



February 1, 2013

U.S. Fish and Wildlife Service
620 South Walker Street
Bloomington, Indiana 47403-2121

Re: Proposed Draft Revised Rangewide Indiana Bat Summer Survey Guidelines

To whom it may concern,

The Ohio Home Builders Association (OHBA), which represents just over 4,000 member companies, appreciates the opportunity to comment on the U.S. Fish and Wildlife (USFWS) Proposed Draft Revised Rangewide Indiana Bat Summer Survey Guidelines. Our members consist of individuals and firms that develop land and construct homes, apartment buildings, light commercial buildings and other industrial projects. Our members live and work in the communities in which they build, and regularly plan and design their projects to optimize environmental protection and resource conservation.

This new guidance from USFWS may have implications for a wide range of projects, including new development in previously undeveloped land. Two major changes are proposed: 1) an update in the definition of suitable habitat to include areas of forest composed of smaller diameter trees than what was previously considered; 2) requirements for the use of acoustic sampling to determine if Indiana bats are using potential habitat on a project site.

Further, I have identified specific areas of concern within the draft documents currently available for comment, summarized below.

- 1. Change in the definition of 'suitable habitat'** – USFWS has previously described suitable habitat as being composed primarily of larger trees (typically greater than 6 inches diameter) that exhibit adequate habitat features (crevices, cavities, exfoliating bark) that provide shelter for the bat. The new proposed guidelines reduce the minimum size of suitable habitat trees (exhibiting the physical characteristics previously described) to 3 inches diameter. This reduction in the size of potential suitable habitat trees expands the area of forested land that, historically, would have been considered unsuitable or less desirable habitat for the bat. As additional areas may be considered suitable habitat, more areas will likely require acoustic sampling following the methodology described in the proposed guidelines.

2. **Acoustic Detection Standards** – The new summer survey guidelines rely on the use of acoustic monitoring to record the calls created by bats flying near detection equipment (microphone and recorder). USFWS is still determining if any existing software is suitable for distinguishing various species of bats by sound. This is an internal review and as of now, not subject to any independent or peer evaluation. The software may also be private and require purchase (no cost has been provided). If no software is found to be suitable, an alternative acoustic methodology is proposed, requiring a major analysis of the data, greatly increasing costs.
3. **Acceptable Error Rate** – According to USFWS, a p-value of <0.10 is acceptable for the positive identification of an Indiana bat from an acoustic recording, resulting in a Type 1 error, or a false positive, in 10% of acoustic recordings (a call is identified as an Indiana bat, when in fact it is not). This 10% probability of misidentifying a bat's acoustic call could have major ramifications for a project, including delays and cost increases. A 10% chance of making a Type 1 error is a very wide margin of uncertainty, given the potential resulting impacts to a proposed project.
4. **2013 Contingency Plan** – The proposed 2013 Contingency Plan states that all calls above a certain frequency will be assumed to be an Indiana bat. However, several species of the *Myotis* genus (which includes the common little brown bat, *Myotis lucifugus*) produce calls above this frequency. Additionally, other studies have documented the challenging nature of teasing apart the identity of calls from bats in this genus. Surveys and data analysis need to be more scientifically rigorous and reproducible to avoid false positives. As there are presently no electronic filters or analysis programs that have been accepted for use by USFWS for evaluating acoustic survey results, as previously described, this would place a large workload and cost on a project proponent. Few experts are available at this time to make the important distinction between calls from a common little brown bat and the Indiana bat.
5. **Interpretation and Effects of Positive Acoustic Results** – As proposed, positive results from an acoustic survey allow for one of two avenues for proceeding with a project: 1) Perform no additional surveys. If no further studies are conducted, USFWS assumes that the site contains a maternity colony within the middle of the project area, requiring the most conservative measures for protection of the species; or 2) Conduct mist-netting and potential radio-tracking or emergence surveys. If a mist-net survey captures no Indiana bats, USFWS will still assume that Indiana bats are utilizing the site. If an Indiana bat is captured, it must be tracked to determine if a maternity colony is in fact present on the site. This type of assumed presence needs to be further clarified, and measures that USFWS intends to implement to avoid impacts to this species should be described.
6. **Reliance on Use of Unpublished Data** – According to USFWS, the shift to the use of acoustic survey methodology is based, in part, on the efficacy of a study conducted at Fort Drum, New York. This study has not been published and therefore has not been peer-

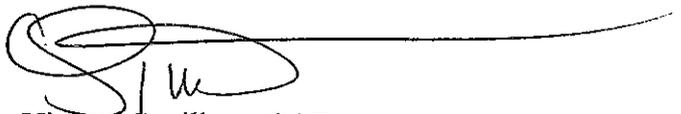
reviewed. Regulatory rulemaking that relies on internal sampling data that has not been evaluated by the scientific community, and not available to the general public, is unscientific. Such studies should be repeated across the range of the species, and results compared and analyzed, before such significant and potentially costly guidelines are implemented.

7. **Costs to Project Proponent** – As proposed, these draft guidelines would place a large financial burden on a project proponent, due to the requirements for additional surveys not historically required (acoustic monitoring) in expanded habitat areas not previously considered suitable for the bat. In addition to the direct costs related to acoustic surveys, the increased potential of detecting a bat, even if one is not present, could add costly delays to a project seeking federal and state permits. USFWS should consider the potential total cost to the private sector that could result from these proposed guidelines and confirm its compliance with the Unfunded Mandates Reform Act of 1995.

8. **Effects on Other Aspects of a Project** – Endangered species surveys are often conducted as part of a § 10 or § 404/401 permitting project. If acoustic surveys identify an Indiana bat call on a project site, and no further studies are conducted, USFWS states that it must assume the presence of a maternity colony within the middle of a project area. This raises a significant issue in Ohio. According to the Ohio Rapid Assessment Method v. 5.0, if a wetland is, "...known to contain an individual of, or documented occurrences of federal or state-listed threatened or endangered plant or animal species" it is automatically considered to be a Category 3 wetland. Without knowing exactly where, or if, a maternity colony is in fact located on a project site, must Ohio Environmental Protection Agency also assume that a maternity colony is present in wetlands and categorize all wetlands on the site as Category 3?

OHBA appreciates the opportunity to provide comments on the proposed draft survey guidelines. Because it imposes unrealistic, significantly burdensome, and economically devastating impacts on construction site operators, OHBA encourage USFWS to work closely with the home building industry during the comment review process and as it works on any revisions to Proposed Draft Revised Rangewide Indiana Bat Summer Survey Guidelines. Feel free to contact me with any questions.

Sincerely,



Vincent Squillace, CAE
Executive Vice President