



Indiana Bat, FW3 <indiana\_bat@fws.gov>

## Comments from the Ohio Coal Association on the January 2013 Draft Revised Rangewide Indiana Bat Summer Survey Guidelines

1 message

zdaniels@ohiocoal.com <zdaniels@ohiocoal.com>  
To: indiana\_bat@fws.gov

Thu, Feb 7, 2013 at 3:24 PM

To Whom It May Concern,

Attached are the comments from the Ohio Coal Association on the 2013 Draft Revised Indiana Bat Summer Survey Guidelines. Please let me know if you have any questions or need any additional information.

Best Regards,

**Zane T. Daniels**  
President



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 **Comments from the Ohio Coal Association on the January 2013 Draft Revised Rangewide Indiana Bat Summer Survey Guidelines.pdf** 4523K

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February 8, 2013

VIA E-MAIL: [Indiana\\_bat@fws.gov](mailto:Indiana_bat@fws.gov)

U.S. Fish & Wildlife Service

RE: January 2013 Draft Revised Rangewide Indiana Bat Summer Survey Guidelines

To Whom It May Concern:

On behalf of the Ohio Coal Association (“OCA”), the following comments are being provided in response to the request by the United States Fish & Wildlife Service (“USFWS”) for comments on the Draft Revised Rangewide Indiana Bat Summer Survey Guidelines (“Draft Indiana Bat Guidelines”) that USFWS published on January 9, 2013. The OCA is a trade association of more than ninety members representing every aspect of the coal mining industry, including coal production, equipment manufacturing and supply, electric power generation, engineering, coal transportation, blasting, and other similar enterprises throughout the State of Ohio. As the trade organization for this important industry, the Draft Indiana Bat Guidelines were brought to our attention by our membership and we are providing our comments to you on their behalf.

It is the OCA’s understanding that USFWS has solicited comments on the Draft Indiana Bat Guidelines with the intent that the final guidelines will replace the 2007 Indiana Bat Mist-Netting Guidelines. Although OCA appreciates the opportunity to provide comments on the Draft Indiana Bat Guidelines, OCA is concerned that USFWS may have prejudged the need for new protocols and/or additional monitoring and survey requirements. Further, as OCA stated in its March 1, 2012 comments on the USFWS’s Draft Revised Indiana Bat Summer Survey Guidance (“March 2012 Draft Indiana Bat Guidance”), OCA is concerned by the fact that the protocols in the Draft Indiana Bat Guidelines have been developed by a multi agency team of state and federal regulatory agencies with little apparent input from external sources. This is troubling for a number of reasons, not the least of which are the short timelines provided by USFWS to members of the regulated community to comment on the draft protocols before their deployment, USFWS’s apparent disregard of the comments that were previously provided regarding the substantively identical March 2012 Draft Indiana Bat Guidance, and the apparent desire of USFWS to proceed with a final action regardless of the comments. OCA believes that a better approach would be to solicit comments on the Draft Indiana Bat Guidelines, convene a work

group of interested parties to discuss the protocols and assumptions underlying the Draft Indiana Bat Guidelines over the course of the next year, field test any protocols no earlier than 2014, and propose a final action, if needed, for implementation no earlier than 2015.

Turning to the particulars of the Draft Indiana Bat Guidelines, and after requesting comments from our members, OCA would like to raise the following additional, more specific concerns:

1. OCA understands that the software for the new acoustic monitoring software may not yet be fully developed or tested. OCA is concerned about the USFWS's planned deployment of a protocol for which there is no approved software. Moreover, OCA believes that it is inappropriate to require the regulated community to invest in expensive software in order to act as a test group for the software's performance. We strongly encourage the USFWS not to rush deployment of any new protocols and to delay field testing of acoustic monitoring until a certified software system for the monitoring has been approved, all of the technical issues with that software are addressed, and the viability of the acoustic monitoring methodology is confirmed. USFWS also should conduct a more detailed analysis of the potential costs of the new protocols, including the cost of the software. To the extent the USFWS requires the regulated community to utilize software, that software should be made available free of charge.

2. Related to point 1 above, it is OCA's understanding that no software presently exists that is capable of accurately distinguishing between individual species of bats. Unless or until such software is developed and tested, it is inappropriate to mandate automated acoustic monitoring when there is no proof that that method will be superior to mist net surveys. USFWS should also review the initial start-up costs associated with deployment of this technology and balance those costs with expected benefits (if any) to bat detection.

3. The Draft Indiana Bat Guidelines will increase the intensity of survey efforts beyond those needed for effectively determining whether or not the Indiana Bat is present within a particular project area. The deployment of additional technology for acoustic monitoring and the accompanying training of individuals to properly operate the equipment do not appear justified unless deploying the new technology produces a reduction in overall costs. The OCA is not aware of an analysis of the costs of deploying the new methodology as compared to the increased accuracy (if any) in detection. This relationship needs to be more fully developed before changes are made that could disrupt the ability of coal operators to properly determine if Indiana Bats are present in a project area.

4. OCA previously expressed concerns that Phase II of the March 2012 Draft Indiana Bat Guidance did not take into consideration the potential for an acoustic sample set to fail to identify any bat calls. Although USFWS appears to have attempted to provide some clarity regarding that issue, *see* Draft Indiana Bat Guidelines at 12, it remains unclear what is required when there are very few or no bats present in the survey area. OCA believes it is unreasonable, where there are very few or no bat calls detected in a survey area, to require surveyors to perform additional nightly monitoring until a sufficient number of calls are identified.

5. The Draft Indiana Bat Guidelines require operators to assume that any identified Indiana bat call indicates the presence of a maternity colony if no other surveys are conducted. We disagree with this policy conclusion. As USFWS apparently concedes, acoustic monitoring is not capable of determining age, sex, health, or other information regarding the demographics of a particular population. If this is indeed the case, unless the Draft Indiana Bat Guidelines specifically and unequivocally state that a “no detect” result is acceptable for confirming the absence of bats in a project area, acoustic surveys do not appear to be a cost effective alternative to mist net surveys because in many instances a mist net survey would be recommended (required) anyway. The question then becomes why should an operator do an acoustic survey in the first place, given that a mist net survey will likely be required. Although the identification of an Indiana bat call during acoustic monitoring may indicate the presence of an Indiana bat (assuming the validity of the sample and accuracy of the software), there is nothing that supports the conclusion that a single call indicates the presence of a maternity colony. If this is the case and additional survey work is needed (i.e. mist net surveys), there does not appear to be any advantage to deployment of this new technology for operators.

6. The implementation schedule and length of validity of the survey results in the Draft Indiana Bat Guidance are unrealistic given other permitting requirements. Survey results need to be valid for a period of time at least as long as other permitting requirements for the particular project. Two years is inadequate.

7. The draft protocol appears to shorten the survey season without justification. Given the tight timeframes for mist net and other surveys, shortening the time period without any apparent justification does not appear to be supported and will impose additional costs on mining operations.

8. In light of the shorter survey season discussed in point 7 above, OCA has concerns that there may not be a sufficient number of qualified experts who have or will obtain the necessary equipment and software to service all survey areas in the State within a 3 month period. Moreover, the short survey period, probable lack of qualified experts, and expense of the new equipment and software likely will result in substantially higher survey costs. As discussed elsewhere, these higher costs of compliance with the protocols have not been justified, and it is inappropriate to levy them on the regulated community.

9. The draft survey protocol appears to anticipate efforts to coordinate with adjacent landowners to obtain authorization to sample. Simply stated, it is not reasonable to expect that any adjacent landowners will agree to such surveys. Project impacts are limited by law to a project area, and there is no incentive for adjacent landowners to provide access for sampling for Indiana bat populations. The survey protocol should be limited to the project area, both because of the practical reality that no offsite impacts will occur, and the fact that there is no incentive for any offsite property owner to allow any sampling on their property.

For these reasons and others, OCA requests that USFWS delay implementation of any field work to test the new protocols, and that the Agency abandon plans to publish a final

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guidance during in 2013. The Agency simply has not afforded interested parties enough time to assess in the development of the protocols, the technology and science underlying the protocols, and the effectiveness of the software associated with the acoustic monitoring requirements, or to properly respond to the various assumptions and conclusions reached by the inter agency task force. OCA is not convinced of the need for these proposed changes, nor are we convinced of the validity of the approach, both scientifically and economically. We urge the Agency to take the additional time needed to address these concerns and to engage in a more broad based discussion of the proposed need for changes to the survey protocols.

We look forward to the opportunity to participate in further discussions on this topic, and if you have any questions, do not hesitate to contact me.

Very truly yours,



Zane T. Daniels