946640115W>



Counties: Fairfax, VA

---

## Endangered Species Act Species

There is a total of 2 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

- 
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

## Mammals

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/9045">https://ecos.fws.gov/ecp/species/9045</a>	Threatened

## Flowering Plants

NAME	STATUS
Small Whorled Pogonia <i>Isotria medeoloides</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/1890">https://ecos.fws.gov/ecp/species/1890</a>	Threatened

## Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

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# USFWS National Wildlife Refuge Lands And Fish Hatcheries

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS OR FISH HATCHERIES WITHIN YOUR PROJECT AREA.

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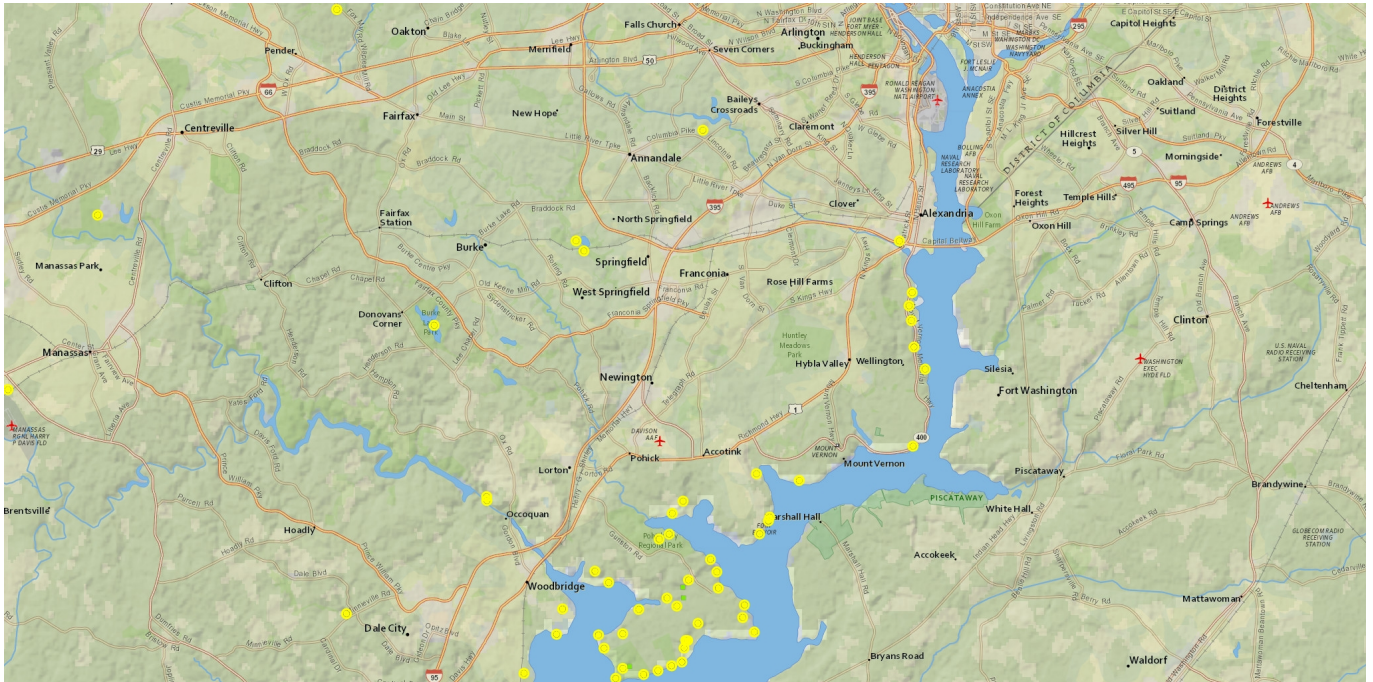
## **Step 6 Attachment**

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### **Center for Conservation Biology (CCB) Mapping for Bald Eagles**



# CCB Mapping Portal



**Layers:** VA Eagle Nest Locator, VA Eagle Nest Buffers, Eagle Roosts, Eagle Roost Buffers, Eagle Roost Polygons

**Map Center [longitude, latitude]:** [-77.15663909912108, 38.7323933028728]

**Map Link:**

[https://ccbbirds.org/maps/#layer=VA+Eagle+Nest+Locator&layer=VA+Eagle+Nest+Buffers&layer=Eagle+Roosts&layer=Eagle+Roost+Buffers&layer=Eagle+Roost+Polygons&zoom=12&lat=38.7323933028728&lng=-77.15663909912108&legend=legend\\_tab\\_4ca7337c-c07d-11e5-93bc-0ecfd53eb7d3&base=NatGeo+World+Map+%28ESRI%29](https://ccbbirds.org/maps/#layer=VA+Eagle+Nest+Locator&layer=VA+Eagle+Nest+Buffers&layer=Eagle+Roosts&layer=Eagle+Roost+Buffers&layer=Eagle+Roost+Polygons&zoom=12&lat=38.7323933028728&lng=-77.15663909912108&legend=legend_tab_4ca7337c-c07d-11e5-93bc-0ecfd53eb7d3&base=NatGeo+World+Map+%28ESRI%29)

**Report Generated On:** 03/05/2020

The Center for Conservation Biology (CCB) provides certain data online as a free service to the public and the regulatory sector. CCB encourages the use of its data sets in wildlife conservation and management applications. These data are protected by intellectual property laws. All users are reminded to view the [Data Use Agreement](#) to ensure compliance with our data use policies. For additional data access questions, view our [Data Distribution Policy](#), or contact our Data Manager, Marie Pitts, at [mlpitts@wm.edu](mailto:mlpitts@wm.edu) or 757-221-7503.

Report generated by [The Center for Conservation Biology Mapping Portal](#).

To learn more about CCB visit [ccbbirds.org](http://ccbbirds.org) or contact us at [info@ccbbirds.org](mailto:info@ccbbirds.org)

## **Step 7b Attachment**

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### **NLEB Determination**



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Virginia Ecological Services Field Office  
6669 Short Lane  
Gloucester, VA 23061-4410  
Phone: (804) 693-6694 Fax: (804) 693-9032  
<http://www.fws.gov/northeast/virginiafield/>



IPaC Record Locator: 605-20643033

March 05, 2020

Subject: Consistency letter for the 'Franconia 3rd Track' project (TAILS 05E2VA00-2020-R-1868) under the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat.

To whom it may concern:

The U.S. Fish and Wildlife Service (Service) has received your request to verify that the **Franconia 3rd Track** (Proposed Action) may rely on the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 *et seq.*).

Based on the information you provided (Project Description shown below), you have determined that the Proposed Action will have **no effect** on the endangered Indiana bat (*Myotis sodalis*) or the threatened Northern long-eared bat (*Myotis septentrionalis*). If the Proposed Action is not modified, **no consultation is required for these two species**.

**For Proposed Actions that include bridge/structure removal, replacement, and/or maintenance activities:** If your initial bridge/structure assessments failed to detect Indiana bats, but you later detect bats during construction, please submit the Post Assessment Discovery of Bats at Bridge/Structure Form (User Guide Appendix E) to this Service Office. In these instances, potential incidental take of Indiana bats may be exempted provided that the take is reported to the Service.

If the Proposed Action may affect any other federally-listed or proposed species and/or designated critical habitat, additional consultation between the lead Federal action agency and this Service Office is required. If the proposed action has the potential to take bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act may also be required. In either of these circumstances, please advise the lead Federal action agency accordingly.



The following species may occur in your project area and **are not** covered by this determination:

- Small Whorled Pogonia, *Isotria medeoloides* (Threatened)

## Project Description

The following project name and description was collected in IPaC as part of the endangered species review process.

### Name

Franconia 3rd Track

### Description

The proposed project will primarily add a third mainline rail track through 8 miles of an existing two-track corridor, as well as: shifting tracks to increase speed through curves; replacing two existing two-track bridges and adding two new adjacent rail bridges; and adding a new passenger rail bypass (flyover bridge) to remove conflicts between freight and passenger trains. The project does not include additional passenger rail service. All project improvements are located within existing CSXT/VDOT right-of-way. On January 13, 2020, FHWA signed the NEPA Concurrence Form for preparation of a Categorical Exclusion for the Franconia 3rd Track Project.

---

## Determination Key Result

Based on the information you provided, you have determined that the Proposed Action will have no effect on the endangered Indiana bat and/or the threatened Northern long-eared bat. Therefore, no consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended 16 U.S.C. 1531 *et seq.*) is required for these two species.

## Qualification Interview

1. Is the project within the range of the Indiana bat<sup>[1]</sup>?

[1] See [Indiana bat species profile](#)

**Automatically answered**

No

2. Is the project within the range of the Northern long-eared bat<sup>[1]</sup>?

[1] See [Northern long-eared bat species profile](#)

**Automatically answered**

Yes

3. Which Federal Agency is the lead for the action?

*B) Federal Railroad Administration (FRA)*

4. Are *all* project activities limited to non-construction<sup>[1]</sup> activities only? (examples of non-construction activities include: bridge/abandoned structure assessments, surveys, planning and technical studies, property inspections, and property sales)

[1] Construction refers to activities involving ground disturbance, percussive noise, and/or lighting.

No

5. Does the project include *any* activities that are **greater than** 300 feet from existing road/rail surfaces<sup>[1]</sup>?

[1] Road surface is defined as the actively used [e.g. motorized vehicles] driving surface and shoulders [may be pavement, gravel, etc.] and rail surface is defined as the edge of the actively used rail ballast.

No

---

6. Does the project include *any* activities **within** 0.5 miles of a known Indiana bat and/or NLEB hibernaculum<sup>[1]</sup>?

[1] For the purpose of this consultation, a hibernaculum is a site, most often a cave or mine, where bats hibernate during the winter (see suitable habitat), but could also include bridges and structures if bats are found to be hibernating there during the winter.

*No*

7. Is the project located **within** a karst area?

*No*

8. Is there *any* suitable<sup>[1]</sup> summer habitat for Indiana Bat or NLEB **within** the project action area<sup>[2]</sup>? (includes any trees suitable for maternity, roosting, foraging, or travelling habitat)

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] The action area is defined as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR Section 402.02). Further clarification is provided by the [national consultation FAQs](#).

*No*

9. Does the project include wetland or stream protection activities associated with compensatory wetland mitigation?

*Yes*

10. Does the project include slash pile burning?

*No*

11. Does the project include *any* bridge removal, replacement, and/or maintenance activities (e.g., any bridge repair, retrofit, maintenance, and/or rehabilitation work)?

*Yes*

12. Is there *any* suitable habitat<sup>[1]</sup> for Indiana bat or NLEB **within** 1,000 feet of the bridge? (includes any trees suitable for maternity, roosting, foraging, or travelling habitat)

[1] See the Service's current [summer survey guidance](#) for our current definitions of suitable habitat.

*No*

---

13. Does the project include the removal, replacement, and/or maintenance of *any* structure other than a bridge? (e.g., rest areas, offices, sheds, outbuildings, barns, parking garages, etc.)

No

14. Will the project involve the use of **temporary** lighting *during* the active season?

No

15. Will the project install new or replace existing **permanent** lighting?

No

16. Does the project include percussives or other activities (**not including tree removal/trimming or bridge/structure work**) that will increase noise levels above existing traffic/background levels?

Yes

17. Will the activities that use percussives (**not including tree removal/trimming or bridge/structure work**) and/or increase noise levels above existing traffic/background levels be conducted *during* the active season<sup>[1]</sup>?

[1] Coordinate with the local Service Field Office for appropriate dates.

No

18. Are *all* project activities that are **not associated with** habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives, limited to actions that DO NOT cause any additional stressors to the bat species?

Examples: lining roadways, unlighted signage, rail road crossing signals, signal lighting, and minor road repair such as asphalt fill of potholes, etc.

Yes

19. Will the project raise the road profile **above the tree canopy**?

No

20. Is the location of this project consistent with a No Effect determination in this key?

**Automatically answered**

*Yes, because the project action area is not within suitable Indiana bat and/or NLEB summer habitat and is outside of 0.5 miles of a hibernaculum.*

---

21. Is the bridge removal, replacement, or maintenance activities portion of this project consistent with a No Effect determination in this key?

**Automatically answered**

*Yes, because the bridge is more than 1,000 feet from the nearest suitable habitat and is therefore considered unsuitable for use by bats*

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## **Determination Key Description: FHWA, FRA, FTA Programmatic Consultation For Transportation Projects Affecting NLEB Or Indiana Bat**

This key was last updated in IPaC on December 02, 2019. Keys are subject to periodic revision.

This decision key is intended for projects/activities funded or authorized by the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and/or Federal Transit Administration (FTA), which may require consultation with the U.S. Fish and Wildlife Service (Service) under Section 7 of the Endangered Species Act (ESA) for the endangered **Indiana bat** (*Myotis sodalis*) and the threatened **Northern long-eared bat** (NLEB) (*Myotis septentrionalis*).

This decision key should only be used to verify project applicability with the Service's [February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects](#). The programmatic biological opinion covers limited transportation activities that may affect either bat species, and addresses situations that are both likely and not likely to adversely affect either bat species. This decision key will assist in identifying the effect of a specific project/activity and applicability of the programmatic consultation. The programmatic biological opinion is not intended to cover all types of transportation actions. Activities outside the scope of the programmatic biological opinion, or that may affect ESA-listed species other than the Indiana bat or NLEB, or any designated critical habitat, may require additional ESA Section 7 consultation.

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## **Step 8 Attachment**

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### **Self Certification Letter**





# United States Department of the Interior

## FISH AND WILDLIFE SERVICE



Virginia Field Office  
6669 Short Lane  
Gloucester, VA 23061

Date: March 5, 2020

### Self-Certification Letter

Project Name: Franconia 3rd Track Project

Dear Applicant:

Thank you for using the U.S. Fish and Wildlife Service (Service) Virginia Ecological Services online project review process. By printing this letter in conjunction with your project review package, you are certifying that you have completed the online project review process for the project named above in accordance with all instructions provided, using the best available information to reach your conclusions. This letter, and the enclosed project review package, completes the review of your project in accordance with the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended (ESA). This letter also provides information for your project review under the National Environmental Policy Act of 1969 (P.L. 91-190, 42 U.S.C. 4321-4347, 83 Stat. 852), as amended. A copy of this letter and the project review package must be submitted to this office for this certification to be valid. This letter and the project review package will be maintained in our records.

The species conclusions table in the enclosed project review package summarizes your ESA conclusions. These conclusions resulted in:

- “no effect” determinations for proposed/listed species and/or proposed/designated critical habitat; and/or
- Action may affect the northern long-eared bat; however, any take that may occur as a result of the Action is not prohibited under the ESA Section 4(d) rule adopted for this species at 50 CFR § 17.40(o) [as determined through the Information, Planning, and Consultation System (IPaC) northern long-eared bat assisted determination key]; and/or
- “may affect, not likely to adversely affect” determinations for proposed/listed species and/or proposed/designated critical habitat.

We certify that use of the online project review process in strict accordance with the instructions provided as documented in the enclosed project review package results in reaching the appropriate determinations. Therefore, we concur with the determinations described above for proposed and listed species and proposed and designated critical habitat. Additional coordination with this office is not needed.

Candidate species are not legally protected pursuant to the ESA. However, the Service encourages consideration of these species by avoiding adverse impacts to them. Please contact this office for additional coordination if your project action area contains candidate species.

Should project plans change or if additional information on the distribution of proposed or listed species, proposed or designated critical habitat becomes available, this determination may be reconsidered. This certification letter is valid for 1 year.

Information about the online project review process including instructions and use, species information, and other information regarding project reviews within Virginia is available at our website [http://www.fws.gov/northeast/virginiafield/endspecies/project\\_reviews.html](http://www.fws.gov/northeast/virginiafield/endspecies/project_reviews.html). If you have any questions, please contact Troy Andersen of this office at (804) 824-2428.

Sincerely,

A handwritten signature in blue ink that reads "Cynthia A. Schulz". The signature is written in a cursive style and is placed on a light blue rectangular background.

Cindy Schulz  
Field Supervisor  
Virginia Ecological Services

Enclosures - project review package

# **Franconia Third Track Project**

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## **Species Conclusion Table**

**Species Conclusions Table**
**Project Name: Franconia Third Track Project**
**Date: Official Species List Obtained February 5, 2020, Updated May 14, 2020 and August 18, 2020**

Species / Resource Name	Conclusion	ESA Section 7 Determination	Notes / Documentation
Northern Long-eared Bat <i>Threatened</i>	No effect	No effect	<i>Per Step 7b:</i> Per the assisted determination key for the NLEB 4(d) rule available from the online IPaC regulatory review process, received a consistency letter showing no effect. Notwithstanding, DRPT commits to the voluntary conservation measures for this species.
Rusty Patched Bumble Bee <i>Endangered</i>	Species not present	No effect	<i>Per Step 4 Habitat Assessment:</i> Species not known to occur in project county. Notwithstanding, DRPT commits to the voluntary conservation measures for this species (see Step 2).
Small Whorled Pogonia <i>Threatened</i>	No suitable habitat present	No effect	<i>Per Step 4 Habitat Assessment:</i> There are records of this species occurring in the Accotink Creek-Gunston Cove and Accokeek Creek watersheds, which are crossed by the project area. However, the existing CSXT/VDOT right-of-way does not provide quality Small Whorled Pogonia habitat.
Critical Habitat	No critical habitat present	No effect	<i>Per Official Species List (Step 2).</i>
Bald Eagle	Species not present	No effect	<i>Per Step 6 Bald Eagles:</i> There are no bald eagle roosts and no active bald eagle nests, or their buffer zones, in the project action area. Notwithstanding, DRPT commits to developing and implementing appropriate mitigation measures for threatened and endangered species, including Time of Year (TOY) construction restrictions specific for the bald eagle.