United States Department of the Interior

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October 12, 2018

Mr. David Baldridge
U.S. Army Corps of Engineers
Louisville District, Regulatory Branch
P.O. Box 59
Louisville, KY 40201-0059

Subject: Biological Opinion for the Republic Transmission LLC Duff to Coleman Transmission Line project (LRL-2018-114) affecting Gray Bats and Indiana Bats in Dubois and Spencer counties, Indiana

Dear Mr. Baldridge:

This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion based on our review of the U.S. Army Corps of Engineers' (Corps) proposed authorization, pursuant to section 10 of the Rivers and Harbor Act, for the construction of the Duff to Coleman transmission line and its effects on the federally endangered gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*), in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.). We received your August 13, 2018 request for formal consultation on August 20, 2018.

This Opinion is based on information that accompanied your August 13, 2018 request for consultation, including the biological assessment, summer survey reports, and mitigation plan. The consultation history is located after the Literature Cited. A complete administrative record of this consultation is on file in this office.

You have requested our concurrence with your determination that the project is not likely to adversely affect (NLAA) the fanshell mussel (*Cyprogenia stegaria*), fat pocketbook mussel (*Potamilus capax*), rabbitsfoot mussel (*Quadrula cylindrica cylindrica*), sheepnose mussel (*Plethobasus cyphyus*), least tern (*Sterna antillarum*) and northern long-eared bat (*Myotis septentrionalis*). Based on the location of the project, and the lack of species' records and suitable habitat within the project area, we concur that the proposed project is not likely to adversely affect the fanshell, fat pocketbook, rabbitsfoot, sheepnose, least tern, and northern

long-eared bat.

This biological opinion specifically covers the Duff to Coleman transmission line project for which the Service concurred was likely to adversely affect the gray bat and Indiana bat. This opinion provides an effects and jeopardy analysis based upon anticipated incidental take as a result of this project. After reviewing the status and environmental baseline of the gray bat and Indiana bat and an analysis of potential effects of the actions to these species, it is our determination that this project is not likely to jeopardize the continued existence of the gray bat or Indiana bat.

BIOLOGICAL OPINION

DESCRIPTION OF PROPOSED ACTION

As defined in the ESA Section 7 regulations (50 CFR 402.02), "action" means "all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by federal agencies in the United States or upon the high seas." The "action area" is defined as "all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action."

The following is a summary of the proposed action and a detailed description can be found in *Biological Assessment for the Duff to Coleman Transmission Line*.

The federal action being evaluated in this biological opinion is the Corps' issuance of a Rivers and Harbors Act section 10 permit for Republic Transmission LLC's proposed transmission line project which would cross the Ohio River and Crooked Creek. The proposed project includes the construction of the Duff to Coleman transmission line routed from the Duff Substation in Dubois County and through Spencer County, Indiana to the Coleman Substation in Hancock County, Kentucky. Construction will be performed in four phases, including: clearing and right-of-way access, erection of transmission line foundations and structures, stringing of the conductor, and restoration of the right-of-way.

All woody vegetation within the right-of-way will be cleared for safety and reliability, totaling 123 acres. Clearing will be accomplished using a hydroax or feller buncher in upland areas to minimize soil disturbance, while non-mechanized methods will be used in waterways or wetlands.

Conservation Measures

Republic Transmission LLC has incorporated conservation measures into the proposed project; these measures are designed to avoid, minimize, and mitigate impacts of the proposed action on the gray bat and Indiana bat. The Service has analyzed the effects of the proposed action based on the assumption that all conservation measures will be implemented. A summary of the conservation measures follows.

1) Avoidance Measures – direct take of bats will be avoided by conducting tree clearing activities between October 1 and March 31 when the bats are not present at the site.

2) Mitigation Measures – To mitigate for the impacts of incidental take associated with the entire project, Republic Transmission LLC will protect 110 acres of suitable summer habitat. This mitigation measure will be implemented concurrent with the proposed project, and as approved by the Service.

ACTION AREA

The implementing regulations for section 7(a)(2) of the Act define the "action area" as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 Code of Federal Regulations 402.02). The action area for this biological opinion is the transmission line right-of-way between the Duff Substation in Dubois County and ending at the Ohio River in Spencer County. The length of the transmission line route in Indiana totals 27.6 miles. The Corps jurisdictional area includes three aerial spans across navigable waterways, specifically Crooked Creek and the Ohio River. The two Crooked Creek crossings and a portion of the Ohio River crossing are within the action area.

STATUS OF THE SPECIES

Per the ESA Section 7 regulations (50 CFR 402.14(g)(2)), it is the Service's responsibility to "evaluate the current status of the listed species or critical habitat."

To assess the current status of the species, it is helpful to understand the species' conservation needs which are generally described in terms of reproduction, numbers, and distribution (RND). The Service frequently characterizes RND for a given species via the conservation principles of resiliency (ability of species/populations to withstand stochastic events – numbers, growth rates), redundancy (ability of a species to withstand catastrophic events – number of populations and their distribution), and representation (variation/ability of a species to adapt to changing conditions) (collectively known as the three Rs).

Gray bat

To meet the goal of recovery of the gray bat, at least 90% of Priority 1 (P1) hibernacula and 25% of Priority 2 (P2) hibernacula in each state must be permanently protected, and the hibernacula populations should be stable or increasing for five years (USFWS 1982).

Currently, as a whole, the range-wide status of the species is stable. Recently, all P1 hibernacula were surveyed during the winter of 2017, providing the most complete coverage in years (P1s are located in AL, AR, KY, MO, and TN). The 2017 range wide estimate is approximately 4.3 million bats (USFWS unpublished data). In 2015, the estimate was approximately 3 million bats and in 2013-2014 it was about 2.6 million bats; however, it is impossible to determine a trend since not all caves were surveyed every year; therefore, the 2017 numbers should not be interpreted as a population increase (Shauna Marquardt, USFWS, personal communication). The primary factors influencing the status include destruction or modification of habitat such as hibernacula, maternity sites and foraging habitat, and the fungal disease white nose syndrome (WNS; USFWS 2009a).

For a more detailed account of the species description, life history, population dynamics, threats, and conservation needs, refer to https://www.fws.gov/midwest/Endangered/mammals/graybat/index.html.

Indiana bat
To meet the goal of recovery of the Indiana bat, at least 80% of P1 and 50% of P2 hibernacula in each recovery unit must be permanently protected, the minimum overall population estimate must equal 457,000 bats, and the hibernacula populations should have positive growth rates and minimal risk of decline over 10 years (USFWS 2007).

Currently, as a whole, the range-wide status of the species is declining. The 2017 range wide estimate is approximately 530,705 bats occurring within 229 hibernacula in 17 states. Since the discovery of WNS in New York in 2007, the range wide population has declined by 20 percent (USFWS 2017a). The primary factors influencing the status include destruction or modification of habitat such as hibernacula, maternity roosts and foraging habitat, and white nose syndrome (USFWS 2009b).For a more detailed account of the species description, life history, population dynamics, threats, and conservation needs, refer to https://www.fws.gov/midwest/endangered/mammals/inba/index.html.

STATUS OF CRITICAL HABITAT

Gray bat
No critical habitat has been designated for this species.

Indiana bat
Critical habitat for this species has been designated at eleven caves and two mines in six states; however, this action does not affect any of those areas.

ENVIRONMENTAL BASELINE

Regulations implementing the ESA (50 CFR 402.02) define the environmental baseline as the past and present impacts of all federal, state, or private actions and other human activities in the action area. Also included in the environmental baseline are the anticipated and/or ongoing impacts of all proposed federal projects in the action area that have undergone Section 7 consultation, and the impacts of state and private actions which are contemporaneous with the consultation in progress.

Status of the Species within the Action Area

To determine the extent of the bat population in the Action Area, Republic performed summer surveys for the Indiana bat, gray bat, and northern long-eared bats in the survey season of 2017. Survey efforts for the Action Area included five mist net surveys sites and 13 acoustic survey sites with four follow-up mist net survey sites.

Two mist net surveys were completed at two sites near the Ohio River (DCT 1 and DCT 2) and two sites along the transmission line route (RT-8 and RT-16). No target species were captured at any of the four mist net sites.

Acoustic surveys were deployed for two nights at all acoustic sites. Qualitative review confirmed probable presence of the gray bats at six sites (RT-5, RT-7, RT-10, RT- 12, RT-17, and RT-18) and probably presence of Indiana bats at five sites (RT-7, RT-11, RT-18, RT-23, and RT-25). Follow-up mist-net surveys were conducted at sites with probable Indiana bat presence. No target species were captured at any of the follow-up mist-net sites.

It was determined that the areas with positive acoustic detections for the gray bat and Indiana bat as well as contiguous forested areas, constituted suitable bat habitat. Based on the length of the transmission line route and the location of the positive detections, we estimate one gray bat maternity colony and three Indiana bat maternity colonies may be impacted by the project.

EFFECTS OF THE ACTION

Direct effects are the direct or immediate effects of the project on the species, its habitat, or designated/proposed critical habitat. Indirect effects are defined as those that are caused by the proposed action and are later in time, but still are reasonably certain to occur (50 CFR 402.02). An interrelated activity is an activity that is part of the proposed action and depends on the proposed action for its justification. An interdependent activity is an activity that has no independent utility apart from the action under consultation. Direct and indirect effects of the proposed action along with the effects of interrelated/interdependent activities are all considered together as the "effects of the action."

Gray Bat

Republic Transmission proposes to construct a 27.6 mile long transmission line which will result in the clearing and permanent loss of 49 acres of suitable forest habitat for gray bats. The forest in this area provides not only a commuting corridor to the Ohio River, but also an area to forage. Forest loss, along with stream impacts from removal of riparian corridor, will likely result in degraded foraging habitat. We also anticipate some amount of habitat fragmentation will occur at the crossings of Crooked Creek, as well as within the forested habitat areas along the transmission line route.

Fragmentation of foraging habitat as a result of tree clearing and construction may degrade the remaining habitat's quality by reducing the size of and distance between remaining forest tracts. It may also create a barrier to bat movement along commuting and foraging corridors. This barrier to movement can reduce the available foraging habitat and alter commuting routes, which in turn can increase energy expenditure and mortality. In addition, since gray bats are known to return to their same foraging areas year after year, those bats displaced by the project may alter their foraging areas and create increased competition in other nearby territories since forest cover is already sparse in many parts of the colony's foraging area.

Indiana Bat

Republic Transmission proposes to construct a 27.6 mile long transmission line which will result in the clearing and permanent loss of 91 acres of suitable forest habitat for Indiana bats for roosting and foraging.

Cutting an Indiana bat roost tree when bats are present (April 1 – November 15) is likely to result in bats being injured or killed. Therefore, Republic Transmission will restrict the removal of trees in the project area to the period between October 1 and March 31 when Indiana bats are not known to be present. Thus, we do not anticipate any direct mortality from the felling of trees in the Action Area. However, some indirect adverse effects could still stress some Indiana bats to the point where take is reasonably certain to occur. For example, the loss of a primary roost tree or multiple alternate roost trees during the non-occupancy season would cause displaced individuals to expend increased levels of energy while seeking out replacement roost trees when they return the following spring. If increased energy expenditure occurs during a sensitive period of a bat's reproductive cycle (e.g., pregnancy) it is assumed that spontaneous abortion or other stress-related reproductive delays or losses would be a likely response in some individuals, particularly those that may have already been under other environmental stresses (e.g., WNS). It has been hypothesized that these stresses and delays in reproduction could also result in lower fat reserves being deposited prior to hibernation and ultimately lead to lower winter survival rates (USFWS 2002). For example, females that do give live birth may have pups with lower birth weights or their pups may have delayed development (i.e., late into the summer). This could in turn affect the overwinter survival of the young-of-the-year bats if their delayed development caused them to enter fall migration and winter hibernation periods with inadequate fat reserves.

The loss of bat habitat associated with construction of the transmission line will be permanent. A few bats displaced by clearing for the project may perish, but the majority of displaced bats will likely establish a new summer home range in nearby habitat. The relative abundance and availability of suitable habitat in areas surrounding the project area should greatly enhance the potential for displaced bats to successfully relocate to a new range.

Tree clearing may also result in alteration of foraging habitat and/or travel corridors, forcing bats to fly farther while foraging at night. The quality of foraging habitat may also be temporarily degraded due to erosion, and subsequent sedimentation of stream corridors, associated with construction of the project. Sedimentation could also reduce the overall production of aquatic insects, which make up a portion of the prey base of Indiana bats, which in turn may exacerbate the issue of lost foraging habitat in the area.

CUMULATIVE EFFECTS

Cumulative effects are those "effects of future State or private activities, not involving federal activities, that are reasonably certain to occur within the action area" considered in this Opinion (50 CFR 402.02).

The Service is not aware of any future state, tribal, local, or private actions that are reasonably certain to occur within the action area at this time; therefore, no cumulative effects are anticipated.

JEOPARDY AND ADVERSE MODIFICATION ANALYSIS

Section 7(a)(2) of the ESA requires that federal agencies ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

Jeopardy Analysis Framework

"Jeopardize the continued existence of" means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). The following analysis relies on 4 components: (1) Status of the Species, (2) Environmental Baseline, (3) Effects of the Action, and (4) Cumulative Effects. The jeopardy analysis in this Opinion emphasizes the range-wide survival and recovery needs of the listed species and the role of the action area in providing for those needs. It is within this context that we evaluate the significance of the proposed federal action, taken together with cumulative effects, for purposes of making the jeopardy determination.

Analysis for Jeopardy

Impacts to Individuals – The proposed action includes the permanent removal of 49 acres of gray bat habitat and 91 acres of Indiana bat habitat along the entire route. As discussed in the Effects of the Action, potential effects of the action include effects to gray and Indiana bats present within the action area during foraging and upon return from hibernation. Effects generally include temporary reduced reproduction of individual bats as a result of having to expend additional energy seeking out alternate foraging and roosting habitat. In addition, a shift in home range for some individual bats from exposure to continuing noise and disturbance is anticipated.

The potential for effects caused by the removal of suitable foraging and roosting habitat is expected to be greatest during the following spring and early summer when bats return from hibernation. Impacts to bats could be minor as bats may acclimate sooner than expected to flying further to find suitable foraging and roosting habitat. However, as discussed above, bats impacted by WNS have additional energetic demands and reduction in flight ability. This compounds the stress of having to find new roosting and/or foraging habitat. Some individuals may have to expend additional energy finding prey, experience higher predation risk, and may experience complications with pregnancy and rearing young, resulting in reduced reproductive potential.

However, the conservation measures (conducting tree removal in winter) will avoid the potential for direct effects to the bats and the permanent protection of 110 acres of habitat will provide for future use.

In summary, there will be impacts to individual gray and Indiana bats in their annual survival or reproductive rates.

Impacts to Populations – As we have concluded that individual gray and Indiana bats are likely to experience some reductions in their annual or lifetime reproductive success, we need to assess the aggregated consequences of the anticipated reductions in fitness (i.e., reproductive success and long-term viability) of the exposed individuals on the population to which these individuals belong.

Individuals of one maternity colony of gray bats and three maternity colonies of Indiana bats will be affected. The effects are not expected to measurably decrease the fitness of these maternity colonies for several reasons. Any removal of potential roost trees will be done in the winter months when bats are hibernating which will avoid the chance of killing adults or pups. Further, not every bat from the single anticipated colony for each species is likely to be exposed to stressors associated with the proposed action as they occur within a small portion of a colony's potential home range. Finally, we anticipate that most impacts will occur within the first spring after tree clearing. Bats are expected to acclimate to this change and seek out alternate habitat nearby. All impacts are anticipated to be short-term in nature. We do not anticipate a long-term reduction in any maternity colony fitness because both bat species are expected to acclimate to changes in the landscape given ample suitable habitat remaining within and adjacent to the project area that will be available to them after future hibernation events.

Impacts to Species – As we have concluded that population of gray and Indiana bats are unlikely to experience reductions in their fitness, there will be no harmful effects (i.e., there will be no reduction in RND) on the species as a whole.

CONCLUSION

We considered the current overall status of gray and Indiana bat and the condition of the species within the action area (environmental baseline). We then assessed the effects of the proposed action and the potential for cumulative effects in the action area on individuals, populations, and the species as a whole. These types of effects of the proposed action are currently considered primary factors influencing the status of the species. While they may compound those factors, as stated above, we do not anticipate any reductions in the overall RND of the gray and Indiana bat. It is the Service's Opinion that the action, as proposed, is not likely to jeopardize the continued existence of the gray bat and Indiana bat.

INCIDENTAL TAKE STATEMENT

Section 9 of the ESA and federal regulation pursuant to Section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without a 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 by the Service 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 (50 CFR §

17.3). Harass is defined by the Service 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 (50 CFR § 17.3). 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 ESA provided that such taking is in compliance with the terms and conditions of this incidental take statement.

AMOUNT OR EXTENT OF TAKE ANTICIPATED

The anticipated level of take is being expressed as the permanent loss of 91 acres of forest that is currently serving as suitable summer habitat for gray and Indiana bats. It is anticipated that up to 91 forested acres will need to be cleared for the construction of the Republic Transmission LLC Duff to Coleman transmission line project. Of the 91 acres of anticipated take, three acres are within the Corps' jurisdiction.

REASONABLE AND PRUDENT MEASURES

According to the agreement (USFWS 2017b), "the Service will identify in the incidental take statement what reasonable and prudent measures (RPMs) address impacts of activities within the Corps' jurisdiction and thus which the Corps must implement through its permit. The Service will likewise identify those RPMs that address impacts of the larger project outside the Corps' jurisdiction and will specify that they must be implemented directly by the applicant if the take exemption is to apply." To accommodate this part of the agreement, we have split the RPMs into measures to be implemented by the Corps and Applicant, respectively.

RPMs to be implemented by the Corps

The measures described below are non-discretionary, and shall be made binding conditions of any permit issued to the Applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The Corps has a continuing duty to regulate the activity covered by this incidental take statement within its jurisdiction. If the Corps (1) fails to assume and implement the terms and conditions or (2) fails to require the Applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit document, the protective coverage of section 7(o)(2) may lapse. To monitor the impact of incidental take, the Corps must report the progress of the action and its impact on the species within the area of its jurisdiction to the Service as specified in the Reporting Requirements below [50 CFR 402.14(i)(3)].

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize the impacts of the incidental take of gray bats and Indiana bats:

1. Effects to the gray bat and Indiana bat must be minimized in the action area within the Corps' jurisdiction.

RPMs to be implemented by Republic Transmission LLC

The measures described below are non-discretionary and shall be undertaken by Republic Transmission LLC for the exemption in section 7(o)(2) to apply. If Republic Transmission LLC (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, the protective coverage of section 7(o)(2) may lapse. To monitor the impact of incidental take, Republic Transmission LLC must report the progress of the action and its impacts on the species to the Service as specified in the Reporting Requirements below [50 CFR 402.14(i)(3)].

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize the impacts of the incidental take of gray bats and Indiana bats:

1. Effects to the gray bat and Indiana bat must be minimized in the action area outside the Corps' jurisdiction.

TERMS AND CONDITIONS

Terms and Conditions to be implemented by the Corps

In order to be exempt from the prohibitions of Section 9 of the ESA, the Corps must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and outline required reporting and monitoring requirements. These terms and conditions are nondiscretionary.

1. To ensure effects to the gray bat and Indiana bat are minimized the Corps shall have a Special Condition in the DA permit stating that in the action area within the Corps' jurisdiction, the project will occur as designed, planned, and documented in the biological assessment and this biological opinion, including all avoidance, minimization, and mitigation measures.

Terms and Conditions to be implemented by Republic Transmission LLC

In order to be exempt from the prohibitions of Section 9 of the ESA, Republic Transmission LLC must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and outline the required reporting and monitoring requirements. These terms and conditions are nondiscretionary.

1. Republic Transmission LLC must agree to implement the proposed action as described in the initiation package.

2. Republic Transmission LLC will limit tree clearing activities to occur when bats are not present at the project site, between October 1 and March 31.

3. Republic Transmission LLC will permanently protect 110 acres of suitable habitat within one year of permit issuance. If phased tree clearing occurs, then mitigation may be phased also.

4. Republic Transmission LLC will provide the Service's INFO with a copy of the fully executed conservation easement, which affords permanent protection to the entire 110 acre mitigation site.

5. Republic Transmission LLC will prepare a report detailing all Conservation Measures and monitoring efforts that have been initiated, are ongoing, or completed during the previous calendar year and the current status of those yet to be completed. The report will be submitted to the Service's INFO by 31 January each year.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation Recommendations (CRs) are discretionary agency activities to minimize or avoid adverse effects of a proposed action/program on listed species or critical habitat, to help implement recovery plans, or to develop information. CRs generally do not focus on a specific project, but rather on an agency's overall program.

The Service provides the following CRs for the Corps' consideration; these activities may be conducted at the discretion of Corps staff as time and funding allow:

1. Working with the Service, develop national guidelines for addressing outstanding Indiana bat issues associated with Corps projects within the range of the Indiana bat.

2. Provide funding to conduct research on understanding/controlling and mitigating the effects of White-Nose Syndrome.

3. Expand on scientific research and educational outreach efforts on Indiana bats in coordination with the Service's INFO.

4. In coordination with the INFO, purchase or otherwise protect additional Indiana bat maternity habitat and/or hibernacula/swarming habitat in Indiana.

In order for the Service to be kept informed of actions for minimizing or avoiding adverse effects or benefiting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

REINITIATION NOTICE

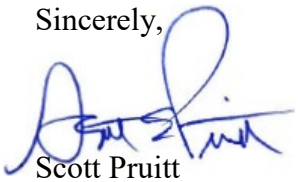
This concludes formal consultation on the action outlined in the Corps' request to initiate. As provided in 50 CFR 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) 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 opinion; (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 opinion; 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, the exemption issued pursuant to section 7(o)(2) may have lapsed and any further take could be a violation of Section 9. Consequently, we recommend that any operations causing such take cease pending reinitiation.

Republic Transmission LLC cannot reinitiate formal consultation if any of the criteria listed above are met within its action area because it is not a Federal agency with discretionary involvement or control over the action; however, the agreement (USFWS 2017b) states that, "If the Corps never had or no longer retains discretionary Federal involvement or control over incidental take anticipated in the biological opinion[1], but the applicant is carrying out the action in full compliance with the associated incidental take statement, the Service will exercise its enforcement discretion and not seek section 11(e) enforcement against the applicant in these situations for the take that was anticipated in the incidental take statement. However, we recognize that the applicant in those situations will face some exposure to a citizen suit brought under section 11(g)."

We encourage Republic Transmission LLC to implement its proposed activities, including the conservation measures, as described in this biological opinion and comply with the incidental take statement to minimize the need for reinitiation of formal consultation. As state above, in instances where the amount or extent of incidental take is exceeded, the exemption issued pursuant to section 7(o)(2) may lapse and any further take could be a violation of Section 9.

If you have any questions about this biological opinion, our response to your concurrence requests, please contact Marissa Reed at (812)334-4261 ext. 215 or Marissa_Reed@fws.gov.

Sincerely,



Scott Pruitt
Field Supervisor

[1] This would be the situation if (a) we do not anticipate any incidental take within the Corps' action area, but do anticipate incidental take within the Applicant's action area, or (b) if the Corps' discretionary control has lapsed because the permitted action within its jurisdiction has ended for whatever reason.

LITERATURE CITED

USFWS. 1982. Gray bat recovery plan. Minneapolis, MN. 26pp. plus appendices.

USFWS. 2007. Indiana Bat (*Myotis sodalis*) Draft Recovery Plan: First Revision. Fort Snelling, MN. 258 pp.

USFWS. 2009a. Gray Bat (*Myotis grisescens*) 5-Year Review: Summary and Evaluation. Columbia, Missouri Ecological Services Field Office Columbia, Missouri.

USFWS. 2009b. Indiana bat (*Myotis sodalis*) 5-Year Review: Summary and Evaluation. Bloomington, Indiana Ecological Services Field Office Bloomington, Indiana.

USFWS. 2017a. 2017 Indiana bat (*Myotis sodalis*) population status update. Bloomington, IN. 9 pp. Available online at https://www.fws.gov/midwest/endangered/mammals/inba/pdf/2017IBatPopEstimate5July2017.pdf

USFWS. 2017b. Letter from Gary Frazer, Assistant Director for Ecological Services, to James C. Dalton, Director of Civil Works, U.S. Army Corps of Engineers, regarding an approach to consultation for projects with limited Corps jurisdiction within a larger project. May 22, 2017.

CONSULTATION HISTORY

The Service began coordination with Corps in April 2018. A chronological summary of coordination events and actions associated with this consultation is presented below.

April 19, 2018 – INFO received the Corps request for informal consultation via email on the proposed Republic Transmission LLC Duff to Coleman transmission line in Dubois and Spencer counties, Indiana.

April 30, 2018 – INFO responded to the USACE request for informal consultation via email. INFO notified the USACE that the Service does not concur with a may affect, not likely to adversely affect determination for the gray and Indiana bats.

August 20, 2018 – INFO received letter from the Corps requesting formal consultation on the Duff to Coleman transmission line project. The Corps' letter included a biological assessment describing potential impacts to gray and Indiana bats.

September 7, 2018 – INFO sent the Corps a letter acknowledging receipt of their request and biological assessment and that formal consultation on the gray and Indiana bat had been initiated on the Duff to Coleman transmission line project.

September 21, 2018 – INFO submitted its draft biological opinion to the Corps for review.

October 12, 2018 – INFO issued its final biological opinion to the Corps.