



UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. Fish and Wildlife Service
Ecological Services Office
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April 26, 2017

Timothy M. Hill, Administrator
Ohio Department of Transportation
Office of Environmental Services
1980 West Broad Street, Mail Stop 4170
Columbus, OH 43223

TAILS: 03E15000-2016-F-1159

Attn: Mike Pettegrew, Chris Staron

RE: **BRO-US 62-11.41 (PID 97240)**

Dear Mr. Hill,

The U.S. Fish and Wildlife Service (Service) is responding to your request dated January 31, 2017 to verify that the proposed **BRO-US 62-11.41** project (PID 97240), may rely on the February 29, 2016, Framework Programmatic Biological Opinion (PBO) for the Ohio Department of Transportation (ODOT) Federal-Aid Highway Program projects that may affect the Indiana bat (*Myotis sodalis*) and/or northern long-eared bat (NLEB) (*Myotis septentrionalis*)¹. ODOT has determined that the project is *likely to adversely affect* the Indiana and northern long-eared bats. This letter provides the Service's response as to whether the proposed project may rely on the PBO to comply with Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) for its effects to the aforementioned species.

The project, as proposed, will rehabilitate the structure on US 62 at the 11.41 mile marker in Brown County, Ohio. The 114' corrugated metal pipe will be lined with a 102" pipe liner. The project will also include minor work to the headwalls. We understand that the project will result in impacts to approximately 0.087 acres of Category 1 wetland habitat. In addition, up to 0.90 acres of suitable wooded habitat (SWH) for the Indiana and northern long-eared bats, 0.63 of which are located beyond 100 feet from the existing edge of pavement. Approximately 0.48 acres of SWH are located within 50 feet of a perennial stream and outside 100 feet of pavement. In addition, 0.15 acres of SWH are located outside 100 feet of pavement and not within 50 feet of a perennial stream.

Conclusion

The Service has reviewed the January 31, 2017 letter and supporting materials submitted by your office, which describe the effects of the proposed project and include ODOT's commitment to implement the impact avoidance, minimization, and compensation measures as described for CC-3b projects in the 2016 PBO. These measures include the implementation of:

¹ Note: The Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-Eared Bat and Activities Excepted from Take Prohibitions is included in the ODOT PBO by reference.

- Avoidance Measure A-1, which will avoid and/or minimize impacts to summer roosting bats by clearing SWH only between 1 October and 31 March.
- All phases/aspects of the project have been designed to avoid tree removal in excess of what is required to implement the project safely.
- The project footprint has been minimized to the extent practicable.
- Impacts to aquatic resources have been minimized.
- Impacts to forested areas and upland habitats have been minimized.
- Due to the relatively young age of the suitable wooded habitat, no potential maternity roost trees were identified that would require marking for avoidance, however, fencing will be installed prior to any tree clearing to ensure contractors stay within clearing limits. ODOT will ensure that contractors understand clearing limits and how they are marked in the field.

We understand that CM-1a, which will offset the 0.63 acres of SWH to be removed beyond 100 feet from the edge of pavement by subtracting acreage credit from the SCCC2 Bat Conservation Area (BCA) at a replacement ratio of 3.5:1. Therefore, 2.205 acres of credits will be taken from the SCCC2 BCA.

We confirm that the proposed project's effects are consistent with those analyzed in the PBO. The Service has determined that projects consistent with the conservation measures and scope of the program analyzed in the PBO are not likely to jeopardize the continued existence of the Indiana and northern long-eared bats.

Incidental Take

Indiana Bat

The Service anticipates that tree removal associated with the proposed project will cause incidental take of Indiana bats. As described in the Framework Incidental Take Statement (ITS) of the PBO, such taking will be difficult to detect. The Service determined that it is appropriate to measure the amount or extent of incidental take resulting from PBO projects using the proposed acreage of tree removal from Indiana bat suitable habitat as a surrogate for the numbers of individuals taken.

The proposed project will remove 0.90 acres of SWH for the Indiana bat, as defined by the 2016 PBO. The Service will add the acreage of project-related tree removal to the annual total acreage attributed to the PBO as a surrogate measure of Indiana bat take and exempted from the prohibitions against incidental taking. Such exemption is effective so long as your agency implements the reasonable and prudent measure (RPM) and accompanying terms and conditions of the PBO's ITS.

Northern Long-eared Bat

The Service anticipates that tree removal associated with the proposed project will cause incidental take of NLEBs. However, the project is consistent with the PBO, and such projects will not cause take of NLEB that is prohibited under the final 4(d) rule for this species (50 CFR §17.40(o)). Therefore, this taking does not require exemption from the Service.

Reporting Dead or Injured Bats

ODOT, its Local cooperators, and any contractors must take care when handling dead or injured Indiana and northern long-eared bats, or any other federally listed species that are found at the project site in order to preserve biological material in the best possible condition and to protect the handler from exposure to diseases, such as rabies. Project personnel are responsible for ensuring that any evidence about

determining the cause of death or injury is not unnecessarily disturbed. Reporting the discovery of dead or injured listed species is required in all cases to enable the Service to determine whether the level of incidental take exempted by this PBO is exceeded, and to ensure that the terms and conditions are appropriate and effective. Parties finding a dead, injured, or sick specimen of any endangered or threatened species must promptly notify this Service Office.

Reinitiation Notice

This letter concludes consultation for the proposed project, which qualifies for inclusion in the PBO issued to Ohio on February 26, 2016. To maintain this inclusion, a reinitiation of this project-level consultation is required if:

1. the amount or extent of incidental take of Indiana bat is exceeded;
2. new information reveals that the project may affect listed species or critical habitat in a manner or to an extent not considered in the PBO;
3. the project is subsequently modified in a manner that causes an effect to listed species or designated critical habitat not considered in the PBO; or
4. a new species is listed or critical habitat is designated that the project may affect.

Per condition #1 above, the anticipated incidental take is exceeded when:

- the project removes trees from more than 0.90 acres of SWH for the Indiana bat

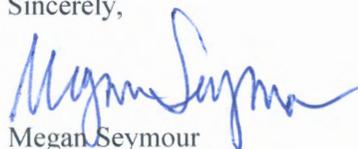
In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

As of this date, our records indicate that projects coordinated under the 2016 PBO have resulted in take of 135.38 acres of SWH:

Management Unit	IT for this project	Cumulative IT to date
West	0.90 acres	112.15 acres
East	0.0 acres	23.23 acres
Statewide	0.90 acres	135.38 acres

We appreciate your continued efforts to ensure that this project is fully consistent with all applicable provisions of the PBO. If you have any questions regarding our response or if you need additional information, please contact Marci Lininger at extension 27 or Karen Hallberg at extension 23 in this office.

Sincerely,



Megan Seymour
Acting Field Supervisor

- cc: J. Kessler, ODNR, Office of Real Estate, Columbus, OH (*email only*)
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