



OHIO DEPARTMENT OF TRANSPORTATION

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JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR

March 08, 2013

U.S. Fish and Wildlife
Service, 620 South Walker Street,
Bloomington, IN 47403-2121
indiana_bat@fws.gov

RE: Comments on the DOI USFWS Draft Revised Indiana Bat Summer Survey Guidelines (January 2013)

To Whom It May Concern;

The Ohio Department of Transportation appreciates the opportunity to provide comment on the USFWS Draft Revised Indiana Bat Summer Survey Guidelines (January 2013). While ODOT continues to work with the USFWS Ohio Field Office under a programmatic approach to assessing impacts to the Indiana bat that may result from federal aid transportation infrastructure projects, it is assumed that this guidance may influence the process by which those impacts are determined. Therefore ODOT provides the following general comments and specific comments for your consideration.

To contact ODOT with questions regarding these comments, please contact Matt Perlik at (614) 466-1937.

Respectfully,

A handwritten signature in black ink that reads "Timothy Hill".

Timothy Hill
Administrator
Office of Environmental Services

Attachments: Comments

C: OES-File

General Comments:

1. To reduce redundancy and potential complications or confusion, the use of the terms “suitable habitat”, “suitable summer habitat”, and “suitable roosting habitat” should all be clearly defined or clearly stated to be interchangeable (if that is the intention). They appear to be used distinctively in some sections of the guidance and appear to be interchangeable in others.
2. If an action is an impact to the species in one field office (FO) region, under what evidence or logical progression could the USFWS support that the very same action is not an adverse impact in another FO region if that decision is left to the FO?

Specific Comments:

1. Page [1]; typo: first paragraph, first sentence, remove the word “and” after the word “protocol.”
2. Page [2]; General Process; top paragraph: “In some cases, the most suitable habitat for effectively conducting surveys may occur outside a project site boundary and may be sampled.” It is not clear why a regulated entity would want to sample in an area that is outside of the area of potential project impact area, as this approach to sampling would not provide any direct insight to the effects of the impacts within the project area. Is it therefore the goal of the sampling protocol to understand what bat species are “near” a project area, rather than what bats fly with in a project area? Further guidance and justification (or examples) on the use of land outside a project area should be provided.
3. Page [2] Figure 1. The flowchart directs that if “suitable habitat” is found in Phase 1 and “adverse impacts” to Indiana bats cannot be avoided, then sampling moves to Phase 2. To increase the usefulness of this guidance, provide a discussion of what “adverse impacts” to the Indiana bat include, examples of those impacts, and support for those decisions.
4. Page [3]Phase 1 Summer Habitat Assessments.
 - a. Suitable summer habitat is described as essentially all vegetated areas, from forests to agricultural fields. Under this broadly defined habitat, mowing a hay field, harvesting corn and soybeans, and mowing a residential yard could all be determined to be actions within “suitable summer habitat”. The USFWS should define if these are adverse impacts to suitable summer habitat. The guidance suggests that the regulated community should contact USFWS FO to determine the impact assessment. Perhaps clearly defining what is or is not an impact here in this guidance would reduce the amount of coordination needed and make the guidance more useful. Further, allowing individual FO make decisions about what is and what is not an impact is not providing uniform rangewide protection to the species.

If an action is an impact to the species in one FO region, under what evidence or logical progression could the USFWS support that the very same action is not an adverse impact in another FO region?

- b. The third paragraph again suggests that only if no “suitable summer habitat” is present in a project area, that no summer surveys are needed. Based on the broad definition of suitable summer habitat, very few areas would be considered “non-suitable summer habitat”. The paragraph then says that if any “suitable habitat” is present, contact USFWS. So essentially without a discussion of the types of activities that could be impacts to the species, anyone who has any type of activity or project within any type of naturally or unnaturally vegetated area should coordinate with USFWS. Is this really the intention of this guidance?
 - c. Footnote ²; the footnote introduces the term “summer roosting habitat”. This is understood to be different than “suitable summer habitat” which is broadly defined in the main body of text on the page. The USFWS should provide a discussion between the differences between these two habitat types and the potential general types of impact to them.
5. Page [7], “DEFINITION OF POTENTIALLY SUITABLE SUMMER HABITAT”. As noted above, the USFWS appears to at times interchange the terms “suitable habitat”, “suitable summer habitat”, and “suitable roosting habitat”.
 6. Page [9]-[10]. The Summer Habitat Assessment Form provides space to record a varied list of data types. The form concludes with a simple question, “is the habitat suitable for Indiana bats?” Earlier the document describes that “suitable summer habitat” can consist of essentially any vegetated area. If the intent is to use the habitat assessment to determine if simply “suitable summer habitat” is present, as defined by USFWS, this assessment form could be drastically simplified (i.e. is there vegetation present?). The apparent assumption is that the USFWS is able to utilize the various information, requested in the form and provided by the user, to make additional objective decisions regarding the quality of the habitat present on the site. No guidelines exist on how the additional information can be used, by USFWS or the user, to objectively come to any decisions. For example, if a user lists that there is 500’ of ephemeral stream channel on the site, does this now change the value of the habitat quality and if so, why, or why not? There is the unstated assumption that permitted bat biologists and USFWS biologists have this mystical ability to assess all vegetated areas (i.e. “suitable summer habitat”) and judge if it is good or bad. While this would be great if it were true, it is a fallacy that is suggested by the draft protocol by affirming traditional surveys are done only in areas where bats could be captured, rather than in all the habitats that the bat uses. While most biologists would admit that forested areas providing suitable roosting habitat may be a simple indication of the habitat’s suitability, it is unreasonable to assume that even USFWS biologists are able to

differentiate the suitability between corn fields and soybean fields, or between 50 year old forests with no streams and 20 year old forests along perennial streams, without the aid of data moved through some level of statistical analysis.

The USFWS should simplify the habitat assessment to just basic yes/no questions regarding vegetation, streams, and supplemented with project size information to get to the decision of whether or not vegetated land (i.e. "suitable summer habitat") exists in a project area and that area will be impacted by the proposed project. If more detailed information is really needed, the habitat should be categorized into potential roosting, potential foraging, potential travel, etc. If the intent of this detailed assessment form is to standardize habitat assessments for the purpose of extrapolating additional information regarding Indiana bat habitat use, then this should be stated.

7. Page [12] last paragraph; the result of no bat calls recorded requires re-sampling. The user is given the option to provide "adequate justification" to the USFWS FO(s) to be relinquished from the requirement to re-sample. Can the USFWS provide a general outline of what they consider "adequate"? For example, a corn field is being sprayed with pesticide; the pesticide will clearly impact the foraging habitat quality of this "suitable summer habitat" and therefore have a negative impact on the bat. The habitat assessment is completed, and the corn field clearly meets the definition of suitable summer habitat provided in the draft protocol. Acoustic sampling is performed and no bats are recorded. This example provides a sample of how there are most likely situations where no calls recorded would not be a surprise or suspicious result and should not require resampling. Under a different scenario, the concern could be that the corn field is being impacted not by pesticide, but by the installation of a wind turbine. In this case the concern from the impact is clearly different, however the timing of the acoustic sampling may be much more important to determine impacts rather than the duration of the sampling. Given these known nuances to both the species and types of impacts, impact type sampling should be detailed in this protocol.

8. Page [13] Weatherproofing. Britzke et. al. 2010 cite the O'Farrell 1998 method for weatherproofing as the basis for their weatherproofing design using 45-degree PVC elbow. However the method used by Britzke et al 2010 to protect the microphone is drastically reduced from that used by O'Farrell. Is the O'Farrell 1998 method of using PVC electrical conduit also an acceptable weatherproofing method? In controlled trials (unpublished), we found that the Britzke et al 2010 approach left the microphone exposed to water from splashing rain drops within the short PVC elbow. However the electrical conduit used by O'Farrell to protect the microphone provided almost 100% coverage against rain including splashing droplets (when oriented at 45 degrees). While the best solution would be to not deploy the units with any waterproofing (as is noted in the draft protocol), if weatherproofing is needed based on a low to moderate risk of rain predicted during the time of a survey, then the

O'Farrell approach provides greater protection against equipment damage while still providing apparently, per O'Farrell 1998, good quality recorded calls.

9. Page [14] Minimal Level of Effort.

- a. The text states, "quantify the amount of suitable habitat within the project area." Should this be "amount of suitable *summer* habitat"? The USFWS is basing sampling effort on the quantity of "suitable habitat" (assuming that "suitable habitat" is interchangeable with "suitable summer habitat") rather than quality. With this approach, the sampling effort for 30 acres of cornfield would be the exact same effort prescribed for 30 acres of 80 year old forest.
- b. Based on the suggested changes to the Phase 1 Habitat Assessment provided above, would it provide a better survey result for the USFWS to prescribe sampling level of effort based on habitat (vegetation) type? Again the definition of "suitable summer habitat" is very broad and encompasses all vegetated areas. Perhaps sampling should be dependent on vegetation type if in fact all vegetated areas, as described in this document, are "suitable summer habitat." For example it doesn't appear prudent to prescribe the exact same level of sampling effort in corn fields as in forest.
- c. The 2012 draft required a minimum of two suitable nights of sampling per site. The 2013 draft has been revised to require a minimum of six suitable nights. Can the USFWS provide the background or justification for this dramatic increase in sampling effort?
- d. The sampling effort is dependent upon the type of project, linear or non-linear. In the description of linear projects, a width of 328 feet is given. Is it to be assumed that for projects that exceed this width at any given point along the project corridor, then those linear projects should be treated as non-linear for the purposes of calculating survey effort? This should be clarified in the text.
- e. Is there a minimum threshold that could be established for requiring a survey? For example, if a project proposes to impact 0.01 acre of agricultural field, by the definitions and guidance provided in this document, that area would need to be acoustically surveyed for six nights. The USFWS should establish lower thresholds of habitat impact (perhaps by habitat/vegetation type) that must be reached for a survey to be required. For example, the 0.01 acre of impact to corn field requires the same level of sampling required for a proposed project that would impact to 29 acres of old growth forest. In this extreme example, one site is being over-sampled while perhaps the other site could be considered to be under sampled.

10. Page [14] Interpretation of Acoustic Analysis Results. It is interesting, in light of the initial deployment of the EchoClass ID software's rampant identification of gray bats beyond its known range, that the USFWS chose the gray bat as an example of a species that could be identified during projects. Has the issue of gray bat identification outside of its known range

been addressed in the latest version of the EchoClass ID software? What conclusions, if any, has the service made in regards to these data?

11. Page [14] Submission of Acoustic Survey Results. The document indicates that “within 48 hours” the appropriate USFWS FO(s) must be notified. This is within 48 hours of when? Is it the intention of this “48 hour” requirement to be met from the time of recording, or from the time of identification using the approved software? What is the significance of 48 hours from the unspecified point? For example, if a site must be monitored for a minimum of six nights, and an Indiana bat was recorded on the first night, there is the potential that that recorded call may not be analyzed until 144 hours after recording. Further this paragraph goes on to describe the full report required to be submitted but the document does not clearly indicate the required timeframe for this to be submitted to the USFWS, if any. Or, is this document to be submitted also within the 48 hour window?
12. Page [18] Minimum Mist-Netting Effort. The sampling protocol is based on “net nights.” The definition of net night provided in footnote 11 is, “1 [sic] location surveyed using 1 [sic] mist-net set-up for a single night.” For clarification, does this mean that two poles with three individual nets set across them for one night equals three net nights? Or would two sets of poles with three nets each for one night equate to six net nights? It is assumed this is not the intention, however further clarification on this issue will resolve potential future contract issues with utilizing the protocol.
13. Page [21] Survey Period. The guidance dictates that the survey period should “continue for at least 6 [sic] hours.” This is an additional 60 minutes of surveying than the previous protocol. Can the USFWS provide some background or justification for this change?
14. Page [33] Emergence Surveys for Potential Indiana bat Roosts. Possible “hazard trees” are provided an expedited review process, if they are to be removed, by conducting an emergence survey. 50 CFR §402.05 recognizes emergency situations requires expedited Section 7 consultation, under which Federal agencies must comply. Within the description of emergency actions, the USFWS has identified, in Section 7 consultation guidance documents, that this can include activities taken to prevent imminent loss of human life or property. Often situations are encountered by ODOT staff where trees immediately adjacent to the roadway are assessed to present a threat of falling on the roadway and the travelling public. In these circumstances, these trees must be removed immediately to prevent imminent loss of human life or property. As such, practical workable guidance (simplified from what is presented in the draft with minimal thresholds or coordination) should be provided in the rangewide guidance for these singular hazard tree situations that are outside Section 7 consultation but may have the potential to impact the species.