

# NLEB Interim Consultation Framework and Determination Key

Summary and Notes

April 12, 2023

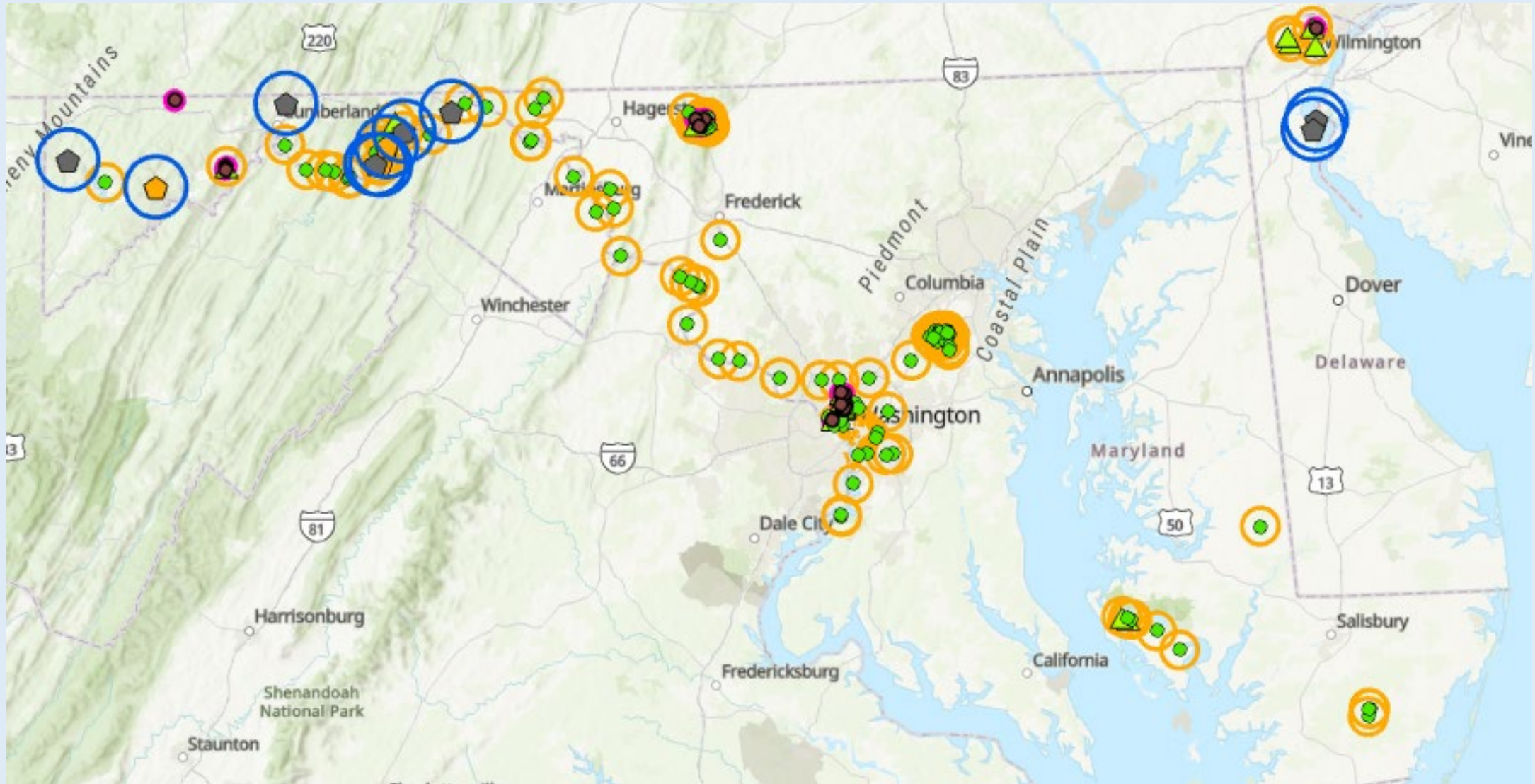
U.S. Fish and Wildlife Service  
Chesapeake Bay Field Office



# Overview of process

- Start with IPaC: If NLEB on Species List, eligible to use NLEB Rangewide Dkey
  - Provides determination of “no effect”, “not likely to adversely affect”, or “may effect”
- Depending on outcome of Dkey, next step is reach out to Field Office if needed, potentially complete Interim Consultation Framework
- Potential for take is determined by project overlap with bat presence buffers
  - 5 miles around hibernacula, 1.5 miles around maternity roosts, 3 miles around acoustic or mist net captures

# Reasonable Certainty Map



# Non-Federal Projects

- Dkey will apply (Through April 1, 2024)
- Will get consistency letter
- Interim Framework does not apply
  - If “may affect”, can use interim voluntary habitat modification guidance

# Federal Actions

- No Effect – No bat habitat and/or no activities that harm bats (i.e. no forest clearing)
- NLAA
  - Survey Results = No Bats (activities don't matter)
  - Bats Present, but no activities that harm bats
  - Outside of known buffer zone (activities don't matter)
- May Affect (bats present based on known buffer zone)
  - Bats Present, has activities that may harm bats - go to Interim Framework

# May Affect Next Steps

- Any May Affect Determination from Dkey
  - Bats Present (project in buffer zones) and activities that may harm bats
    - Reach out to FO if any questions
    - Can use Interim Framework
- Interim Framework – template biological assessment, provides template biological opinion with incidental take coverage
- Certain projects not eligible for Interim Framework- must go through Traditional Consultation with FO

# Projects not considered under the Interim Framework

- Projects that are not compatible with the Interim Framework
  - Occurs within 0.25 miles (0.4 km) of known NLEB hibernacula
  - Disruption or disturbance of bats during hibernation
  - Physical or other alteration of hibernacula's environment or entrance at any time of year
  - Tree clearing activities within 0.25 miles (0.4 km) of a known NLEB hibernaculum any time of year
  - Cuts or destroys known, occupied maternity roost trees or any other trees within a 150-foot (45 meter) radius around the known, occupied maternity tree during the pup season (June 1 to July 31)

# Projects not Considered under the Interim Consultation Framework (cont.)

- Purposeful take of NLEBs
- Intentional Exclusion of NLEBs from Buildings designed for human entry or modifications of buildings designed for human entry when NLEBs are present
- Wind facility development or wind turbine operation
- Broad-scale aerial applications of pesticides over suitable forested habitat

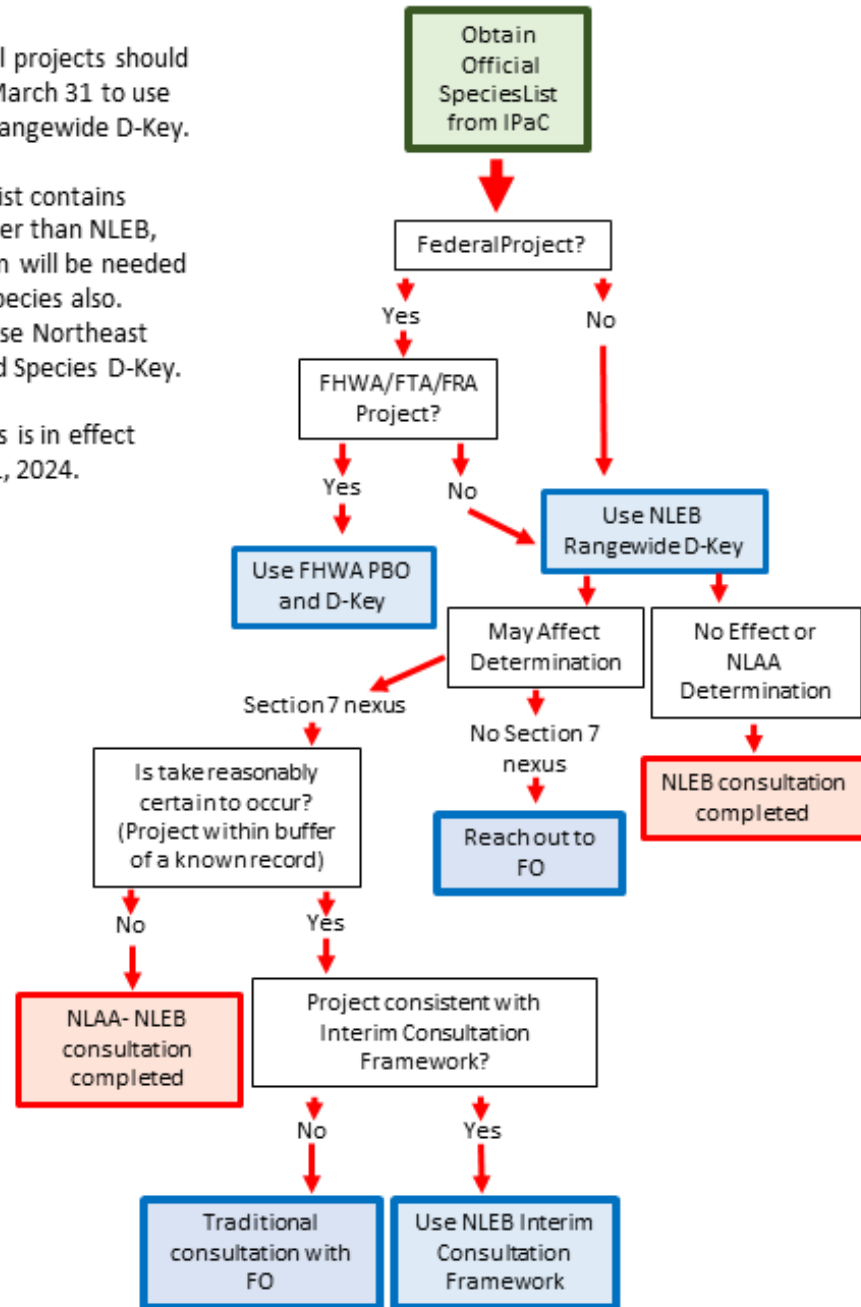


**Notes:**

Non-federal projects should wait until March 31 to use the NLEB Rangewide D-Key.

If Species List contains species other than NLEB, consultation will be needed for those species also. Option to use Northeast Endangered Species D-Key.

This process is in effect until April 1, 2024.



**Known Record Buffers:**  
5 miles around hibernacula

1.5 miles around known roost trees

3 miles around acoustic or mist net detections

# Projects can Proceed while BO and ITS are developed If Consistent with Interim Consultation Framework

- Section 7(d) prohibits Federal agencies and permit applicants from making any irreversible or irretrievable commitment of resources with respect to agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures
  - Projects that are consistent with the Interim Consultation Framework are not likely to jeopardize the NLEB
  - No need for agencies to formulate or implement any reasonable and prudent alternatives for actions consistent with the framework
  - Will not add reasonable and prudent measures or terms and conditions to the project specific ITS that are not already listed in the BO and ITS Form
  - Action agency will report any incidental take to local ES FO while the BO and ITS are being developed – if monitored and reported, such take will be exempted from Section 9 prohibitions if in compliance with Standing Analysis

# Timeframes

- Only applies to projects where NLEB is the only species.
  - Traditional consultation timelines apply when there are additional species
- Activities that will not be completed by April 1, 2024
  - These projects can consult under the Interim Framework but will have to reinitiate if activities are not completed by April 1, 2024.
- Information is submitted through the BA Form
  - Is sufficient information included to conclude consultation and develop the BO and ITS Form. Has enough site-specific and project-specific information been provided to meet the information standards of section 7(a)(2)
    - Yes – Issue BO and ITS Form within 15 days. Consultation is concluded.
    - No- Request additional information within 15 days. Consultation will conclude 15 days after the Service receives sufficient information.

# Stressors that can result in take

This list can be found in the Interim Consultation Framework document

- Removal of occupied roost trees via the removal of roosting habitat<sup>[1]</sup> during the active season.
  - Removal of occupied roost trees via the removal of roosting habitat during the maternity season.
  - Removal of occupied roost trees via the removal of roosting habitat during the swarming or staging season.
  - Removal of occupied roost trees via the removal of roosting habitat during the cold winter months (December 15- February 15) in areas where the NLEB may be active year-round, which is the Southeast Coastal Plain from the James River in Virginia south to the border of Georgia and the species' entire range in Louisiana.
  - Removal of unoccupied roost trees in maternity areas via the permanent removal of roosting habitat during the inactive season. This does not apply to forest management activities.
  - Disturbance associated with human activities (e.g., noise, exhaust, vibration, detonations, military aircraft, etc.) occurring during the active season that is significant enough to result in result in NLEBs fleeing occupied roost tree(s) during the day time.
- <sup>[1]</sup> Roosting habitat consists of forests and woodlots containing potential roost trees, which are defined as live and/or dead trees (i.e., snags)  $\geq 3$  inches diameter at breast height (dbh) that have exfoliating bark, cracks, crevices, and/or cavities.

# Stressors that can result in take (cont.)

- Prescribed fire conducted during the active season.
- Prescribed fire conducted during the pup season.
- Prescribed fire conducted during the cold winter months (December 15- February 15) in areas where the NLEB may be active year-round.
- Use of military training smoke and obscurants during the active season.
- Work on bridges (maintenance and demolition) and culverts >4ft in diameter (removal and sliplining) where NLEBs are roosting during the active season. Collision risk resulting from construction of new roads within 1,000-ft of documented habitat.
- Use of waste pits and tanks containing water and contaminants during the active season. This can cause harm (death or injury) when NLEBs drink contaminated water or become trapped in waste pits or tanks.

# Stressors that may impact bats but take is not reasonably certain to occur

This list can be found in the Interim Consultation Framework document

- Removal of unoccupied roost trees via the removal of roosting habitat during the inactive season.
- Removal of foraging, swarming, or staging habitat during the inactive season.
- Installation of new lighting sources can cause reduced fitness through altered foraging patterns or increased risk of predation.
- Use of pesticides.
- Water quality alteration can cause temporary effects on water quality and reduce insect populations.
- Work on bridges (maintenance and demolition) and culverts >4ft in diameter (removal and sliplining) during the inactive season that renders a structure unsuitable for roosting.