



Civil & Environmental
Consultants, Inc.

IMAA Winter Workshops Environmental Committee Permitting Updates

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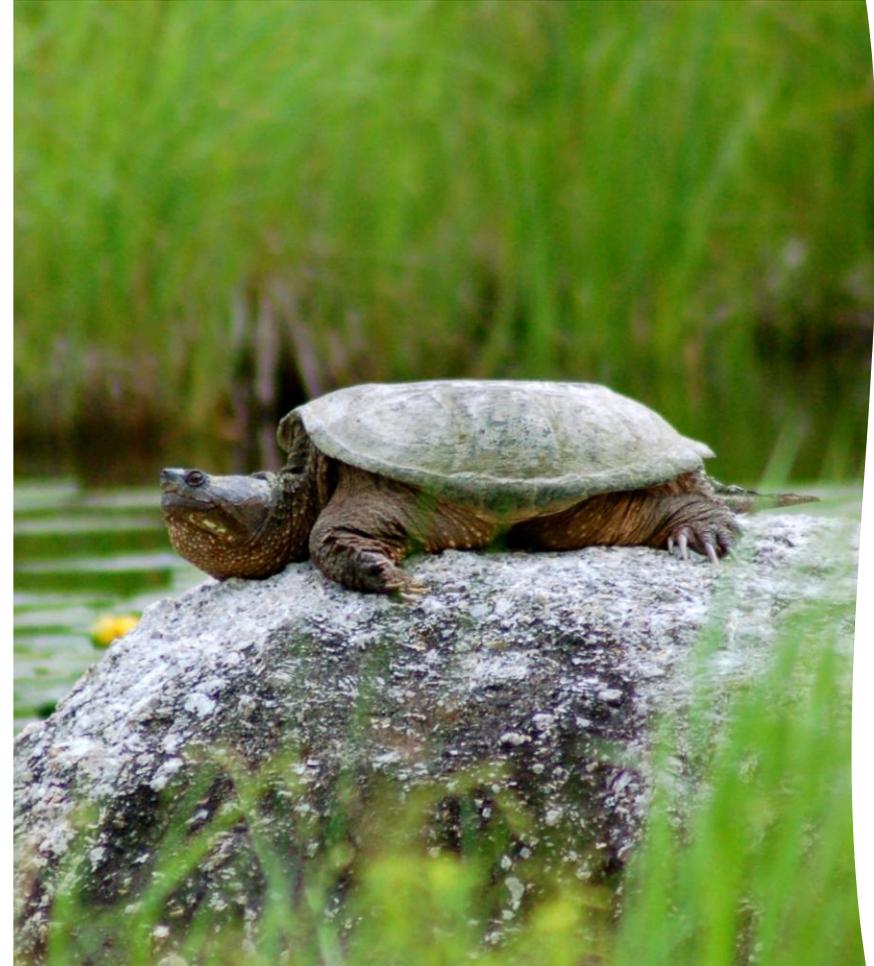
February 3, 2026



- Wetlands are nature's kidneys and play a vital role in improving water quality.
 - Filters sediment and pollutants from surface water while adding oxygen to the water and pulling carbon into the ground through diverse hydrophytic plant species.
 - Additional filtering continues through permeable layers of soils.
 - Reduces flooding as water is absorbed and cycled throughout the watersheds and floodplains.
- Provide ideal habitats to threatened & endangered species.
 - Ecosystems established with varieties of species of fish, amphibians, reptiles, birds, bats, insects, shellfish, etc.

State & Federal Regulations

- The regulations are as dynamic as the waters they set out to protect. In other words, wetlands are constantly changing and so are their regulations. We've seen significant changes the past 5 years.
- State & Federal Agencies move as slow as a turtle to accommodate these changes.
- We're going to cover the most recent Fed & State reg changes for the benefit of proactive development site acquisition ...



Recent Federal Reg Changes

After 2020, Biden administration began regulating ephemeral streams.

May 2023 - Sackett vs. EPA ruling took ephemeral streams back out.

August 2023 – EPA issues Amendments to the Revised Definition of “Waters of the United States”

September 2023 – EPA issues conformity rulings to accommodate interpretation of “Sackett vs EPA”

Ephemeral streams were still being regulated under reach analysis

March 2025 – Memorandum revised WOTUS definition still pending implementation

Addresses “continuous surface connection”

Eliminates ephemeral streams from regulation

Under the relatively permanent standard for adjacent wetlands, wetlands meet the continuous surface connection requirement if they physically abut, or touch, a relatively permanent paragraph (a)(2) impoundment or a jurisdictional tributary when the jurisdictional tributary meets the relatively permanent standard, or if the wetlands are connected to these waters by a discrete feature like a non-jurisdictional ditch, swale, pipe, or culvert.



General Permits

NWPs Modifications and Reissuance

Status of Existing Permits/Grandfathering

Activities authorized by the 2021 NWPs that have commenced or are under contract to commence by March 14, 2026, will have one year (*i.e.*, until March 14, 2027) to complete those activities (see 33 CFR 330.6(b)).

Indiana RGP 1 Louisville District

Issued December 15, 2024

Expires December 15, 2029

EPA Proposed Rule – WQC

Public Notice – January 15, 2026

Comments close – February 17, 2026

Summary of the 2026 Nationwide Permits¹

Nationwide Permit (NWP)	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold in Terms of NWP	Delineation Required?	Applicable Waters	Changes	Other Information
NWP 1 – Aids to Navigation	10	none	PCN not required	no	navigable waters of the U.S.	none	
NWP 2 – Structures in Artificial Canals	10	none	PCN not required	no	navigable waters of the U.S.	none	
NWP 3 – Maintenance	10/404						
(a) Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills		authorizes only minor deviations for maintenance	PCN not required	no	all waters of the U.S.	none	Does not authorize: maintenance dredging for the primary purpose of navigation; beach restoration; or new stream channelization or stream relocation projects. Limits stream channel modification to the minimum necessary for the maintenance activity.
(b) Discharges associated with removal of accumulated sediments and debris in the vicinity of existing structures, including intake and outfall structures and associated canals		200 feet from structure; minimum necessary to restore capacity intake or outfall or associated canal	all activities	yes	all waters of the U.S.	none	
(c) Temporary structures, fills, and work necessary to conduct maintenance activity			PCN not required	no	all waters of the U.S.	none	Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations
NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	10/404	none	PCN not required	no	all waters of the U.S.	none	Does not authorize impoundments or artificial reefs. Does not authorize covered oyster trays or clam racks.
NWP 5 – Scientific Measurement Devices	10/404	25 cubic yards for weirs and flumes	PCN not required	no	all waters of the U.S.	none	Devices and any associated structures or fills be removed upon completion of the use and restored to pre-construction elevations to maximum extent practicable.
NWP 6 – Survey Activities	10/404	1/10-acre	PCN not required	no	all waters of the U.S.	none	Does not authorize fills for roads. Does not authorize permanent structures. Does not authorize fill associated with recovery of historic properties. Backfilling of exploratory trenches must not drain a water of the U.S.

¹ This table is intended to provide general information on the 2026 nationwide permits published in the *Federal Register* on January 8, 2026 (91 FR 768). Permittees are responsible for reading and complying with the terms and conditions of the NWPs. For more information, see the USACE website at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>.



Recent State Reg Changes

- April 2021 HR 389 passed – Reducing isolated wetland protections with farming history exemptions, municipal exemptions, wetland classification exemptions, etc.
- Indiana Department of Environmental Management (IDEM) responds with isolated wetland classification worksheet requirement for classifying wetlands for proposed impacts.
- February 2024 HR 1383 passed – Adjusting IDEM criteria and reducing Class 3 wetland protections.
- IDEM Isolated Wetland Classification form.
 - Class 1
 - Class 2
 - Class 3



Proactive Land Acquisition

- Here are some basic public access tools to utilize:

- National Wetland Inventory (NWI) Mapper



- <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>

- United States Geological Survey (USGS) for hydrography



- <https://apps.nationalmap.gov/viewer/>

- Natural Resources Conservation Service (NRCS)/ United States Department of Agriculture (USDA) Web Soil Survey



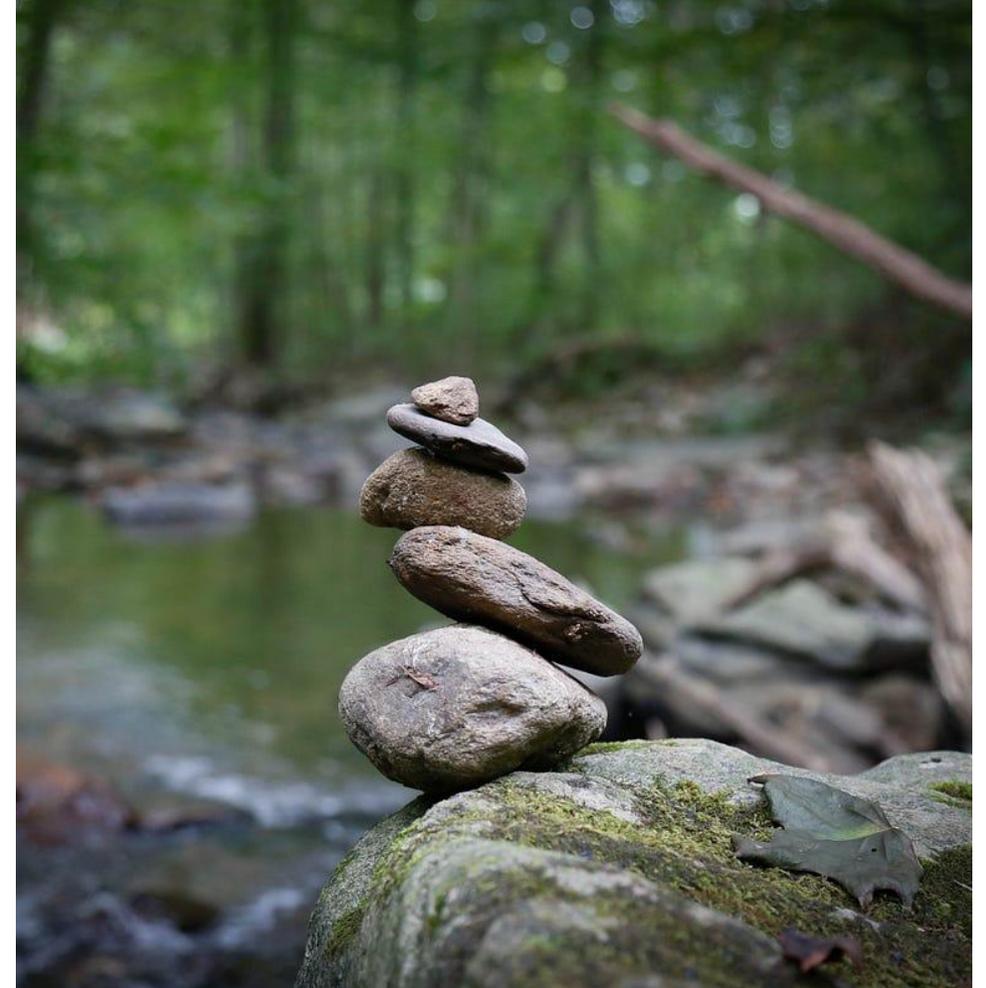
- <https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>

- These basic tools do NOT provide 100% accuracy as to whether a regulated water of U.S. and/or State is present.



Mitigating Proposed Impacts

- Avoid, Minimize, then Mitigate
- How many acres of the jurisdictional and/or isolated wetlands do you intend to impact?
- How much lineal feet of regulated streams do you intend to impact?
- How long is it taking United States Army Corps of Engineers (USACE) to process and complete a Jurisdictional Determination (JD)?
- The more you propose to impact, the more there is a likelihood of increased mitigation costs and permitting turn around time required.



Four Types of Mitigation - Hierarchy

- 2008 EPA/USACE Mitigation Rule - USACE upholds hierarchy of the three types of mitigation options per service area/watershed. Indiana has 11 service areas/watersheds.
 - 1 - Wetland/Stream Mitigation Bank
 - 2 - In-Lieu Fee Program (IDNR)
 - 3 - Permittee Responsible Mitigation (PRM) On-site
 - 4 - Permittee Responsible Mitigation (PRM) Off-Site



Wetland/Stream Mitigation Bank

- Provides compensatory mitigation in advance of permitted impacts to wetlands and/or streams. In other words, mitigation project sites are built and established before mitigation credits are sold.
- Requires funding up front and operates for profit through a partnership; landowners/stakeholders, consultants, contractors, and mitigation banking company.
- Completely transfers all liability of the applicant to the mitigation banker, while offsetting the loss of wetlands and/or streams through the purchase of mitigation bank credits.



In-Lieu Fee Program

- IDNR's ILF Program funds itself by selling wetland/stream mitigation credits in advance of wetland and stream mitigation being completed.
- Completely transfers all liability of the applicant to the ILF Program and the land trust/conservation partner responsible for perpetual monitoring and maintenance, while offsetting the loss of wetlands and/or streams through the purchase of mitigation credits.
- According to the 2024 Annual Report released in February 2025, the total of “advance” mitigation credits sold to accommodate unavoidable impacts from development equate to \$92,725,326.88



Permittee Responsible Mitigation (PRM)

- Permitted applicant is responsible for offsetting loss of wetlands and/or streams from permitted unavoidable impacts on-site or off-site of project.
 - On-Site – If there is available and workable acreage and/or lineal feet of stream channel, then the permitted applicant would work with their consultant to design and implement restored wetlands and/or streams. Typically, less expensive.
 - Off-Site – The permitted applicant would need to purchase land with available workable acreage and/or lineal feet of stream channel to mitigate the permitted impacts.
 - Permitted applicant takes on a considerable amount of liability.
 - Mitigation costs (Land acquisition, consulting costs for mitigation design, engineering / construction costs for earth work, etc.)
 - Monitoring & maintenance costs for success criteria standards potentially requiring up to 10 years.

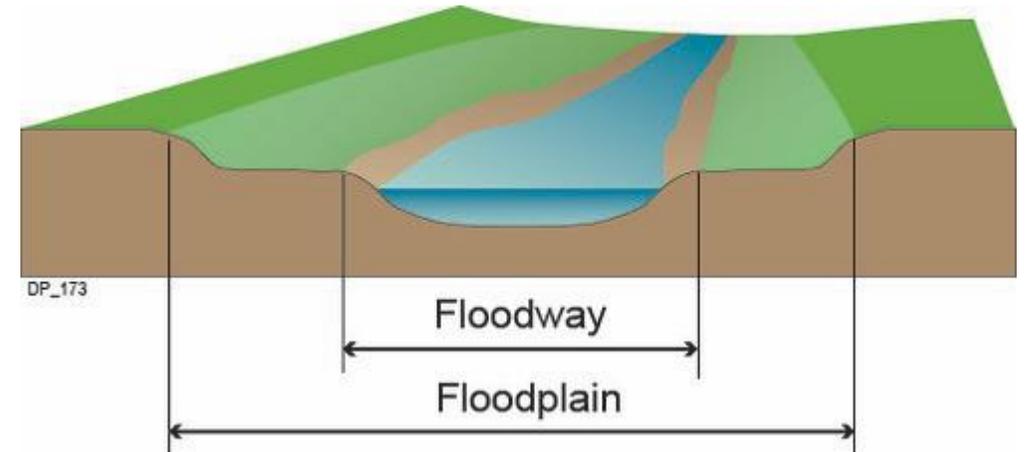


Floodplain/Floodway -

Floodway is the channel of the river or stream and the adjacent land that must remain free from obstruction so that the 100-year flood can be conveyed downstream.

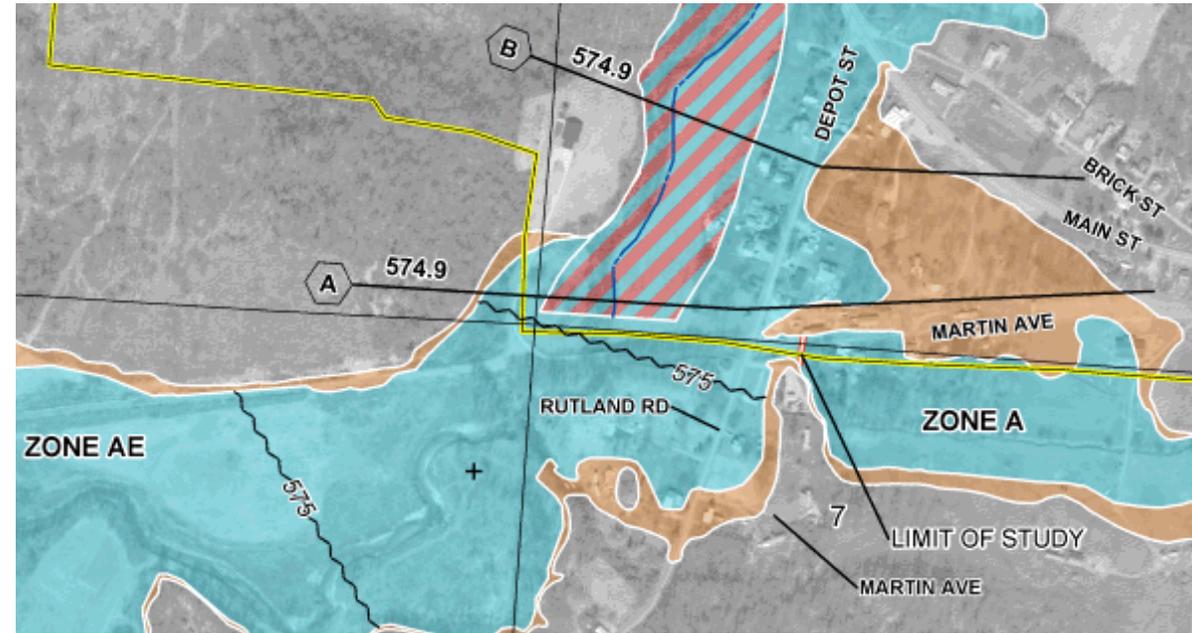
Floodplain is where the regulated storage of the 100-year flood event takes place.

Flood Fringe is the remaining portion of the floodplain. FEMA and state regulations permit communities to allow the flood fringe to be obstructed and developed if standards (i.e., elevating and floodproofing structures) are met.



FEMA No Rise Certification

- No Rise = change in flood elevation of 0.00 ft
- FEMA is requiring updated HEC-RAS modeling with most No Rise Certifications
 - Required for anything within the **floodway**.
 - Local floodplain administrator has authority to require No Rise Certification within **flood fringe**.
- Watershed analysis for the region can be required by FEMA if the existing modeling is outdated.



Northern Long-eared and Tricolored Bats



Tricolored Bat Consultation Range



Northern Long-eared Bat Consultation Range

Run IPaC or Re-run IPaC

<https://ipac.ecosphere.fws.gov/>

- Allows for/requires GIS upload of the project area
- Check for bat species on a species list (if re-running, list may have changed)
- Run Determination Keys (D-Keys) for northern long-eared bat and tricolored bat
- D-key process can give an instant ‘not likely to adversely affect’ determination without having to contact the Field Office (getting better all the time)
- D-Key will not give a final determination without answering ‘Yes’ or ‘No’ to the following:
 - Does the action area contain any winter roosts or caves (or associated sinkholes, fissures, or other karst features), mines, rocky outcroppings, or tunnels that could provide habitat for hibernating bats?
 - Will the action cause effects to a bridge?
 - Will the action result in effects to a culvert or tunnel equal or exceed 23 feet (7.0 meters) in length at any time of year?
- ‘No’ answers may require a negative survey report to be uploaded to continue
- ‘Yes’ answers do require survey report to be uploaded and sent to USFWS Field Office for review



Takeaways

- IPaC's that were run >30 days ago are likely not accurate and should be rerun
- Tree clearing date restrictions are easier now using IPaC and D-keys (instead of coordinating with a field office... as much)
- Early coordination especially on the caves/mine portals/bridges/culverts questions is imperative
- Federal nexus still applies making this a voluntary process when nexus is not there (less USACE jurisdiction of wetlands/stream = less federal nexus)



Crystal Ball on Bats

- Tricolored bats will not likely be listed in the next 12 months (unless sued)
- Little brown bats were given a 2026 priority, but seem to be moving to 2027+
- USFWS seems more serious about delisting gray bats and Indiana bats
- Hoary bats may be considered for listing in FY28 (wind energy)



Monarch Butterfly – Threatened Listing Proposal

- Review your sites land management plans to inventory ‘natural areas’ and if any pertinent activities (mowing / herbicide elimination) might apply
- For large land holders, consider enrollment in Nationwide Monarch Butterfly Candidate Conservation Agreement for Energy and Transportation Lands (CCAA)*
 - Conservation measures adopted for subset of acres
 - In return, regulatory approval is expedited by USFWS when species is listed (Safe Harbor)
 - 4(d) rule likely will provide similar flexibility, but is less specific



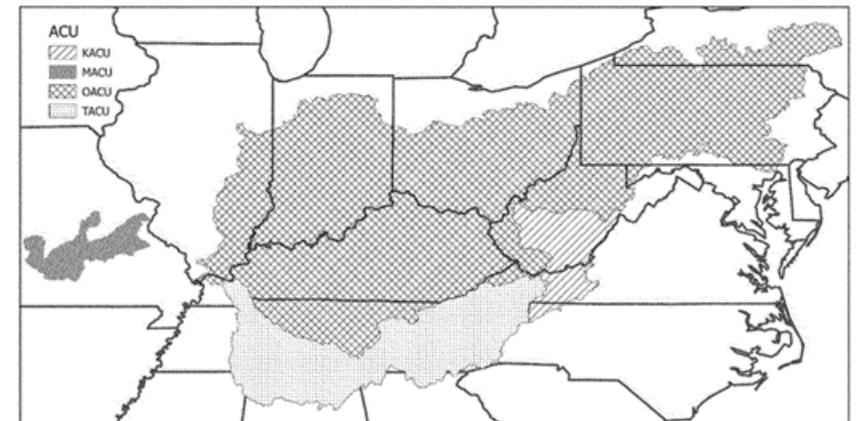
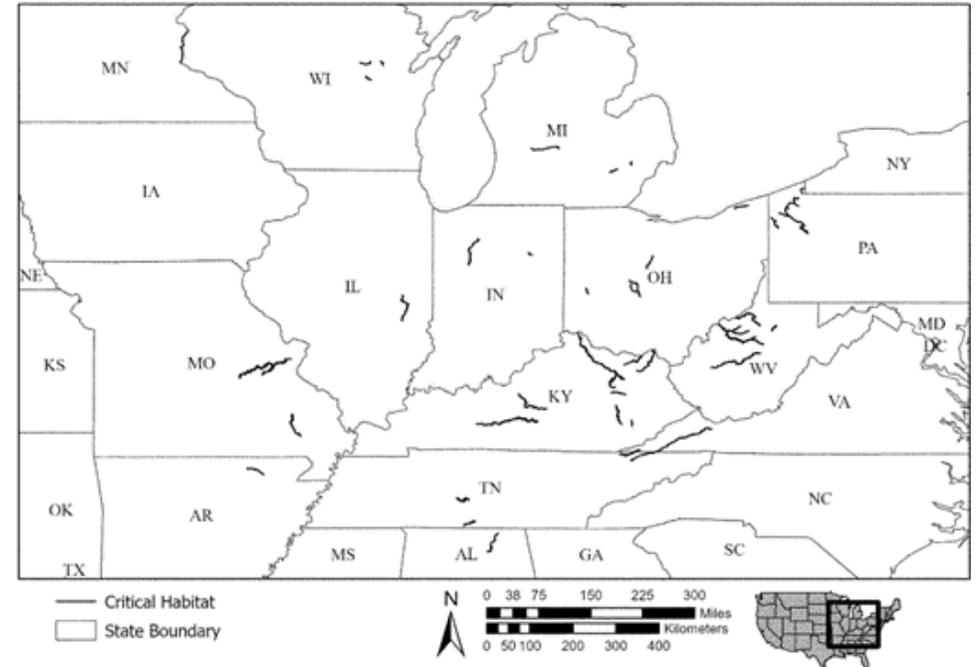
* As of May 2024, CCAAs are superseded by new Conservation Benefit Agreement (CBA) process under ESA Section 10, integrating Habitat Conservation Plans and take permitting into CBAs

Other Species Listing News

- 4 freshwater mussel species
 - Proposed critical habitat designation on December 13, 2024 (previously listed in 2012) for rayed bean, sheepsnose, snuffbox and spectaclecase mussels
 - 3,974 river miles across 17 midwestern states
- Eastern hellbender salamander
 - Occurs in large, clean streams throughout Midwest (15 states)
 - Proposed endangered listing on December 13, 2024



Index Map: Snuffbox Critical Habitat Units



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