



## ACOE Staff Wildlife Scoping

Department of Wildlife Resources  
Wildlife Information and Environmental Services  
September 29, 2023

This document includes guidance for coordination with DWR to ensure the Corps-issued permits are consistent with the Virginia State Endangered Species Act (Article 6, Chapter 5, Title 29.1 of the Code of Virginia, §§29.1-563 through 29.1-570).

Assuming ACOE staff are appropriately coordinating with the USFWS and/or NOAA Fisheries regarding potential impacts upon federal-listed species ACOE staff should **only coordinate with DWR, per the below, if potential impacts upon state-listed species and/or DWR-designated resources have been described/documented from the project area.**

Scoping: To scope any project location (2 mile radius from project boundaries) to determine if listed wildlife and/or designated resources under our jurisdiction are known from the project area, access the Virginia Fish and Wildlife Information Service (VAFWIS), <https://services.dwr.virginia.gov/fwis/> and perform a Geographic Search Initial Project Assessment (IPA) for the project location.

Data Results: If any listed species and/or designated resource is confirmed from the project area, coordinate the project/permit application with DWR according to the project activities described below:

### A. State-Listed Species (state Threatened or Endangered wildlife)

#### 1. Fishes:

Coordinate with DWR when one or more state-listed fish and/or Threatened and Endangered Species Waters (TE Water) is confirmed from the project area (per the VAFWIS IPA), **only if the project proposes one or more of the following activities\***:

- Instream work (defined as work within any channel experiencing flow) located in a designated TE Water.
- Instream work located at a site within 1 river mile upstream of a designated TE Water.

\*If the instream work time of year restriction (TOYR) for the listed fish or fishes (sometimes requiring more than one TOYR) is written into the permit/approval as a required condition of the permit/approval issued by your agency for the project, coordination with DWR regarding protection of the listed fish(es) is not necessary. TOYR for listed fishes, and other species are located online at <https://dwr.virginia.gov/wp-content/uploads/media/Time-of-Year-Restrictions.pdf>.

**In addition to the TOYR for instream work, we recommend the following to protect the**

### **unique habitats necessary for Virginia's listed fishes to persist in our environment:**

- We recommend protecting from impacts a natively vegetated riparian buffer of at least 100 ft on both sides of all intermittent tributaries to the designated water;
- We recommend protecting from impacts a natively vegetated riparian buffer of at least 200 ft on both sides of all perennial tributaries to designated waters; and/or
- We recommend protecting from impacts a natively vegetated riparian buffer of at least 300 ft on both sides of designated waters.

### 2. Mussels, Snails, and Crayfish:

Coordinate with DWR **anytime** one or more state- listed mussel, snail, and/or crayfish; and/or Threatened and Endangered Species Waters (TE Water) is confirmed from the project area (per the VAFWIS IPA), **if** the project proposes one or more of the following activities\*:

- instream work located in a designated TE Water
- instream work located in perennial waters that drain to the designated TE Water

These species cannot move out of harm's way like fish often can. As such, we need to ensure that any individuals of these species are **either not present** within the instream area of affect (instream work site plus some distance up and downstream, depending on the scope and type of work) **or that any individuals of these species are relocated** from the area of affect prior to instream work. The only way to do this is for a species survey to be performed within the area of affect. **DWR must review the project in order to recommend the appropriate type and length of survey at the necessary locations.**

\*If the only instream work proposed is within intermittent or ephemeral streams, a survey is not necessary. In this case, if the instream work time of year restriction (TOYR) for the listed mussel, snail, and/or crayfish (sometimes requiring more than one TOYR) is written into the permit/approval as a required condition of the permit/approval issued by your agency for the project, coordination with DWR regarding protection of the listed mussel, snail, and/or crayfish is not necessary. TOYR for listed species are located online at <https://dwr.virginia.gov/wp-content/uploads/media/Time-of-Year-Restrictions.pdf> .

### **In addition to the TOYR for instream work, we recommend the following to protect the unique habitats necessary for Virginia's listed aquatic fauna to persist in our environment:**

- We recommend protecting from impacts a natively vegetated riparian buffer of at least 100 ft on both sides of all intermittent tributaries to the designated water;
- We recommend protecting from impacts a natively vegetated riparian buffer of at least 200 ft on both sides of all perennial tributaries to designated waters; and/or

- We recommend protecting from impacts a natively vegetated riparian buffer of at least least 300 ft on both sides of designated waters.

### 3. Semi-Aquatic Species: amphibians, wood turtles, bog turtles, eastern chicken turtles:

Coordinate with DWR when one or more state-listed semi-aquatic species, or designated resource is confirmed from the project area (per the VAFWIS IPA), **only if the project proposes one or more of the following activities:**

- Wood Turtles:
  - instream work located in a designated TE Water
  - instream work located in perennial tributaries of the designated TE Water
  - Work in uplands located within 900 ft of designated TE Water
- Amphibians:
  - Impacts upon wetlands
  - Upland impacts located within 900 ft of wetlands
- Chicken Turtles:
  - Impacts upon open water features
  - Upland impacts located within 900 ft of open water features
- Bog Turtles:
  - Impacts upon emergent wetlands
  - Instream impacts
  - Upland impacts within 900 ft of a stream or emergent wetland

These species also cannot move out of harm's way. In addition, the habitats that support them are unique, disappearing on the landscape, and their loss cannot be appropriately mitigated. As such, to ensure protection of these listed species, we need to know if the species is likely present on site, as determined by habitat assessment and/or species surveys.

**DWR must review the project in order to recommend the appropriate type of habitat assessments and survey areas at the necessary locations.**

### 4. Birds:

Coordinate with DWR when one or more state-listed bird, or designated resource is confirmed from the project area (per the VAFWIS IPA), **only if the project proposes one or more of the following activities:**

- Vegetation removal (trees, shrubs, grasses)
- Ground clearing, grubbing
- Habitat modifications to beaches, dunes, and shell rakes
- Use of loud machinery (dredges, construction equipment, cranes)
- Bald Eagles: To ensure protection of bald eagles in compliance with the Bald and Golden Eagle Act, we recommend using the Center for Conservation Biology (CCB) [Eagle Nest Locator](#) to determine if any active eagle nests are known from the project area. If

active bald eagle nests have been documented from the project area, we recommend that the project move forward in a manner consistent with [state and federal guidelines for protection of bald eagles](#); and coordination, as indicated, with the U.S. Fish and Wildlife Service regarding possible impacts upon bald eagles or the need for a federal bald eagle take permit.

#### 5. Bats:

Coordinate with DWR when one or more state-listed bat or designated resource is confirmed from the project area (per the VAFWIS IPA), **only if the project proposes one or more of the following activities:**

To determine if your site is located within one of these buffers, please refer to the applications found at the links below and refer to the Virginia Fish and Wildlife Information Service (VAFWIS), as directed.

- Little Brown and Tricolored Bats:  
Projects located within the regulatory buffer placed around a designated hibernaculum or roost site and/or VAFWIS confirms these bats from the project area, coordinate with DWR **if the project proposes tree removal, timbering, prescribed burn, or any impacts upon a hibernaculum entrance or within 150 of a roost site.** To determine if your site is located within one of these buffers, please refer to the applications found at the links below and refer to the Virginia Fish and Wildlife Information Service (VAFWIS), as directed. <https://dwr.virginia.gov/wildlife/bats/little-brown-bat-tri-colored-bat-winter-habitat-roosts-application/>
- Rafinesque's Eastern Big-eared Bats: Coordinate with DWR anytime VAFWIS confirms Rafinesque's Eastern Big-eared Bats from the project area **IF your project includes tree removal, timbering, removal/modification of an abandoned human structure or work on large culverts.**

6. Reptiles (other than those in "Semi-aquatic" section above): ONLY coordinate with DWR when hits for state-listed reptiles are returned **IF the project includes work within suitable habitats as described below:**

- Eastern Glass Lizards: Work on beaches, dunes, associated shrublands, and freshwater wetlands particularly if located in Virginia Beach.
- Canebrake Rattlesnakes: Work in mature forested habitats in southeastern Virginia, particularly Chesapeake, Suffolk, and Virginia Beach.

7. Terrestrial Invertebrates: Coordinate with DWR when hits for terrestrial invertebrates are returned **ONLY if your project includes ground disturbance (at or below plow line).**

8. Aquatic Cave invertebrates: Coordinate with DWR when hits for terrestrial invertebrates are returned **ONLY if your project includes disturbance to karst habitat or the waters feeding that habitat.**

## **B. Wildlife Action Plan (WAP) Species of Greatest Conservation Need (SGCN)**

Only coordinate your project with DWR if VAFWIS returns a “hit” (documentation within 2 miles of your project site) for a tiered species of **freshwater mussel**, IF the project includes instream work and/or earth disturbing work (including tree removal / grubbing) within 300 ft of the stream bank.

Otherwise, applicants should reference the 2015 Wildlife Action Plan (available through [www.bewildvirginia.gov](http://www.bewildvirginia.gov)) to determine what threats are known to the documented species, what suitable habitat for these species consists of and how to best protect them and their habitats from harm.

## **C. Additional Impact Minimization Recommendations:**

### 1) Instream work:

We recommend conducting any in-stream activities during low or no-flow conditions, using non-erodible cofferdams or turbidity curtains to isolate the construction area, blocking no more than 50% of the streamflow at any given time (minimal overlap of construction footprint notwithstanding), stockpiling excavated material in a manner that prevents reentry into the stream, restoring original streambed and streambank contours, revegetating barren areas with native vegetation, and implementing strict erosion and sediment control measures. We recommend that instream work be designed and performed in a manner that minimizes impacts upon natural streamflow and movement of resident aquatic species. If a dam and pump-around must be used, we recommend it be used for as limited a time as possible and that water returned to the stream be free of sediment and excess turbidity. To minimize potential wildlife entanglements resulting from use of synthetic/plastic erosion and sediment control matting, we recommend use of matting made from natural/organic materials such as coir fiber, jute, and/or burlap. To minimize harm to the aquatic environment and its residents resulting from use of the Tremie method to install concrete, installation of grout bags, and traditional pouring of concrete, we recommend that such activities occur only in the dry, allowing all concrete to harden prior to contact with open water. Due to future maintenance costs associated with culverts, and the loss of riparian and aquatic habitat, we prefer stream crossings to be constructed via clear-span bridges. However, if this is not possible, we recommend countersinking any culverts below the streambed at least 6 inches, or the use of bottomless culverts, to allow passage of aquatic organisms. We also recommend the installation of floodplain culverts to carry bankfull discharges.

### 2) Land-based activities:

To minimize overall impacts to wildlife and our natural resources, we offer the following comments about development activities: we recommend that the applicant avoid and minimize impacts to undisturbed forest, wetlands, and streams to the fullest extent practicable. Avoidance and minimization of impact may include relocating stream channels as opposed to filling or channelizing as well as using, and incorporating into the development plan, a natural stream channel design and forested riparian buffers. We recommend maintaining undisturbed naturally vegetated buffers of at least 100 feet in width around all on-site wetlands and on both sides of all perennial and intermittent streams. We recommend maintaining

wooded lots to the fullest extent possible. We generally do not support proposals to mitigate wetland impacts through the construction of stormwater management ponds, nor do we support the creation of in-stream stormwater management ponds.

We recommend that the stormwater controls for this project be designed to replicate and maintain the hydrographic condition of the site prior to the change in landscape. This should include, but not be limited to, utilizing bioretention areas, and minimizing the use of curb and gutter in favor of grassed swales. Bioretention areas (also called rain gardens) and grass swales are components of Low Impact Development (LID). They are designed to capture stormwater runoff as close to the source as possible and allow it to slowly infiltrate into the surrounding soil. They benefit natural resources by filtering pollutants and decreasing downstream runoff volumes.

We recommend that all tree removal and ground clearing adhere to a time of year restriction (TOYR) protective of resident and migratory songbird nesting from March 15 through August 15 of any year.

We recommend adherence to erosion and sediment controls during ground disturbance. To minimize potential wildlife entanglements resulting from use of synthetic/plastic erosion and sediment control matting, we recommend use of matting made from natural/organic materials such as coir fiber, jute, and/or burlap.

### 3) Resource Protection Recommendations:

#### Stream buffers:

- We recommend protecting from impacts a natively vegetated buffer of at least 100 ft on both sides of all intermittent or perennial streams, including those known to support wild trout or anadromous fishes.
- We recommend protecting from impacts a natively vegetated buffer of at least 200 ft on both sides of all perennial tributaries to waters known to support listed aquatic species.
- We recommend protecting from impacts a naturally vegetated buffer of at least 300 ft on both sides of waters known to support listed aquatic species.

#### Wetland buffers:

- We recommend protecting from impacts a naturally vegetated buffer of at least 100 ft on all sides of any wetland. We recommend avoiding or minimizing wetland impacts as much as possible.
- We recommend no impacts upon wetlands or vernal pools known to support any listed species. We also recommend protecting from impacts and preserving, planting, and/or enhancing an undisturbed naturally vegetated buffer of at least 900 feet on all sides of any wetland known to support a listed species.

Colonial Waterbird Colony buffers:

- We recommend preserving, planting or enhancing, an undisturbed naturally vegetated buffer of at least 500 ft around any identified waterbird colonies (rookeries). This provides the colony with a line of sight and habitat buffer, providing nesting activity protection as well as habitat protection to ensure suitability for future nesting seasons.