



Endangered Species Act Programmatic Consultation Agreement

Red-cockaded Woodpecker

This letter agreement provides a programmatic approach to address project effects to the Red-cockaded Woodpecker under the Endangered Species Act for projects that “may affect, but are not likely to adversely affect” the species.



United States Department of the Interior

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Mr. Carlos Swonke
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Environmental Affairs Division
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Consultation Number 02ETAU00-2017-I-0091

Dear Mr. Swonke:

Thank you for your letter dated October 20, 2016, in which the Texas Department of Transportation (TxDOT) is requesting informal programmatic project-level consultation for future minor road improvement projects within the range of the red-cockaded woodpecker (*Picoides borealis*) (RCW), a species listed pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), in east Texas. TxDOT has submitted documentation to the U.S. Fish and Wildlife Service (Service) requesting our concurrence on future road improvement projects which meet the criteria described in the programmatic BA. TxDOT has determined that these projects “may affect, but are not likely to adversely affect” the RCW.

Section 7 of the Act requires that all Federal agencies consult with the Service to ensure that the actions authorized, funded, or carried out by such agencies do not jeopardize the continued existence of any threatened or endangered species or adversely modify or destroy designated critical habitat of such species. The Federal Highway Administration (FHWA) assigned responsibility for all section 7 consultations associated with National Environmental Policy Act (NEPA) Categorical Exclusions to TxDOT in an MOU dated February 12, 2014, effectively making TxDOT the Federal agency associated with this proposed project (23 U.S.C. 326).

Since 2013, TxDOT has conducted informal consultations with the Service on 11 highway projects within the range of the RCW in Texas. The consultations were for projects with minor disturbances outside of the existing road footprint. Typical projects included the modernization of roads, including; resurfacing, seal coats, restoration, rehabilitation, reconstruction, adding shoulders, or auxiliary lanes, and installing safety/traffic operation improvements, such as adding safety end treatments, bridge rails, or traffic signs.

The projects that would be authorized under this programmatic consultation are similar to the types of projects which have been previously consulted on. A detailed description of each is included in the BA for the programmatic. The following routine transportation improvements would be covered under the programmatic consultation, as long as they do not exceed any requirements detailed in the BA and all proposed conservation measures are fully implemented. These types of projects may result in the removal of small amounts of vegetation typically found



in association with RCW habitat, or may result in minor, temporary, disruption of normal nesting, roosting, or foraging behavior, due to noise or construction-related activities. The types of projects to be covered by the programmatic consultation include:

- Road resurfacing, including, but not limited to, seal coats and overlays;
- Crack sealing;
- Rehabilitating the existing pavement;
- Roadway widening that does not add capacity;
- Bridge construction or replacement, on the same or adjacent alignment;
- Culvert extensions and the installation of safety end treatments;
- Metal beam guard fence and bridge rail installation or replacement;
- Miscellaneous activities, including: adding or replacing signs, traffic signals, or constructing/rehabilitating driveways or turnouts;
- Tree trimming;
- Project specific locations (PSLs); and,
- Installation of pavement markings or painted striping.

TxDOT will conduct field reconnaissance surveys for all projects utilizing the programmatic consultation, to determine if suitable RCW nesting habitat occurs within 400 feet of the project area. Transect spacing may vary, but the distance between transects will not exceed 300 feet, which will allow for visual inspection of all suitable trees for evidence of cavity excavation. Transects will be oriented in a north-south direction. Within National Forest boundaries, where RCW are actively managed and/or monitored, previously established data will be used to determine cluster boundaries. In areas where cluster boundaries have not been determined, TxDOT will establish the cluster boundary by placing a 200-foot buffer around any active cavity trees within the survey area.

The programmatic consultation includes criteria which must be met by any project using the programmatic for informal section 7 consultation concurrence. Construction is acceptable on projects where active RCW clusters are located within 200 feet of the project area, only if no mature pine trees would be removed or if tree removal includes only immature pines, less than 10-inch diameter-at-breast-height (dbh) or if only hardwood trees would be removed.

It is sometimes necessary to remove mature (greater than or equal to 10-inch dbh) pine trees from the ROW for safety or construction reasons, which can sometimes be beneficial if the stand is overstocked. The removal of mature pines would be allowable under this programmatic consultation only if the following criteria are met.

- All trees must be visually surveyed to verify they do not contain any RCW cavities.
- The tree removal would not reduce the average basal area of the stand below a basal area of 60. A stand is defined as the boundary around an active RCW cluster and associated 0.5 mile foraging radius.
- TxDOT would initiate a separate consultation for any project where the tree removal would reduce the basal area of the stand below 60.

In addition to the criteria described above, TxDOT is proposing to implement several Voluntary Conservation Measures to minimize potential effects to the RCW for this project. Implementation of these conservation measures is mandatory and any project that cannot implement them fully must be consulted on individually.

The conservation measures include:

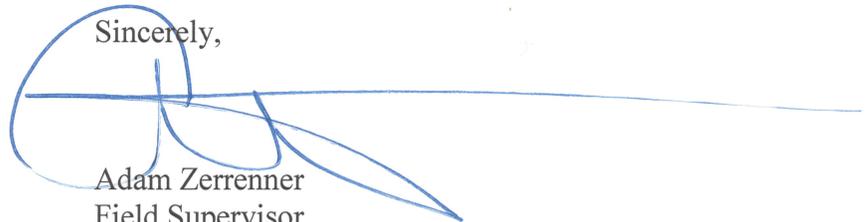
- Stockpile and equipment storage areas and other PSLs would not be placed adjacent to active RCW clusters within 200 feet of the clear ROW.
- TxDOT would avoid work during the RCW breeding season (April 1 to July 31) adjacent to any project area where active RCW cavity trees are located within 200 feet of the ROW.
- TxDOT would not begin work until one hour after sunrise and would cease work one hour before sunset each day where active RCW cavity trees are located within 200 feet of the ROW to ensure that birds are not flushed from their cavities in the morning or prevented from roosting in the evening.

By June 30 of each calendar year, TxDOT would provide the Service with a list of projects completed under this RCW programmatic informal consultation. The list will include the name of the project and a description of the actions taken, the project location, and confirmation that all conservation measures were implemented. TxDOT and the Service would meet on an annual, or as needed, basis to discuss the list of projects covered during the previous year, evaluate and discuss the effectiveness of the programmatic consultation for the RCW, and update consultation procedures or conservation measures, as necessary.

TxDOT has determined that the effects to the RCW from all projects included in the programmatic informal consultation would be insignificant or discountable. Based on the information provided and proper implementation of the above stated conservation measures, we concur with TxDOT's conclusion that the projects associated with the programmatic RCW consultation "may affect, but are not likely to adversely affect" the RCW. Therefore, no further endangered species consultation will be required for these projects unless: 1) the identified action is subsequently modified in a manner that causes an effect on listed species or designated Critical Habitat; 2) new information reveals the identified action may affect federally protected species or designated Critical Habitat in a manner or to an extent not previously considered; or, 3) a new species is listed or Critical Habitat is designated under the Act that may be affected by the identified action.

We appreciate your efforts to conserve this sensitive species. If you have any questions or comments, please contact Robert Allen at 936-569-7981.

Sincerely,



Adam Zerrenner
Field Supervisor
Austin Ecological Services Field Office

cc: Dennis Palafox, TxDOT ENV, Austin, TX (electronic)