

**APPENDIX J**  
**USFWS INFORMATION FOR PLANNING AND CONSULTATION (IPAC)**  
**AND USFWS CONSULTATION**



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Minnesota-Wisconsin Ecological Services Field Office

4101 American Blvd E

Bloomington, MN 55425-1665

Phone: (952) 252-0092 Fax: (952) 646-2873

<http://www.fws.gov/midwest/Endangered/section7/s7process/step1.html>

In Reply Refer To:

October 13, 2021

Consultation Code: 03E19000-2022-SLI-0162

Event Code: 03E19000-2022-E-00556

Project Name: Badger State Solar Project

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

To Whom It May Concern:

This response has been generated by the Information, Planning, and Conservation (IPaC) system to provide information on natural resources that could be affected by your project. The U.S. Fish and Wildlife Service (Service) provides this response under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d), the Migratory Bird Treaty Act (16 U.S.C. 703-712), and the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).

### **Threatened and Endangered Species**

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 may be affected by your proposed project. The species list fulfills the requirement for obtaining a Technical Assistance Letter from the U.S. Fish and Wildlife Service under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. 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. 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.

### Consultation Technical Assistance

Please refer to the Midwest Region [S7 Technical Assistance](#) website for step-by-step instructions for making species determinations and for specific guidance on the following types of projects: projects in developed areas, HUD, CDBG, EDA, pipelines, buried utilities, telecommunications, and requests for a Conditional Letter of Map Revision (CLOMR) from FEMA.

### Using the IPaC Official Species List to Make No Effect and May Affect Determinations for Listed Species

1. If IPaC returns a result of “There are no listed species found within the vicinity of the project,” then project proponents can conclude the proposed activities will have **no effect** on any federally listed species under Service jurisdiction. Concurrence from the Service is not required for **No Effect** determinations. No further consultation or coordination is required. Attach this letter to the dated IPaC species list report for your records. An example ["No Effect" document](#) also can be found on the S7 Technical Assistance website.
2. If IPaC returns one or more federally listed, proposed, or candidate species as potentially present in the action area of the proposed project – other than bats (see below) – then project proponents must determine if proposed activities will have **no effect** on or **may affect** those species. For assistance in determining if suitable habitat for listed, candidate, or proposed species occurs within your project area or if species may be affected by project activities, you can obtain [Life History Information for Listed and Candidate Species](#) through the S7 Technical Assistance website. If no impacts will occur to a species on the IPaC species list (e.g., there is no habitat present in the project area), the appropriate determination is **No Effect**. No further consultation or coordination is required. Attach this letter to the dated IPaC species list report for your records. An example ["No Effect" document](#) also can be found on the S7 Technical Assistance website.
3. Should you determine that project activities **may affect** any federally listed, please contact our office for further coordination. Letters with requests for consultation or correspondence about your project should include the Consultation Tracking Number in the header. Electronic submission is preferred.

### Northern Long-Eared Bats

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Northern long-eared bats occur throughout Minnesota and Wisconsin and the information below may help in determining if your project may affect these species.

This species hibernates in caves or mines only during the winter. In Minnesota and Wisconsin, the hibernation season is considered to be November 1 to March 31. During the active season (April 1 to October 31) they roost in forest and woodland habitats. Suitable summer habitat for northern long-eared bats consists of a wide variety of forested/wooded habitats where they roost, forage, and travel and may also include some adjacent and interspersed non-forested habitats such as emergent wetlands and adjacent edges of agricultural fields, old fields and pastures. This includes forests and woodlots containing potential roosts (i.e., live trees and/or snags  $\geq 3$  inches dbh for northern long-eared bat that have exfoliating bark, cracks, crevices, and/or hollows), as well as linear features such as fencerows, riparian forests, and other wooded corridors. These wooded areas may be dense or loose aggregates of trees with variable amounts of canopy closure. Individual trees may be considered suitable habitat when they exhibit the characteristics of a potential roost tree and are located within 1,000 feet (305 meters) of forested/wooded habitat. Northern long-eared bats have also been observed roosting in human-made structures, such as buildings, barns, bridges, and bat houses; therefore, these structures should also be considered potential summer habitat and evaluated for use by bats. If your project will impact caves or mines or will involve clearing forest or woodland habitat containing suitable roosting habitat, northern long-eared bats could be affected.

Examples of unsuitable habitat include:

- Individual trees that are greater than 1,000 feet from forested or wooded areas,
- Trees found in highly developed urban areas (e.g., street trees, downtown areas),
- A pure stand of less than 3-inch dbh trees that are not mixed with larger trees, and
- A stand of eastern red cedar shrubby vegetation with no potential roost trees.

If IPaC returns a result that northern long-eared bats are potentially present in the action area of the proposed project, project proponents can conclude the proposed activities **may affect** this species **IF** one or more of the following activities are proposed:

- Clearing or disturbing suitable roosting habitat, as defined above, at any time of year,
  - Any activity in or near the entrance to a cave or mine,
  - Mining, deep excavation, or underground work within 0.25 miles of a cave or mine,
  - Construction of one or more wind turbines, or
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- Demolition or reconstruction of human-made structures that are known to be used by bats based on observations of roosting bats, bats emerging at dusk, or guano deposits or stains.

*If none of the above activities are proposed*, project proponents can conclude the proposed activities will have **no effect** on the northern long-eared bat. Concurrence from the Service is not required for **No Effect** determinations. No further consultation or coordination is required. Attach this letter to the dated IPaC species list report for your records. An example "[No Effect](#)" [document](#) also can be found on the S7 Technical Assistance website.

*If any of the above activities are proposed*, please use the northern long-eared bat determination key in IPaC. This tool streamlines consultation under the 2016 rangewide programmatic biological opinion for the 4(d) rule. The key helps to determine if prohibited take might occur and, if not, will generate an automated verification letter. No further review by us is necessary. Please visit the links below for additional information about "may affect" determinations for the northern long-eared bat.

[NLEB Section 7 consultation](#)

[Key to the NLEB 4\(d\) rule for federal actions that may affect](#)

[Instructions for the NLEB 4\(d\) assisted d-key](#)

[Maternity tree and hibernaculum locations by state](#)

### **Other Trust Resources and Activities**

*Bald and Golden Eagles* - Although the bald eagle has been removed from the endangered species list, this species and the golden eagle are protected by the Bald and Golden Eagle Act and the Migratory Bird Treaty Act. Should bald or golden eagles occur within or near the project area please contact our office for further coordination. For communication and wind energy projects, please refer to additional guidelines below.

*Migratory Birds* - The Migratory Bird Treaty Act (MBTA) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Service. The Service has the responsibility under the MBTA to proactively prevent the mortality of migratory birds whenever possible and we encourage implementation of recommendations that minimize potential impacts to migratory birds. Such measures include clearing forested habitat outside the nesting season (generally March 1 to August 31) or conducting nest surveys prior to clearing to avoid injury to eggs or nestlings.

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*Communication Towers* - Construction of new communications towers (including radio, television, cellular, and microwave) creates a potentially significant impact on migratory birds, especially some 350 species of night-migrating birds. However, the Service has developed [voluntary guidelines for minimizing impacts](#).

*Transmission Lines* - Migratory birds, especially large species with long wingspans, heavy bodies, and poor maneuverability can also collide with power lines. In addition, mortality can occur when birds, particularly hawks, eagles, kites, falcons, and owls, attempt to perch on uninsulated or unguarded power poles. To minimize these risks, please refer to [guidelines](#) developed by the Avian Power Line Interaction Committee and the Service. Implementation of these measures is especially important along sections of lines adjacent to wetlands or other areas that support large numbers of raptors and migratory birds.

*Wind Energy* - To minimize impacts to migratory birds and bats, wind energy projects should follow the Service's [Wind Energy Guidelines](#). In addition, please refer to the Service's [Eagle Conservation Plan Guidance](#), which provides guidance for conserving bald and golden eagles in the course of siting, constructing, and operating wind energy facilities.

### **State Department of Natural Resources Coordination**

While it is not required for your Federal section 7 consultation, please note that additional state endangered or threatened species may also have the potential to be impacted. Please contact the Minnesota or Wisconsin Department of Natural Resources for information on state listed species that may be present in your proposed project area.

#### *Minnesota*

[Minnesota Department of Natural Resources - Endangered Resources Review Homepage](#)

Email: [Review.NHIS@state.mn.us](mailto:Review.NHIS@state.mn.us)

#### *Wisconsin*

[Wisconsin Department of Natural Resources - Endangered Resources Review Homepage](#)

Email: [DNRERReview@wi.gov](mailto:DNRERReview@wi.gov)

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We appreciate your concern for threatened and endangered species. Please feel free to contact our office with questions or for additional information.

Attachment(s):

- Official Species List
  - Migratory Birds
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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:

**Minnesota-Wisconsin Ecological Services Field Office**

4101 American Blvd E

Bloomington, MN 55425-1665

(952) 252-0092

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## Project Summary

Consultation Code: 03E19000-2022-SLI-0162

Event Code: Some(03E19000-2022-E-00556)

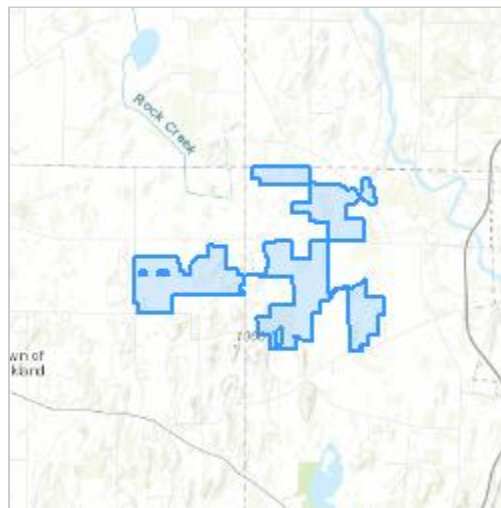
Project Name: Badger State Solar Project

Project Type: POWER GENERATION

Project Description: Badger State Solar proposes to construct, install, operate, and maintain a 149-megawatt photovoltaic Alternating Current solar energy generating facility on a site in the Townships of Jefferson and Oakland, in Jefferson County, Wisconsin. The proposed project is approximately 1,750 acres located on the north and south sides of U.S. Highway 18, approximately 2-miles west of the City of Jefferson and west of State Highway 89. The collector substation would be located in the Primary Development Area.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@42.999731,-88.90936208483262,14z>



Counties: Jefferson County, Wisconsin

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## Endangered Species Act Species

There is a total of 4 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

### Birds

NAME	STATUS
Whooping Crane <i>Grus americana</i> Population: U.S.A. (AL, AR, CO, FL, GA, ID, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, NM, OH, SC, TN, UT, VA, WI, WV, western half of WY) No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/758">https://ecos.fws.gov/ecp/species/758</a>	Experimental Population, Non- Essential

### Insects

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/9743">https://ecos.fws.gov/ecp/species/9743</a>	Candidate

## Flowering Plants

NAME	STATUS
Eastern Prairie Fringed Orchid <i>Platanthera leucophaea</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/601">https://ecos.fws.gov/ecp/species/601</a>	Threatened

## Critical habitats

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

## Migratory Birds

Certain birds are protected under the Migratory Bird Treaty Act<sup>1</sup> and the Bald and Golden Eagle Protection Act<sup>2</sup>.

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described [below](#).

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1. The [Migratory Birds Treaty Act](#) of 1918.
  2. The [Bald and Golden Eagle Protection Act](#) of 1940.
  3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

The birds listed below are birds of particular concern either because they occur on the [USFWS Birds of Conservation Concern](#) (BCC) list or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ [below](#). This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the [E-bird data mapping tool](#) (Tip: enter your location, desired date range and a species on your list). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list, including how to properly interpret and use your migratory bird report, can be found [below](#).

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
Bald Eagle <i>Haliaeetus leucocephalus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. <a href="https://ecos.fws.gov/ecp/species/1626">https://ecos.fws.gov/ecp/species/1626</a>	Breeds Dec 1 to Aug 31
Black Tern <i>Chlidonias niger</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. <a href="https://ecos.fws.gov/ecp/species/3093">https://ecos.fws.gov/ecp/species/3093</a>	Breeds May 15 to Aug 20

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NAME	BREEDING SEASON
<b>Black-billed Cuckoo</b> <i>Coccyzus erythrophthalmus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. <a href="https://ecos.fws.gov/ecp/species/9399">https://ecos.fws.gov/ecp/species/9399</a>	Breeds May 15 to Oct 10
<b>Lesser Yellowlegs</b> <i>Tringa flavipes</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. <a href="https://ecos.fws.gov/ecp/species/9679">https://ecos.fws.gov/ecp/species/9679</a>	Breeds elsewhere
<b>Red-headed Woodpecker</b> <i>Melanerpes erythrocephalus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 10 to Sep 10
<b>Rusty Blackbird</b> <i>Euphagus carolinus</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA	Breeds elsewhere
<b>Short-billed Dowitcher</b> <i>Limnodromus griseus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. <a href="https://ecos.fws.gov/ecp/species/9480">https://ecos.fws.gov/ecp/species/9480</a>	Breeds elsewhere

## Probability Of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read and understand the FAQ "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

### Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum



BCC Rangewide  
(CON)

Rusty Blackbird  
BCC - BCR



Short-billed  
Dowitcher  
BCC Rangewide  
(CON)



Additional information can be found using the following links:

- Birds of Conservation Concern <http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>
- Measures for avoiding and minimizing impacts to birds <http://www.fws.gov/birds/management/project-assessment-tools-and-guidance/conservation-measures.php>
- Nationwide conservation measures for birds <http://www.fws.gov/migratorybirds/pdf/management/nationwidestandardconservationmeasures.pdf>

## Migratory Birds FAQ

**Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.**

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. [Additional measures](#) or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

**What does IPaC use to generate the migratory birds potentially occurring in my specified location?**

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [AKN Phenology Tool](#).

### **What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?**

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go to the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

### **How do I know if a bird is breeding, wintering, migrating or present year-round in my project area?**

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may refer to the following resources: [The Cornell Lab of Ornithology All About Birds Bird Guide](#), or (if you are unsuccessful in locating the bird of interest there), the [Cornell Lab of Ornithology Neotropical Birds guide](#). If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

### **What are the levels of concern for migratory birds?**

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern](#) (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Eagle Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

### **Details about birds that are potentially affected by offshore projects**

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides

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birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the [Diving Bird Study](#) and the [nanotag studies](#) or contact [Caleb Spiegel](#) or [Pam Loring](#).

### **What if I have eagles on my list?**

If your project has the potential to disturb or kill eagles, you may need to [obtain a permit](#) to avoid violating the Eagle Act should such impacts occur.

### **Proper Interpretation and Use of Your Migratory Bird Report**

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the "no data" indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ "Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds" at the bottom of your migratory bird trust resources page.

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## United States Department of the Interior



### FISH AND WILDLIFE SERVICE

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<http://www.fws.gov/midwest/Endangered/section7/s7process/step1.html>

In Reply Refer To:

December 20, 2021

Consultation code: 03E19000-2022-TA-0162

Event Code: 03E19000-2022-E-03427

Project Name: Badger State Solar Project

Subject: Verification letter for the 'Badger State Solar Project' project under the January 5, 2016, Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-eared Bat and Activities Excepted from Take Prohibitions.

Dear Larry Neal:

The U.S. Fish and Wildlife Service (Service) received on December 20, 2021 your effects determination for the 'Badger State Solar Project' (the Action) using the northern long-eared bat (*Myotis septentrionalis*) key within the Information for Planning and Consultation (IPaC) system. This IPaC key assists users in determining whether a Federal action is consistent with the activities analyzed in the Service's January 5, 2016, Programmatic Biological Opinion (PBO). The PBO addresses activities excepted from "take"<sup>[1]</sup> prohibitions applicable to the northern long-eared bat under the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based upon your IPaC submission, the Action is consistent with activities analyzed in the PBO. The 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). Unless the Service advises you within 30 days of the date of this letter that your IPaC-assisted determination was incorrect, this letter verifies that the PBO satisfies and concludes your responsibilities for this Action under ESA Section 7(a)(2) with respect to the northern long-eared bat.

Please report to our office any changes to the information about the Action that you submitted in IPaC, the results of any bat surveys conducted in the Action area, and any dead, injured, or sick northern long-eared bats that are found during Action implementation. If the Action is not completed within one year of the date of this letter, you must update and resubmit the information required in the IPaC key.

This IPaC-assisted determination allows you to rely on the PBO for compliance with ESA Section 7(a)(2) only for the northern long-eared bat. It **does not** apply to the following ESA-protected species that also may occur in the Action area:

- Eastern Prairie Fringed Orchid *Platanthera leucophaea* Threatened
- Monarch Butterfly *Danaus plexippus* Candidate
- Whooping Crane *Grus americana* Experimental Population, Non-Essential

If the Action may affect other federally listed species besides the northern long-eared bat, a proposed species, and/or designated critical habitat, additional consultation between you and this Service office is required. If the Action may disturb bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act is recommended.

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[1]Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct [ESA Section 3(19)].

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## Action Description

You provided to IPaC the following name and description for the subject Action.

### 1. Name

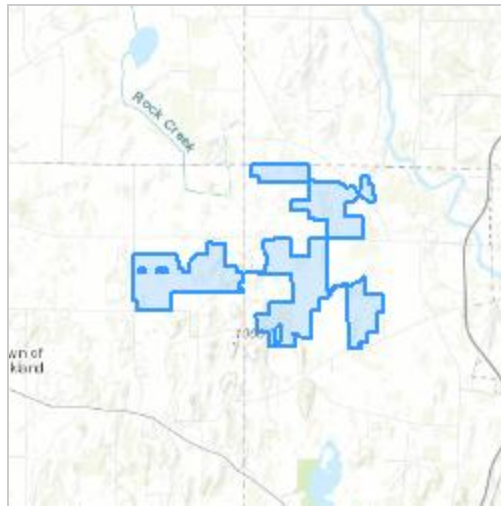
Badger State Solar Project

### 2. Description

The following description was provided for the project 'Badger State Solar Project':

Badger State Solar proposes to construct, install, operate, and maintain a 149-megawatt photovoltaic Alternating Current solar energy generating facility on a site in the Townships of Jefferson and Oakland, in Jefferson County, Wisconsin. The proposed project is approximately 1,750 acres located on the north and south sides of U.S. Highway 18, approximately 2-miles west of the City of Jefferson and west of State Highway 89. The collector substation would be located in the Primary Development Area.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@42.999731,-88.90936208483262,14z>



## Determination Key Result

This Federal Action may affect the northern long-eared bat in a manner consistent with the description of activities addressed by the Service's PBO dated January 5, 2016. Any taking that may occur incidental to this Action is not prohibited under the final 4(d) rule at 50 CFR §17.40(o). Therefore, the PBO satisfies your responsibilities for this Action under ESA Section 7(a)(2) relative to the northern long-eared bat.

## Determination Key Description: Northern Long-eared Bat 4(d) Rule

This key was last updated in IPaC on May 15, 2017. Keys are subject to periodic revision.

This key is intended for actions that may affect the threatened northern long-eared bat.

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The purpose of the key for Federal actions is to assist determinations as to whether proposed actions are consistent with those analyzed in the Service's PBO dated January 5, 2016.

Federal actions that may cause prohibited take of northern long-eared bats, affect ESA-listed species other than the northern long-eared bat, or affect any designated critical habitat, require ESA Section 7(a)(2) consultation in addition to the use of this key. Federal actions that may affect species proposed for listing or critical habitat proposed for designation may require a conference under ESA Section 7(a)(4).

## Determination Key Result

This project may affect the threatened Northern long-eared bat; therefore, consultation with the Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.) is required. However, based on the information you provided, this project may rely on the Service's January 5, 2016, *Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-Eared Bat and Activities Excepted from Take Prohibitions* to fulfill its Section 7(a)(2) consultation obligation.

## Qualification Interview

1. Is the action authorized, funded, or being carried out by a Federal agency?  
Yes
2. Have you determined that the proposed action will have "no effect" on the northern long-eared bat? (If you are unsure select "No")  
No
3. Will your activity purposefully **Take** northern long-eared bats?  
No
4. [Semantic] Is the project action area located wholly outside the White-nose Syndrome Zone?  
**Automatically answered**  
No
5. Have you contacted the appropriate agency to determine if your project is near a known hibernaculum or maternity roost tree?

Location information for northern long-eared bat hibernacula is generally kept in state Natural Heritage Inventory databases – the availability of this data varies state-by-state. Many states provide online access to their data, either directly by providing maps or by providing the opportunity to make a data request. In some cases, to protect those resources, access to the information may be limited. A web page with links to state Natural Heritage Inventory databases and other sources of information on the locations of northern long-eared bat roost trees and hibernacula is available at [www.fws.gov/midwest/angered/mammals/nleb/nhisites.html](http://www.fws.gov/midwest/angered/mammals/nleb/nhisites.html).

Yes

6. Will the action affect a cave or mine where northern long-eared bats are known to hibernate (i.e., hibernaculum) or could it alter the entrance or the environment (physical or other alteration) of a hibernaculum?  
No
  7. Will the action involve Tree Removal?  
Yes
-

8. Will the action only remove hazardous trees for the protection of human life or property?

*No*

9. Will the action remove trees within 0.25 miles of a known northern long-eared bat hibernaculum at any time of year?

*No*

10. Will the action remove a known occupied northern long-eared bat maternity roost tree or any trees within 150 feet of a known occupied maternity roost tree from June 1 through July 31?

*No*

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## Project Questionnaire

**If the project includes forest conversion, report the appropriate acreages below. Otherwise, type '0' in questions 1-3.**

1. Estimated total acres of forest conversion:

2

2. If known, estimated acres of forest conversion from April 1 to October 31

0

3. If known, estimated acres of forest conversion from June 1 to July 31

0

**If the project includes timber harvest, report the appropriate acreages below. Otherwise, type '0' in questions 4-6.**

4. Estimated total acres of timber harvest

0

5. If known, estimated acres of timber harvest from April 1 to October 31

0

6. If known, estimated acres of timber harvest from June 1 to July 31

0

**If the project includes prescribed fire, report the appropriate acreages below. Otherwise, type '0' in questions 7-9.**

7. Estimated total acres of prescribed fire

0

8. If known, estimated acres of prescribed fire from April 1 to October 31

0

9. If known, estimated acres of prescribed fire from June 1 to July 31

0

**If the project includes new wind turbines, report the megawatts of wind capacity below. Otherwise, type '0' in question 10.**

10. What is the estimated wind capacity (in megawatts) of the new turbine(s)?

0

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**From:** [Kosterman, Megan K](#)  
**To:** [Steinour, Peter - RD, Washington, DC](#); [Neal, Larry](#)  
**Cc:** [Freeman, Carol L B](#)  
**Subject:** [EXTERNAL] Badger State Solar Project  
**Date:** Tuesday, December 21, 2021 9:50:42 AM

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Dear Mr. Steinour,

The U.S. Fish and Wildlife Service (Service) has reviewed your October 20, 2021 email and enclosures requesting informal consultation on the proposed Badger State Solar Project (Project) near Jefferson, Wisconsin (Consultation Code: 03E19000-2022-I-0162), and submits these comments pursuant to the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531-1544).

You have determined that the Project may affect, but is not likely to adversely affect whooping crane (*Grus americana*), and northern long-eared bat (*Myotis septentrionalis*).

#### Whooping Crane

We concur that the proposed Project may affect, but is not likely to adversely affect whooping crane. The whooping crane has been designated a nonessential experimental population under the Endangered Species Act in a 20-state area of the eastern United States including Wisconsin. While there is no suitable habitat for breeding and nesting in the project area, whooping cranes may use palustrine, emergent wetlands and croplands as stopover and feeding habitat during migration. Stopover and feeding habitat is present within the Project area and will be temporarily disturbed by noise and human activity, however, Project minimization measures during construction are expected to avoid or minimize disturbance to whooping cranes. There will be a minor loss of stopover and feeding habitat, however, abundant suitable habitat is available nearby, and the minor loss of stopover habitat is not likely to negatively impact the species.

#### Northern Long-eared Bat

The Service acknowledges your use of the 4(d) rule to fulfill project-specific section 7(a)(2) responsibilities for the northern long-eared bat (*Myotis septentrionalis*). Thank you for utilizing the online assisted determination key for this species.

#### Impacts to Eagles

Bald eagles, golden eagles, and their nests are protected under the Eagle Act. The Eagle Act prohibits, except when authorized by a permit, the taking of bald and golden eagles and defines “take” as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.” The Eagle Act’s implementing regulations define disturb as “...to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.”

Our [National Bald Eagle Management Guidelines](#) are intended to help people protect eagle nests and avoid “disturbance” of eagles as required by the Eagle Act. We have also developed guidance to help determine if you may need an [incidental take permit for bald eagles](#) if disturbance cannot be avoided. If your project may impact a bald eagle nest, or you anticipate that you will be unable to avoid disturbing bald eagles, please contact us regarding the Eagle

Act permit process.

Site Selection and Layout Recommendations:

1. Select a site with the least wildlife value practicable. Sites such as vehicle parking areas (using elevated solar panels), commercial roof tops, brownfields, industrial developments, or municipal solid waste landfills may provide adequate space for a solar development and have no impact to existing wildlife habitat. Additionally, developing solar with compatible forms of agriculture (e.g., “dual-use farming”) may allow for continued crop production or grazing by using elevated solar panels and minimize the potential for additional loss of wildlife habitat.

2. If low wildlife value sites are not feasible, we suggest avoiding or minimizing to the greatest degree the conversion of forested areas, native grasslands, and wetlands. These areas provide important habitat for a variety of species and help protect water quality.

3. Plan the site to help ensure bat habitat is adequately protected by minimizing the removal of forested habitat and protecting forested hedgerows or other forested corridors connecting areas of suitable bat habitat.

4. For other threatened or endangered species identified in the official IPaC Species List, determine if their habitat is present in the project action area. If suitable habitat is present, plan to avoid impacts to listed species’ habitat. If habitat impacts cannot be avoided, we suggest conducting appropriate surveys to confirm species presence.

5. Identify bald eagle nests that are within or near the project site to help inform project layout. Bald eagle nests are large (4-6 feet in diameter and 3 feet deep, on average) and therefore noticeable, especially when in deciduous trees after leaf drop.

6. Plan the site to provide habitat for pollinators. Many pollinators are declining, including species that pollinate key agricultural crops and help maintain natural plant communities. Planting a diverse group of native plants around and under solar panels will help support the nutritional needs of Minnesota’s pollinators. We recommend a mix of flowering trees, shrubs, and herbaceous plants so that something is always in bloom and pollen is available during the active periods of pollinators (mid-March to mid-October).

7. Incorporate a water source (e.g., ephemeral pool or low area) to provide additional resources for pollinators and bats.

Project Construction Recommendations:

1. When removing potential wildlife habitat is necessary, avoid spring and summer (March 15-August 15) when feasible to help prevent the loss of nests, non-mobile young, and help wildlife populations maintain productivity.

2. Consider voluntary mitigation in addition to any required mitigation to offset the loss of forested areas, wetlands, or native grasslands.

3. Use construction techniques and materials (wildlife friendly erosion control materials) that are not likely to cause additional harm to wildlife.

4. Implement measures to reduce the chances that equipment will exacerbate the spread of invasive species into natural habitats (e.g., cleaning equipment prior to accessing the site, post-

site restoration monitoring, and invasive plant treatments, as necessary).

5. Any above ground electrical transmission lines or other equipment should follow the [Avian Power Line Interaction Committee guidelines](#) for minimizing avian electrocution and collision risk.

This concludes consultation under Section 7 of the Endangered Species Act, as amended. Please contact our office if this project changes or new information reveals effects of the action to proposed or listed species or critical habitat to an extent not covered in your original request. If you have any questions regarding our response or if you need additional information, please contact me via email at [megan\\_kosterman@fws.gov](mailto:megan_kosterman@fws.gov).

Best regards,

Megan Kosterman

Megan Kosterman (*she/her*)  
U.S. Fish and Wildlife Service  
Minnesota-Wisconsin Field Office  
Bloomington, MN  
[megan\\_kosterman@fws.gov](mailto:megan_kosterman@fws.gov)

**From:** [Neal, Larry](#)  
**To:** [Kosterman, Megan K](#)  
**Cc:** [Steinour, Peter - RD, Washington, DC](#); [Freeman, Carol L B](#); [Hurley, Bobbie](#); [Greer, Regina](#)  
**Subject:** RE: [EXTERNAL] Re: USDA RUS Request for Informal Section 7 Consultation  
**Date:** Wednesday, October 20, 2021 2:12:53 PM  
**Attachments:** [image002.png](#)  
[image003.png](#)

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Received. Thank you Megan.

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**Larry W. Neal**  
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---

**From:** Kosterman, Megan K <[megan\\_kosterman@fws.gov](mailto:megan_kosterman@fws.gov)>  
**Sent:** Wednesday, October 20, 2021 1:49 PM  
**To:** Neal, Larry <[larry.w.neal@aecom.com](mailto:larry.w.neal@aecom.com)>  
**Cc:** Steinour, Peter - RD, Washington, DC <[Peter.Steinour@usda.gov](mailto:Peter.Steinour@usda.gov)>; Freeman, Carol L B <[Carol.Freeman@aecom.com](mailto:Carol.Freeman@aecom.com)>; Hurley, Bobbie <[Bobbie.Hurley@aecom.com](mailto:Bobbie.Hurley@aecom.com)>; Greer, Regina <[REGINA.GREER@aecom.com](mailto:REGINA.GREER@aecom.com)>  
**Subject:** [EXTERNAL] Re: USDA RUS Request for Informal Section 7 Consultation

Thank you, Larry. I have received your project information and I will reach out if I have any questions.

Best regards,

Megan Kosterman

---

**From:** Neal, Larry <[larry.w.neal@aecom.com](mailto:larry.w.neal@aecom.com)>  
**Sent:** Wednesday, October 20, 2021 12:33 PM  
**To:** Kosterman, Megan K <[megan\\_kosterman@fws.gov](mailto:megan_kosterman@fws.gov)>  
**Cc:** Steinour, Peter - RD, Washington, DC <[Peter.Steinour@usda.gov](mailto:Peter.Steinour@usda.gov)>; Freeman, Carol L B <[Carol.Freeman@aecom.com](mailto:Carol.Freeman@aecom.com)>; Hurley, Bobbie <[Bobbie.Hurley@aecom.com](mailto:Bobbie.Hurley@aecom.com)>; Greer, Regina <[REGINA.GREER@aecom.com](mailto:REGINA.GREER@aecom.com)>  
**Subject:** [EXTERNAL] USDA RUS Request for Informal Section 7 Consultation



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Ms. Kosterman,

USDA RUS is preparing an EIS for the Badger State Solar Project located in Jefferson County, WI and is requesting informal Section 7 consultation. Please find the request in the attached file. Your timely consideration of this request will be much appreciated.

Per the previous email from Ms. Marquardt we understand that Mr. Horton is not longer the POC for USDA RUS. I am forwarding the information for your review that we had provided to Mr. Horton.

Respectfully,

Larry Neal / *for Peter Steinour*

**Larry W. Neal**

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