



United States Department of the Interior

FISH AND WILDLIFE SERVICE
1505 Ferguson Ln,
Austin TX, 78754



September 4, 2025

In reply refer to:
2024-0020457

Ms. Clover Clamons
Natural Resource Management Section Director
Environmental Affairs Division
Texas Department of Transportation
Environmental Affairs Division
125 East 11th Street
Austin, TX 78701-2483

Subject: RM 2243, CSJ: 2103-01-038, Williamson County, Texas; Amendment to 2024 Conference and Biological Opinion

Dear Ms. Clamons:

This amends the December 12, 2024, Conference and Biological Opinion (CBO) to improve Hero Way and a section of Ranch to Market Road (RM) 2243 for 7.7 miles (mi) between Highway 183A near Leander to Southwest Bypass near Georgetown in Williamson County, Texas. On August 21, 2025, the U. S. Fish and Wildlife Service (Service) received a request for reinitiation of formal consultation from the Texas Department of Transportation (TxDOT) for Phase 1A due to changed construction locations that were not considered in the CBO. This amendment concerns effects to the golden-cheeked warbler (*Setophaga chrysoparia*) pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; Act). We reinitiated consultation on August 29, 2025.

Section 7 of the Act requires that all Federal agencies consult with the Service to ensure actions authorized, funded, or carried out by such agencies are not likely to jeopardize the continued existence of any threatened or endangered species, or adversely modify or destroy critical habitat of such species. The Federal Highway Administration (FHWA) assigned responsibility for compliance with the National Environmental Policy Act and all Federal resources agency consultations, including section 7 formal consultations, to TxDOT in a Memorandum of Understanding (MOU) dated July 17, 2025. This project is partially funded by the FHWA and therefore constitutes a Federal action with which TxDOT has section 7 authority as designated by the MOU.

This CBO amendment is based on information in the December 2024 CBO, email, site visits, and other sources of information. A complete administrative record of this consultation is on file at the Austin Ecological Services Office.

CONSULTATION HISTORY

- December 12, 2024 Service delivered a CBO to TxDOT.
- August 21, 2025 TxDOT requested reinitiation to construct Phase 1A on new alignment.

Description of the Proposed Activity

Plans are to realign and widen RM 2243, a rural undivided highway, in phases to make a divided controlled access freeway with two lanes and a frontage road in either direction. The project will extend along Hero Way for approximately 1.6 mi (between 183A and Ronald Reagan Boulevard), continue for approximately 0.7 mi on new alignment crossing RM 2243, and continuing south for about 0.5 mi. The project alignment connects with RM 2243 approximately 1.2 mi east of Ronald Reagan Boulevard and along RM 2243 for approximately 5.0 mi, to SW Bypass.

Phase 1A plans included constructing 3.9 mi of westbound frontage road along Hero Way from the 183A northbound frontage road east to Ronald Reagan Boulevard. The proposed Phase 1A alignment was to follow the westbound frontage road to a point east of the Garey Park entrance and tie into the existing RM 2243 roadway. The footprint of the proposed Phase 1A alignment was approximately 19.1 acres (ac). Construction of Phase 1A has not begun and is scheduled for the last quarter of 2025 or the first quarter of 2026 and will last about 9 months. This reinitiation considers a new alignment for Phase 1A road construction north of and parallel to Hero Way, and accounts for a wider footprint. The new alignment is in Karst Zone 4b and mostly oak (*Quercus* sp.) and juniper (*Juniperus ashei*) woodlands and savanna grasslands. The new Phase 1A footprint will be wider than previous plans to include grading outside of paved areas. In total, 1A will now encompass 55.1 ac, removing 6.4 ac of golden-cheeked warbler habitat and 21.2 ac of potential golden-cheeked warbler habitat within 250 feet (ft) of project limits. Compared to the 2024 CBO, 4.4 additional ac of habitat removal are anticipated and impacts within 250 ft of project limits are 0.5 ac less than was considered in the CBO. See Table 1 below for impact differences between the 2024 CBO and this amendment.

Table 1. Changes to Golden-cheeked Warbler Impacts

	Acres in Project Area	Acres within 250 Feet
CBO ImpactCalculation	2.0	21.7
Updated Project Footprint	6.4	21.2
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Difference	4.4	-0.5

TxDOT does not anticipate any additional effects will occur to listed species in this location because effects would be similar to those already analyzed.

CONSERVATION MEASURES

TxDOT has committed to implement best management practices and conservation measures (CMs) listed in the 2024 CBO and those apply to the amended project as well. TxDOT and Williamson County will also implement a voluntary credit purchase for additional golden cheeeked-warbler habitat to be impacted by the project changes.

The Action Area remains the same as in the 2024 CBO. The Status of the Species is also the same.

The Environmental Baseline in the Action Area and for the species remains essentially the same as the 2024 CBO.

EFFECTS OF THE ACTION

Only the surface footprint of the road has changed slightly and there are no changes to other listed species habitat considered in the 2024 CBO. The project is not expected to affect recovery of the warbler because while the proposed activities may result in effects to golden-cheeked warbler, we expect these effects will be limited to habitat impacts described in the 2024 CBO that are reasonably certain to occur. These effects continue to be localized, and we do not anticipate the Action would appreciably reduce the likelihood of both the survival and recovery of this species and we do not anticipate range-wide impacts from the proposed action.

The proposed project's Cumulative Effects remain the same as the 2024 CBO.

CONCLUSION

After reviewing the current status of the golden-cheeked warbler, the environmental baseline for the action area; the effects of the proposed action; and the cumulative effects, it is our biological opinion that the action, as proposed, is not likely to jeopardize the continued existence of the species because:

Effects to the warbler addressed in this amendment will be localized and the project is not expected to negatively affect recovery of the golden-cheeked warbler, and

TxDOT will minimize, to the maximum extent practicable, adverse effects from authorized activities through the implementation of conservation measures during and after construction.

The conclusions of this CBO amendment are based on full implementation of the project as described in the 2024 CBO and changes and conservation measures described in the August 21, 2025 letter from TxDOT requesting reinitiation.

AMENDED INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. “Take” is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. “Harm” is further defined (50 CFR § 17.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. “Harass” is defined (50 CFR § 17.3) as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. “Incidental take” is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking follows the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary, and must be undertaken by TxDOT as appropriate, for the exemption in section 7(o)(2) to apply. There is a continuing duty by TxDOT to regulate the activity covered by this incidental take statement. If TxDOT (1) fails to assume and implement the terms and conditions or (2) fails to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. To monitor the impact of incidental take, TxDOT must report the progress of the action and its impact on the species as specified in the incidental take statement [50 CFR §402.14(i)(3)].

Amount or Extent of Anticipated Take

Because quantifying take of individual warblers is difficult, the CBO amendment evaluates habitat affected as a surrogate for the level of incidental take. The following amounts of incidental take in the form of harm (lethal and sublethal effects) are reasonably certain to occur from the new action for Phase 1A:

6.4 ac of golden-cheeked warbler habitat will be removed, an increase of 4.4 ac more than authorized in the previous CBO. Additionally, 21.2 ac of habitat within 250 ft of the project is anticipated to be removed which is 0.5 ac less than the 21.7 ac previously calculated for the 2024 CBO.

Amount or Effect of the Take

In the 2024 CBO and in this amendment, we determined that the level of anticipated take is not likely to jeopardize the continued existence of the golden-cheeked warbler based on the anticipated effects of the proposed action described in the Effects of the Action section. Although we anticipate some incidental take will occur where the activities intersect the subject

species, the implementation of the conservation measures proposed should ultimately result in avoidance and minimization of adverse effects.

EFFECT OF THE TAKE

In the previous CBO and this amendment, we determined that the level of anticipated take is not likely to jeopardize the continued existence of the golden-cheeked warbler based on the anticipated effects of the proposed action. Although we anticipate some incidental take will occur where construction activities intersect the subject species, the implementation of the conservation measures from the 2024 CBO extended to this project and the measures in the 2025 request for reinitiation should result in avoidance and minimization of adverse effects.

The Reasonable and Prudent Measure and Terms and Conditions remain the same as in the 2024 CBO. The Conference Report, Disposition of Dead or Injured Species, and Conservation Recommendations sections also remain the same as in the 2024 CBO.

This concludes reinitiation of formal consultation on the proposed expansion of RM 2243. As provided in 50 CFR §402.16, reinitiation of consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this BO amendment; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this BO amendment or written concurrence; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

Please refer to the consultation number, 2024-0020457, in future correspondence concerning this project. Should you require further assistance or if you have any questions, please contact Dawn Gardiner at dawn_gardiner@fws.gov.

Sincerely,

Michael Warriner
Acting Project Leader
Austin Ecological Services Field Office

cc: Andrea Montalvo, TxDOT Environmental Affairs Division
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