



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Ecological Services, Eastern North Carolina Field Office
3916 Sunset Ridge Rd.
Raleigh, North Carolina 27607

January 22, 2025

Yolonda Jordan
Division Administrator
Federal Highway Administration
310 New Bern Avenue, Suite 410
Raleigh, NC 27601

Tommy Fennel
Chief, Regulatory Division
U.S. Army Corps of Engineers
69 Darlington Avenue
Wilmington, NC 28403-1343

Subject: Revision to Programmatic Biological Opinion: Bridge and Culvert Replacement/Repair/ Rehabilitation Effects on Carolina Madtom and Neuse River Waterdog in NCDOT Divisions 2, 4, 5, and 7; FWS Log #: 04EN2000-2020-FC-0681

Dear Ms. Jordan and Mr. Fennel:

On May 6, 2020, the U.S. Fish and Wildlife Service (Service) issued *Programmatic Conference Opinion: Bridge and Culvert Replacement/Repair/ Rehabilitation Effects on Carolina Madtom and Neuse River Waterdog in NCDOT Divisions 2, 4, 5, and 7*. The Service subsequently adopted the Programmatic Conference Opinion as a Programmatic Biological Opinion (PBO) on August 3, 2021 after publication of the final rule for listing the Carolina Madtom as a federally endangered species and the Neuse River Waterdog as a federally threatened species. The PBO is still currently in effect.

To streamline the use of this PBO and to utilize the best available scientific information, the Service, your respective agencies, and the North Carolina Department of Transportation have all agreed to revise the Programmatic Methodology language of Section 2.7 in the PBO. The term “identified stream reach” shall be replaced with “current element occurrence”. Attached is a revised Section 2.7 with the new language indicated in red. The associated protocol flowcharts depicted in Appendices B1-B3 are also revised to reflect this change and are attached for your convenience. If you have any questions regarding this revision to the PBO, please contact Gary Jordan at gary_jordan@fws.gov.

Sincerely,

Jennifer M. Archambault, Ph.D.
Acting Field Supervisor

Enclosures

Electronic copy provided to:

Donnie Brew, FHWA, Raleigh, NC
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Eric Alsmeyer, USACE, Wake Forest, NC
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Travis Wilson, NCWRC, Creedmoor, NC

2.7. Programmatic Methodology

The Action evaluated in this PCO includes NCDOT bridge replacements/repairs/rehabilitations, culvert replacements/repairs/extensions, and the bridge and culvert construction portions of road widening projects with a federal nexus in NCDOT Divisions 2, 4, 5 and 7 that are scheduled to be under construction during a ten-year period beginning June 2020. For purposes of this PCO, pipes are considered as culverts. Projects that involve replacing an existing bridge with a culvert in areas which are likely to adversely affect the Carolina Madtom or Neuse River Waterdog are excluded from this conference (see Appendix B3). Furthermore, bridge replacements on streams that cannot be spanned with up to a single 120-foot permanent span will require additional review and may require a separate consultation/conference. Widening projects that run closely parallel to streams occupied by Carolina Madtom or Neuse River Waterdog may not qualify to use this PCO. If questions arise as to the applicability of the PCO for a specific project, NCDOT will request guidance from the Service as to the project's eligibility. The Service will respond to such requests within 30 days. Also, road widening projects with bridge/culvert components that also include a new location road component are excluded from this PCO unless the new location portion does not cross any streams which may affect Carolina Madtom or Neuse River Waterdog.

This programmatic methodology assumes suitable habitat is present. If no suitable habitat is present, the appropriate biological conclusion is "no effect" and no further evaluation is needed. This programmatic process is an optional process and does not preclude individual project review if that is in the interest of the FHWA and USACE.

If the above criteria are met, the project may be evaluated using one of the three protocols described below. These protocols are intended to flow in a step-by-step manner as depicted by the flowcharts in Appendices B1-B3. Integral to these protocols are the following terms:

IPaC – The Service's Information for Planning and Consultation project planning tool found at <https://ipac.ecosphere.fws.gov/>. The project planning tool is used to draw a polygon of the action area to develop a customized list of federally listed or proposed listed species and critical habitats that may be affected by a project.

Current Element Occurrence – The North Carolina Natural Heritage Program (NCNHP) collects information on occurrences of rare plants, animals, natural communities, and animal assemblages. Collectively, these are referred to as "elements," and the locations of these elements are referred to as "element occurrences" (EOs). The NCNHP maintains a list of EOs for the species covered in this PBO with GIS layers depicting the list. The EOs are categorized as either "current" or "historical." Typically, historical EOs have not had an observation of that species in that area within the past ~20 years, and current EOs have had an observation of that species within the past ~20 years. The NCNHP updates the data on their Data Explorer webpage quarterly, so it is possible that some current EOs are added, while others may be recategorized to the historical status throughout the year.

In-Lieu Fee (ILF) Program – a compensatory mitigation program where monetary payments are remitted to a fund for conservation. All ILF payments will go to and be administered by the N.C. Nongame Aquatic Species Fund. These funds will be used for the conservation and recovery of Carolina Madtom and Neuse River Waterdog (see Section 4.3.4 for examples and benefits of the ILF program). A multi-agency/organization group of species experts will determine how to expend the funds. For individual bridge or culvert projects that may affect, and are likely to adversely affect (MA-LAA) Carolina Madtom or Neuse River Waterdog, the NCDOT will remit \$25,000 for each bridge and \$10,000 for each culvert (including pipe structures ≥ 72 inches in diameter). Pipe structures < 72 inches in diameter do not require payment, but other conservation measures apply.

For purposes of this PCO, the procedure for NCDOT will be to go to the IPaC webpage (<https://ipac.ecosphere.fws.gov/>) and upload a shapefile of the footprint of the project (or draw the area on the map). A list of federally listed/proposed species for that area will be returned. If Carolina Madtom or Neuse River Waterdog is identified as potentially being present, then NCDOT will review the **current element occurrences** for Carolina Madtom and Neuse River Waterdog. A direct comparison between those **current element occurrences** should be made with the footprint of the proposed project to determine if the project will intersect a **current element occurrence** or a tributary within 0.25 mile of such. Individual projects will be evaluated using one of the following protocols.

Protocols

Bridge Replacement with Bridge/Repair/Rehabilitation (Appendix B1)

If the project has a federal nexus (federal funding, federal permit, or federal land), then Section 7 applies. If IPaC does not identify Carolina Madtom or Neuse River Waterdog as potentially being present, then there is **No Effect**. If IPaC does identify Carolina Madtom or Neuse River Waterdog as potentially being present, but no in-channel work or no earthwork will occur within 100 feet of the stream bank, then the biological conclusion is **MA-NLAA** (May Affect-Not Likely to Adversely Affect). If there will be in-channel or earthwork within 100 feet of the stream bank and the project intersects a **current element occurrence** or a tributary within 0.25 mile of such, or if the project occurs within designated/proposed critical habitat, then assume presence and **MA-LAA** (May Affect-Likely to Adversely Affect). If the project does not intersect a **current element occurrence** nor is it within designated/proposed critical habitat, then surveys may be conducted or presence assumed. If there is no survey conducted, then presence is assumed and a **MA-LAA** conclusion made. If a survey is conducted, note if Carolina Madtom or Neuse River Waterdog were observed. If so, then the biological conclusion is **MA-LAA**. If Carolina Madtom or Neuse River Waterdog were not observed, then the biological conclusion is **MA-NLAA**. In all cases where a **MA-LAA** biological conclusion is reached, an ILF payment will be paid. In all cases where a **MA-NLAA** biological conclusion is reached, concurrence with that conclusion is automatically provided by the Service (see Section 3).

Culvert Replacement or Extension (Appendix B2)

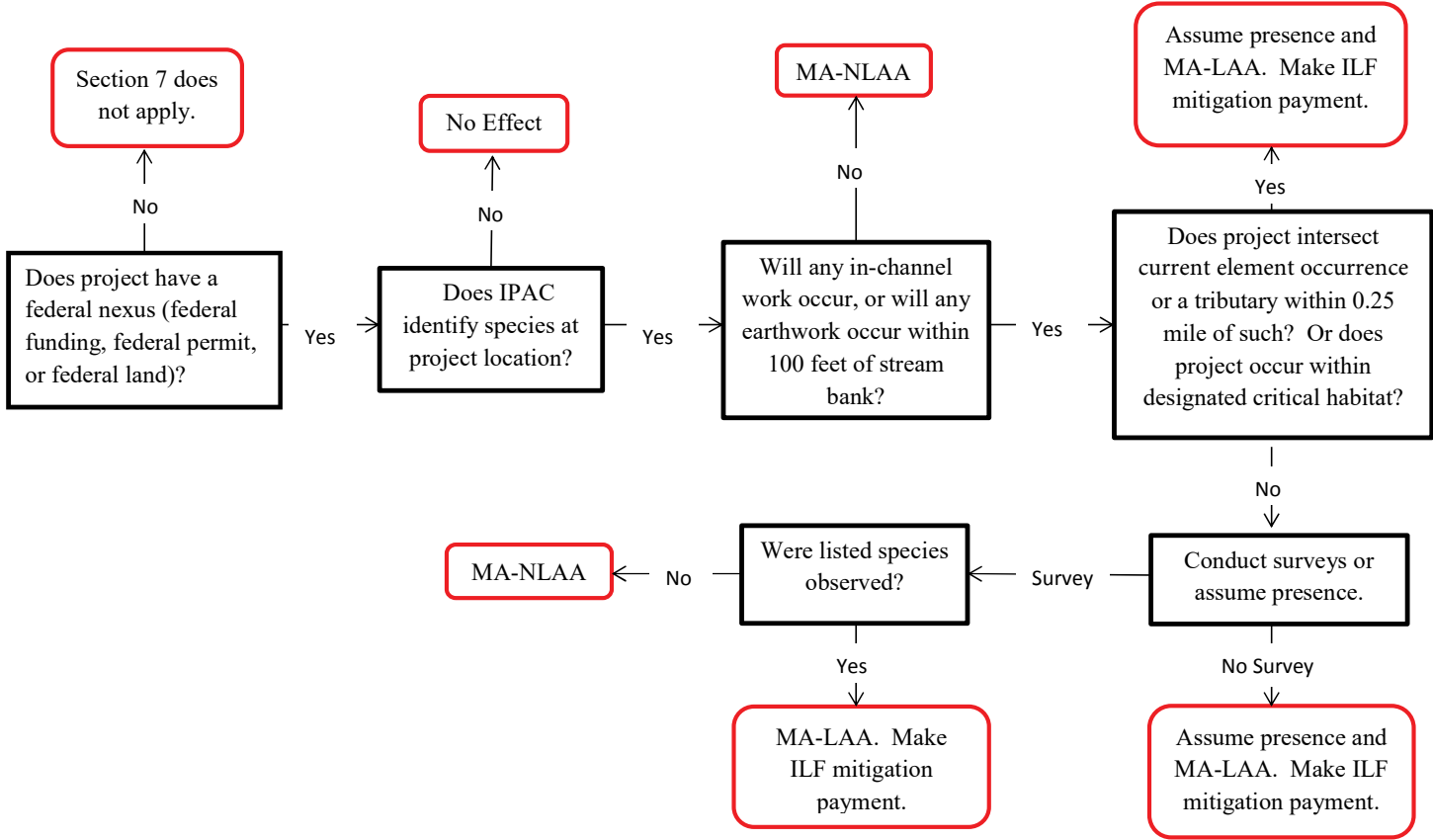
If the project has a federal nexus (federal funding, federal permit or federal land), then Section 7 applies. If IPaC does not identify Carolina Madtom or Neuse River Waterdog as potentially being present, then there is **No Effect**. If IPaC does identify Carolina Madtom or Neuse River Waterdog as potentially being present and intersects a **current element occurrence** or a

tributary within 0.25 mile of such, or if the project occurs within designated/proposed critical habitat, then presence is assumed and a **MA-LAA** biological conclusion is made. If the project does not intersect a **current element occurrence** or is not within designated/proposed critical habitat, then the biological conclusion is **MA-NLAA**. When a **MA-LAA** biological conclusion is reached, an ILF payment will be paid. When a **MA-NLAA** biological conclusion is reached, concurrence with that conclusion is automatically provided by the Service (see Section 3).

Bridge to Culvert Replacement (Appendix B3)

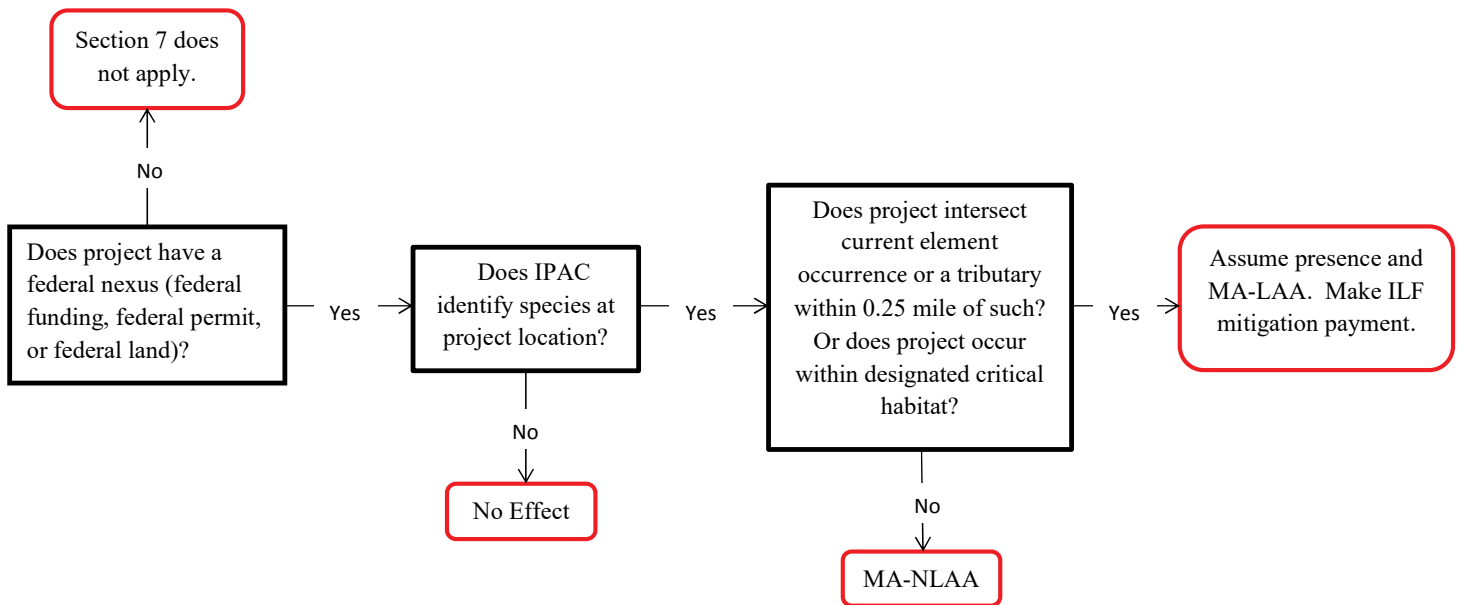
If the project has a federal nexus (federal funding, federal permit, or federal land), then Section 7 applies. If IPaC does not identify Carolina Madtom or Neuse River Waterdog as potentially being present, then there is **No Effect**. If IPaC does identify Carolina Madtom or Neuse River Waterdog as potentially being present and intersects a **current element occurrence** or a tributary within 0.25 mile of such, or if the project occurs within designated/proposed critical habitat, then the programmatic process cannot be used and the Service should be contacted. If the project does not intersect a **current element occurrence** or is not within designated/proposed critical habitat, then a survey is needed. If Carolina Madtom or Neuse River Waterdog are observed, then the programmatic process cannot be used and the Service should be contacted. If Carolina Madtom or Neuse River Waterdog were not observed, then the biological conclusion is **MA-NLAA** and concurrence with that conclusion is automatically provided by the Service (see Section 3).

**Appendix B1. Section 7 Programmatic Process – Bridge Replacement with Bridge/Repair/
Rehabilitation Divisions 2, 4, 5, and 7 for Carolina Madtom and Neuse River Waterdog**



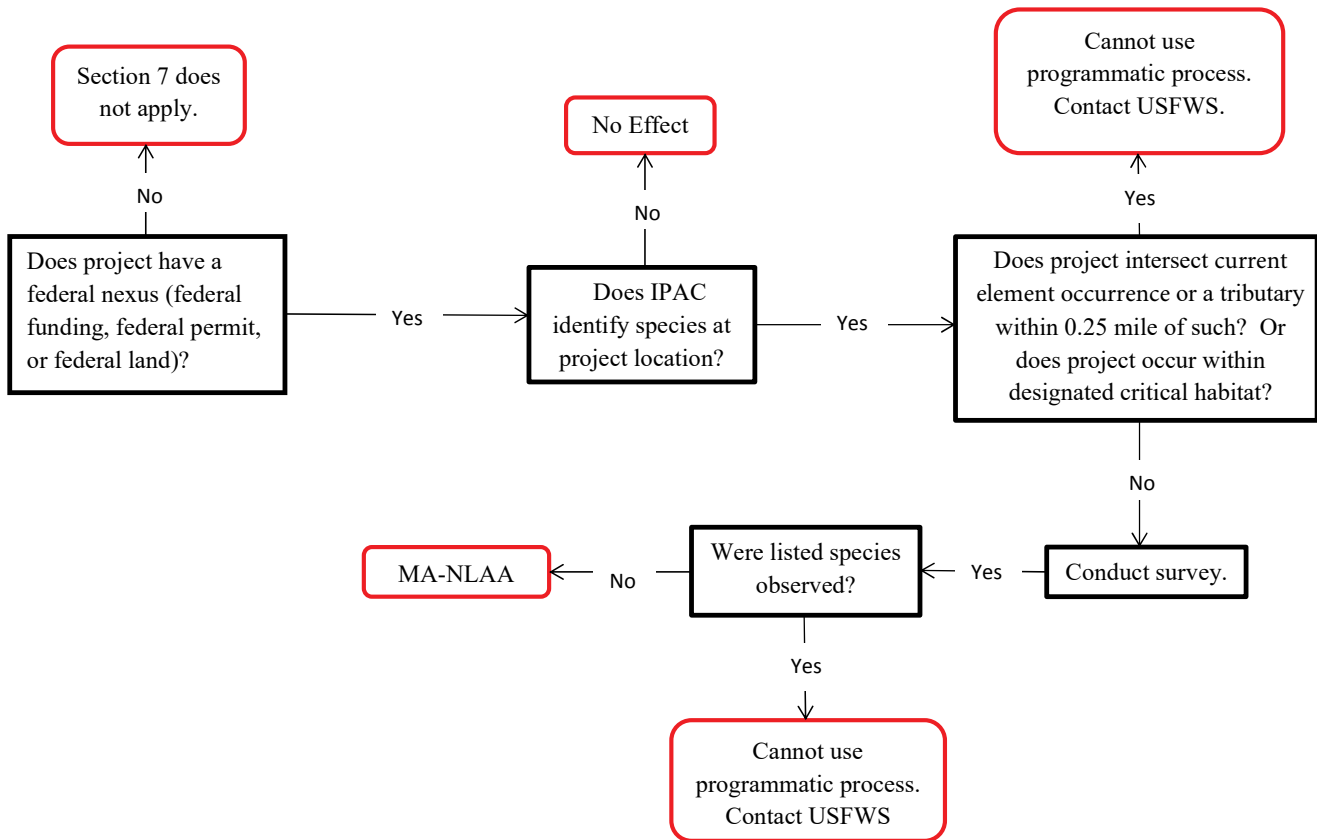
*This programmatic process assumes that all normal BMPs and on-site conservation measures regarding design, construction, and erosion control are implemented.

**Appendix B2. Section 7 Programmatic Process – Culvert Replacement/Repair/Extension
Divisions 2, 4, 5, and 7 for Carolina Madtom and Neuse River Waterdog**



*This programmatic process assumes that all normal BMPs and on-site conservation measures regarding design, construction, and erosion control are implemented.

**Appendix B3. Section 7 Programmatic Process – Bridge to Culvert Replacement
Divisions 2, 4, 5, and 7 for Carolina Madtom and Neuse River Waterdog**



*This programmatic process assumes that all normal BMPs and on-site conservation measures regarding design, construction, and erosion control are implemented.