

WisDOT Guidance for Rusty Patched Bumble Bee Critical Habitat

On June 1, 2026, USFWS announced a [final rule](#) designating **critical habitat** for the federally endangered **rusty patched bumble bee** under the federal **Endangered Species Act**. This rule is **effective July 1, 2026**.

Important notes on critical habitat

- Critical habitat units are legally designated geographic areas that contain suitable habitat for RPBB and specific physical or biological features (PBFs) essential to the conservation of the species. All RPBB critical habitat units are considered occupied by the species.
- Designation of critical habitat is in addition to the listed species and its respective range, which is represented by high potential zones (HPZs). This critical habitat designation does not change/remove HPZs.
- The final rule specifically excluded land enrolled in the Nationwide Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportation Lands (monarch CCAA) at the time of designation. It doesn't change/remove any expectations for RPBB (the species) within HPZs.
 - WisDOT is a partner to the monarch CCAA and enrolled its entire state highway network right-of-way (ROW), roadside facilities and wetland mitigation sites. WisDOT ROW at the time of rule publication (June 1, 2026) was excluded from the RPBB final critical habitat units. WisDOT right-of-way/easements acquired* on or after June 1, 2026 are not excluded, meaning those areas fall within the critical habitat designation.
 - The exclusion does not apply to temporary limited easements (TLE), regardless of when those were acquired.
 - No other transportation ROW/land has been enrolled into the monarch CCAA in Wisconsin. As such, local, county, airport, railroad, or other public/private ROW is not excluded, meaning it falls within the critical habitat designation.
- The RPBB critical habitat units overlap developed areas, such as lands covered by buildings, pavement, and other structures. These structures are not designated as critical habitat themselves because such structures lack the PBFs necessary for RPBB.
- Critical habitat is designated under Section 4 of the Endangered Species Act. Federal agency actions or federally funded or permitted activities that *may affect* an area designated as critical habitat require Section 7 consultation with USFWS to ensure that any action is not likely to result in the destruction or adverse modification of designated critical habitat.
- Critical habitat requires its own effects analysis and determination based on the PBFs (see below).

RPBB critical habitat physical or biological features (PBFs)

1. For overwintering, contiguous upland forest habitat, at least 82 feet (25 meters) from a non-forested edge, with plants that provide spring pollen and nectar for spring queen foraging

*Including but not limited to fee, permanent limited easement (PLE), highway easement (HE), temporary limited easement (TLE).

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immediately after emergence from diapause, containing leaf litter or duff for burrowing, and without dense invasive plant understory vegetation.

2. For nesting, upland grasslands, shrublands, savannas, and the forest edge interface between forested and non-forested natural habitats that extend approximately 30 meters into the forest.
3. For nesting, abandoned rodent burrows, other mammal burrows, existing cavities with ample cover, or similar existing cavities at the soil surface or below to 4 feet underground.
4. For nesting and overwintering, well-drained, uncompacted, loose soils sheltered from the elements.
5. For foraging, diverse, abundant, native floral resources for the entire active flight season.

Units that overlap Wisconsin

All of the RPBB critical habitat is considered occupied by the species (i.e. within HPZ) and each unit contains all of the PBFs listed above.

- **Unit 1: Minneapolis-St Paul Metropolitan** – Small areas extend into St Croix and Pierce counties
- **Unit 5: Denzer** – Sauk County near Denzer
- **Unit 6: Bunker Hill** – Iowa County near Bunker Hill
- **Unit 7: Madison** – Dane and Iowa counties near Madison
- **Unit 8: Milwaukee** – Milwaukee, Ozaukee, Racine, Washington and Waukesha counties in the Milwaukee metropolitan area
- **Unit 10: McHenry** – Kenosha County near state line

Project Guidance

Refer to attached flow chart.

Projects without a federal nexus

- Actions that do not have a federal nexus (i.e. funding, permit, authorization), for example, WisDOT-only funded projects/maintenance actions, do not have any new/additional requirements as they are not actions subject to Section 7. Continue to evaluate these actions for species impacts within HPZs.

Projects with a federal nexus

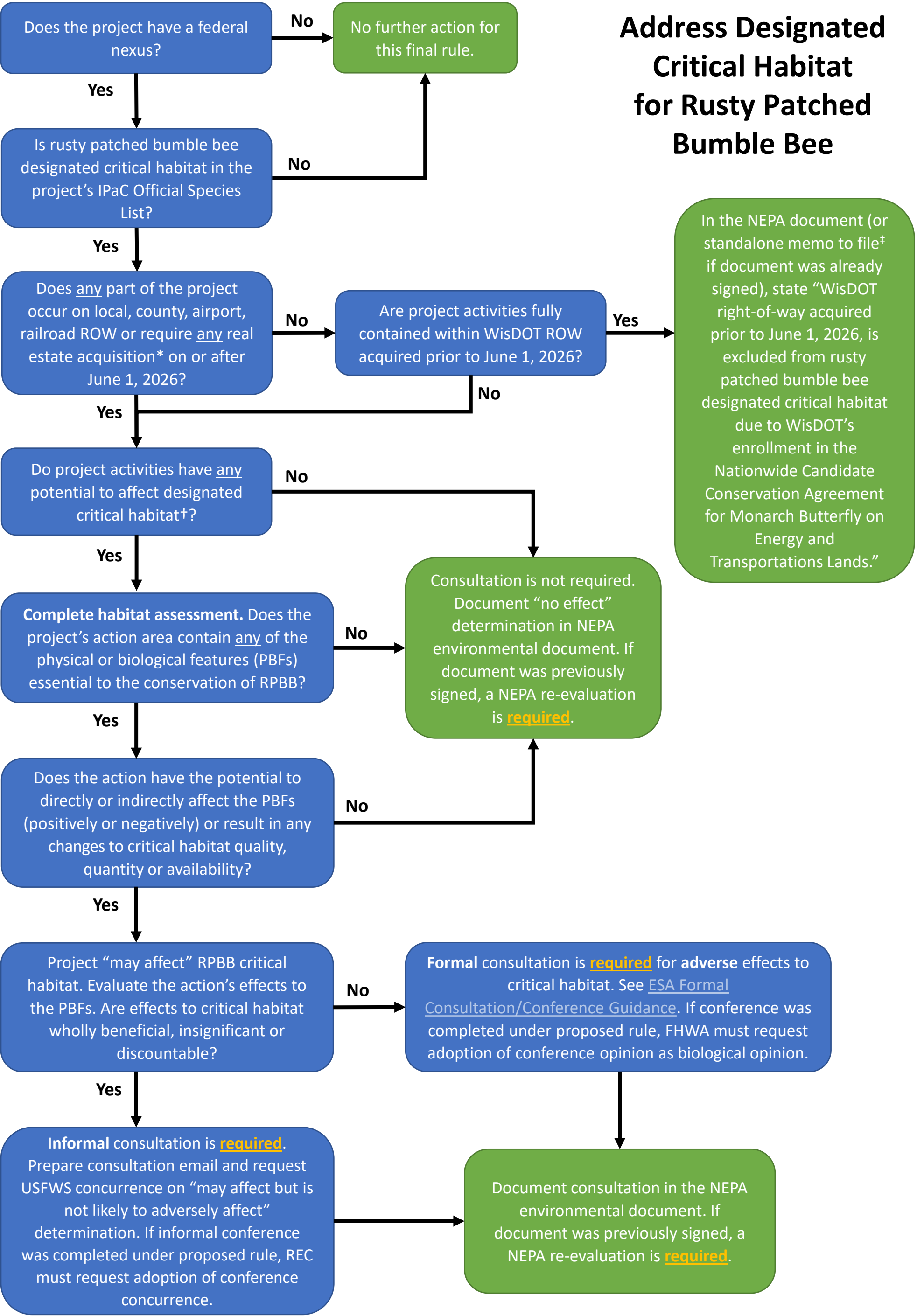
- Review existing federalized projects against the critical habitat unit maps. Refresh the project's IPaC Official Species List.
- If the project's action area does not overlap a critical habitat unit, no further action for the critical habitat is necessary. Ensure any RPBB species HPZ overlap is addressed as previously expected.

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- If the project's action area is fully contained within the WisDOT right-of-way and the project does not include any real estate acquisition* on/after June 1, 2026, then project area is considered excluded from the critical habitat unit.
 - In the NEPA document state "WisDOT right-of-way acquired prior to June 1, 2026, is excluded from rusty patched bumble bee designated critical habitat due to WisDOT's enrollment in the Nationwide Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportations Lands."
 - If the NEPA environmental document has been signed, FHWA does not require a full re-evaluation. Include the above statement in a standalone memo to file.
 - Ensure any RPBB species HPZ overlap is addressed as previously expected.
- If the project's action area overlaps with a critical habitat unit, Section 7 requirements must be followed. As applicable, a **NEPA environmental document re-evaluation is required** after the effect determination is made and any applicable consultation is complete.
 - The critical habitat impact assessment and effect determination are made based on the PBFs that are essential to the conservation of the species. The analysis should not include any WisDOT ROW that was excluded from the critical habitat designation due to the monarch CCAA enrollment.
 - Critical habitat is not included in the IPaC rusty patched bumble bee assisted determination key at this time.
 - ***No effect*** determinations made for critical habitat do not require consultation, but WisDOT must document reasoning and rationale for how the determination was made in the NEPA environmental document. If the environmental document has been signed, **NEPA environmental document re-evaluation is required**.
 - If **Section 7 informal or formal conferencing was completed** for RPBB critical habitat during the proposed status, WisDOT (informal) or FHWA (formal) must submit a request to USFWS confirming the impact assessment and effective determination remain valid and to ask for the conference concurrence/opinion to be adopted as the consultation concurrence/biological opinion, thus fulfilling the consultation requirement. If the environmental document has been signed, a **NEPA environmental document re-evaluation is required**.
 - If **Section 7 conferencing was not** completed for the RPBB critical habitat during the proposed status, consultation must be completed for any critical habitat ***may affect*** determination, even if the RPBB species consultation is already complete. Follow consultation process per FDM 24 10-10. If the environmental document has been signed, a **NEPA environmental document re-evaluation is required**.

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WisDOT Process to Address Designated Critical Habitat for Rusty Patched Bumble Bee



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† Critical habitat does not include human-made structures (e.g., buildings, runways, roads, and other paved areas). Further, critical habitat does not include WisDOT right-of-way acquired prior to June 1, 2026.

‡ FHWA does not require a full NEPA re-evaluation.