



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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April 7, 2011

Timothy M. Hill
Office of Environmental Services
Ohio Department of Transportation
P.O. Box 899
Columbus, OH 43216-0899

TAILS: 31420-2011-F-0039 (PID 83079)

Attn: Michael Pettegrew, Megan Michael

RE: **HAM-27-16.79 (PID 83079)**

Dear Mr. Hill:

This letter is in response to your October 12, 2010 request, received in our office on October 13, 2010, for U.S. Fish & Wildlife Service (Service) concurrence on your Endangered Species Act section 7(a)(2) effects determination for federally listed species in the HAM-27-16.79 project area. This project proposes to construct a two-lane, "jug handle" interchange in the southwest quadrant of the intersection of Kemper Road and US-27 in Colerain Township in Hamilton County, Ohio. We understand that the project will result in impacts to approximately 317 linear feet of an unnamed tributary to Banklick Creek. This tributary is described as a Modified Class II Primary Headwater Habitat (PHWH) stream with seasonal flow. We also understand that no wetlands will be impacted by the project. In addition, eleven trees exhibiting suitable Indiana bat (*Myotis sodalis*) roosting habitat will be removed for the project, nine of these trees exhibit characteristics suitable for maternity colony roosts.

FISH & WILDLIFE COORDINATION ACT COMMENTS:

The Service recommends that impacts to streams and wetlands be avoided, and buffers surrounding these systems be preserved. Streams and wetlands provide valuable habitat for fish and wildlife resources, and the filtering capacity of wetlands helps to improve water quality. Naturally vegetated buffers surrounding these systems are also important in preserving their wildlife-habitat and water quality-enhancement properties. We support and recommend mitigation activities that reduce the likelihood of invasive plant spread and encourage native plant colonization. Prevention of non-native, invasive plant establishment is critical in maintaining high quality habitats. All disturbed areas in the project vicinity should be mulched and revegetated with native plant species.

In addition, we recommend limiting the use of rock channel protection (RCP) or similar materials for erosion control. Instead, we recommend using native vegetation to control erosion, or, at a minimum, using native vegetation in combination with rock.

FEDERALLY LISTED SPECIES:

This project lies within the range of the federally endangered **Indiana bat** (*Myotis sodalis*), **running buffalo clover** (*Trifolium stoloniferum*), and **fanshell** (*Cyprogenia stegaria*) and **pink mucket** (*Lampsilis abrupta*) mussels; the **sheepnose** (*Plethobasus cyphus*) and **snuffbox** (*Epioblasma triquetra*), both mussel species proposed for listing as federally endangered; and the **bald eagle** (*Haliaeetus leucocephalus*), a federal species of concern. Based on the type, location, and size of the project, ODOT anticipates that none of these species, except the Indiana bat, will be affected by the project.

INDIANA BAT - TIER 2 BIOLOGICAL OPINION:

On January 26, 2007, the U.S. Fish and Wildlife Service (Service) issued a programmatic biological opinion (PBO) for the Ohio Department of Transportation's (ODOT) Statewide Transportation Program through January 2012. This PBO established a two-tiered consultation process for ODOT activities, with issuance of the programmatic opinion being Tier 1 and all subsequent site-specific project analyses constituting Tier 2 consultations. Under this tiered process, the Service will produce tiered biological opinions when it is determined that site-specific projects are likely to adversely affect federally listed species. When *may affect, not likely to adversely affect* determinations are made, the Service will review those projects and if justified, provide written concurrence and section 7(a)(2) consultation will be considered completed for those site-specific projects.

In issuing the PBO (Tier 1 biological opinion), we evaluated the effects of all ODOT actions outlined in your Biological Assessment on the federally listed Indiana bat. Your current request for Service review of the HAM-27-16.79 interchange project is a Tier 2 consultation under the January 26, 2007, PBO. We have reviewed the information contained in the letter and supporting materials submitted by your office describing the effects of the proposed project on federally listed species. We concur with your determination that the action is *likely to adversely affect* the Indiana bat. As such, this review focuses on determining whether: (1) this proposed site-specific project falls within the scope of the Tier 1 PBO, (2) the effects of this proposed action are consistent with those anticipated in the Tier 1 PBO, and (3) the appropriate conservation and mitigation measures identified in the biological assessment are adhered to.

That is, this letter serves as the Tier 2 biological opinion for the proposed HAM-27-16.79 interchange project. As such, this letter also provides the level of incidental take that is anticipated and a cumulative tally of incidental take that has been authorized and exempted in the PBO.

HAM-27-16.79 Tier 2 Consultation History

At the time that ODOT initiated the current Tier 2 formal consultation on the HAM-27-16.79 project (October 12, 2010), the Service and ODOT OES were in the process of resolving problems that had been identified regarding ODOT's use of pooled mitigation areas (PMAs) to mitigate for project impacts to the Indiana bat. In a meeting on May 14, 2010, ODOT OES and the Service agreed that potential mitigation areas would need to be approved by the Service prior to establishment of a PMA for the Indiana bat. Approval of a crediting system would also need prior approval. In your October 12, 2010 letter, you proposed that acreage on a property in Montgomery County, MOT-70/75, serve as mitigation for impacts to Indiana bat habitat on the HAM-27-16.79 project.

On December 14, 2010, Megan Michael (ODOT OES) and Karen Hallberg (Service, Ohio Field Office) field reviewed the MOT-70/75 property. In an email dated January 11, 2011, Megan Michael provided mapping of the MOT-70/75 site, delineating the separate areas to be used for stream, wetland, and Indiana bat mitigation. The Service approved the site as an Indiana bat PMA in March 2011 and agreed that ODOT could utilize the site to mitigate for impacts from the HAM-27-16.79 project. It was agreed that ODOT would mitigate for the 2.2 acres of forested area to be cleared on HAM-27-16.79 at a ratio of 1:1. An updated balance sheet, showing the current available acreage remaining at the MOT-70/75 site, was provided to the Service by ODOT OES on April 1, 2011 and a copy is enclosed with this letter.

Description of the Proposed Action

Pages 1-2 of your letter, along with the supporting materials you submitted, include the location and a thorough description of the proposed action. The action, as proposed, involves the construction of a two-lane, “jug handle” interchange in the southwest quadrant of the intersection of Kemper Road and US-27 in Colerain Township in Hamilton County. The purpose of this project is to improve the safety of the Kemper Road-US27 intersection. Eleven trees that exhibit suitable summer roost habitat characteristics for the Indiana bat will be removed for the project, including nine trees that exhibit brood-rearing habitat for the species. ODOT will implement the following conservation measures to avoid, minimize, and/or mitigate adverse impacts to the Indiana bat: 1) any unavoidable tree removal will take place between September 30 and April 1 to avoid direct impacts (avoidance measure A-1), and 2) protection of land/habitat through a restrictive covenant to offset loss of suitable habitat (M-1). **The Service appreciates ODOT’s use of the revised tree clearing dates of September 30 and April 1.**

Status of the Species

Species description, distribution, life history, population dynamics, and status are fully described on pages 13-26 for the Indiana bat in the PBO and are hereby incorporated by reference. Since the issuance of the PBO in 2007, there has been no change in the status of the species.

Species descriptions, life histories, population dynamics, status and distributions are fully described on pages 23-30 for the Indiana bat in the PBO and are hereby incorporated by reference. The most recent population estimate indicates 387,835 Indiana bats occur rangewide (King 2010). The current revised Indiana Bat Recovery Plan: First Revision (2007) delineates recovery units based on population discreteness, differences in population trends, and broad level differences in land-use and macrohabitats. There are currently four recovery units for the Indiana bat: Ozark-Central, Midwest, Appalachian Mountains, and Northeast. All of Ohio falls within the Midwest Recovery Unit.

In 2007, white nose syndrome (WNS) was found to fatally affect several species of bats, including the Indiana bat, in eastern hibernacula. To date, WNS is known from New York, Massachusetts, Vermont, West Virginia, Pennsylvania, New Jersey, New Hampshire, Connecticut, Virginia, Tennessee, Oklahoma, and Missouri, as well as the provinces of Ontario and Quebec in Canada. The extent of the impact this syndrome may have on the species rangewide is uncertain, but based on our current limited understanding of WNS, we expect mortality of bats at affected sites to be high (personal communication, L. Pruitt, 2008).

Environmental Baseline

The environmental baseline for the species listed above was fully described on pages 21-26 of the PBO and is hereby incorporated by reference. Since the issuance of the PBO in 2007, there has been no change in the environmental baseline.

Status of the species within the action area

Since the issuance of the PBO in 2007, there have been no new Indiana bat capture records within the vicinity of this project. Your letter and supporting materials state that suitable habitat exists within the action area, thus we are assuming presence.

Effects of the Action

Based on analysis of the information provided in your letter and supporting materials, we have determined that the effects of the proposed action are consistent with those contemplated and fully described on pages 31-35 of the PBO. Adverse effects to the Indiana bat from this project could occur due to the removal of potential maternity roost trees. However, implementation of seasonal cutting restrictions (avoidance measure A-1) will avoid direct adverse effects to individual bats. Projects that require the removal of one or more potential primary maternity roost trees outside of the Indiana bats’ maternity season can result in adverse effects to colony members upon their return to maternity areas

following hibernation. When a primary roost tree becomes unsuitable, members of a colony may initially distribute themselves among several previously used alternate roost trees (USFWS 2002; Kurta et al. 2002). It is not known how long it takes for the colony to attain the same level of roosting cohesiveness that it experienced prior to the loss of an important primary roost tree. As explained in the PBO, colony cohesiveness is essential for successful birth and rearing of young. It is likely that due to the ephemeral nature of roost trees, the Indiana bat has evolved to be able to relocate replacement roosts, if available, when their previously-used roost trees become unsuitable. Until the bats from the colony locate another desirable primary roost tree and reunite, it is possible, however, that some individual members of a colony will be subject to increased stress resulting from: (1) having to search for a replacement primary roost tree, which increases energy expenditure and risk of predation; (2) having to roost in alternate trees that are less effective in meeting thermoregulatory needs; and (3) having to roost singly, rather than together, which decreases the likelihood in meeting thermoregulatory needs, thereby reducing the potential for reproductive success.

Adult male and non-reproductive female Indiana bats may also be indirectly exposed to loss of roosting habitat. In general, effects on these individual bats would be less severe than the effects associated with individuals of maternity colonies. Adult male and non-reproductive female Indiana bats are not subject to the physiological demands of pregnancy and rearing young. Males and non-reproductive females typically roost alone or occasionally in small groups. When these individuals are displaced from roosts they must utilize alternative roosts or seek out new roosts. Because these individuals are not functioning as members of maternity colonies, they do not face the challenge of reforming as a colony. Roost tree requirements for non-reproductive Indiana bats are less specific whereas maternity colonies generally require larger roost trees to accommodate multiple members of a colony. Therefore, it is anticipated that adverse indirect effects to non-reproductive bats will be less than the effects to reproductively active females. The Service anticipates that indirect effects to non-reproductive Indiana bats from the loss of roosting habitat will be insignificant.

In addition, ODOT's placement of a Restrictive Covenant on the MOT-70/75 pooled mitigation site has the potential to provide suitable habitat for the Indiana bat at this location into perpetuity. Without this covenant, the MOT-70/75 site would be available for development, which would further reduce available habitat for the Indiana bat in southwestern Ohio. We understand that, as of the date of this letter, ODOT's District 7 Office of Real Estate is processing a Restrictive Covenant for the MOT-70/75 parcel. It is expected that this Covenant will be signed and recorded by July 1, 2011, and ODOT will provide us with a copy of the final authorized instrument at that time.

We are not aware of any non-federal actions in the action area that are reasonably certain to occur. Thus, we do not anticipate any cumulative effects associated with this project.

Conclusion

We believe the proposed HAM-27-16.79 interchange project is consistent with the PBO. After reviewing site specific information, including 1) the scope of the project, 2) the environmental baseline, 3) the status of the Indiana bat and its assumed presence within the project area, 4) the effects of the action, and 5) any cumulative effects, it is the Service's biological opinion that this project is *not likely to jeopardize* the continued existence of the Indiana bat.

Incidental Take Statement

The Service anticipates that the proposed action will result in incidental take associated with projects in the South management unit. Incidental take for this project is approximately 2.2 acres, resulting in the cumulative incidental take of 74.69 for this management unit. This project, added to the cumulative total of incidental take for the implementation of ODOT's Statewide Transportation Program, is well within the level of incidental take anticipated in the PBO through 2012 (see table below).

Management Unit	IT anticipated in PBO	IT for this project	Cumulative IT granted to date
West	1,565 acres	0 acres	125.87 acres
Central	2,280 acres	0 acres	50.99 acres
Northeast	4,679 acres	0 acres	199.21 acres
East	6,370 acres	0 acres	71.39 acres
South	7,224 acres	2.2 acres	74.69 acres
Statewide	22,118 acres	2.2 acres	522.15 acres

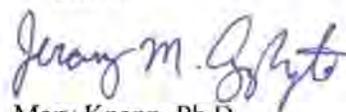
We determined that this level of anticipated and exempted take of Indiana bats from the proposed project, in conjunction with the other actions taken by ODOT pursuant to the PBO to date, is *not likely to result in jeopardy* to the species.

We understand that ODOT is implementing all pertinent Indiana bat conservation measures, specifically A-1 and M-1 stipulated in the Biological Assessment on pages 29-31. In addition, ODOT is monitoring the extent of incidental take that occurs on a project-by-project basis. These measures will minimize the impact of the anticipated incidental take.

This fulfills your section 7(a)(2) requirements for this action. However, should the proposed project be modified or the level of take identified above be exceeded, ODOT should promptly reinstate consultation as outlined in 50 CFR §402.16. As provided in 50 CFR §402.16, reinstatement 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 continued implementation of ODOT's Statewide Transportation Program and projects predicated upon it may affect listed species in a manner or to an extent not considered in this opinion; (3) the continued implementation of ODOT's Statewide Transportation Program and projects predicated upon it are subsequently modified in a manner that cause an effect to federally listed species 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, any operations causing such take must cease, pending reinstatement. Requests for reinstatement, or questions regarding reinstatement, should be directed to the U.S. Fish Wildlife Service's Columbus, Ohio Field Office.

We appreciate your continued efforts to ensure that this project is consistent with all provisions outlined in the Biological Assessment and PBO. If you have any questions regarding our response or if you need additional information, please contact Karen Hallberg at extension 23.

Sincerely,

for 
Mary Knapp, Ph.D.
Field Supervisor

cc: ODNR, DOW, SCEA Unit, Columbus, OH (*email only*)
Ohio Regulatory Transportation Office, Columbus, OH (*email only*)
OEPA, Columbus, OH (*email only*)

enc.

BALANCE SHEET - REMAINING
ODOT MOT-70/75 POOLED MITIGATION SITE , PID# 18904
MONTGOMERY COUNTY
LATEST REVISION - 4/1/2011

*ORIGINAL PURCHASE = 10.44 AC INDIANA BAT RESERVATION CREDITS, 0.32 AC WETLAND MITIGATION CREDITS, 1333 LF STREAM MITIGATION CREDITS (*Stream preservation has a 50 ft buffer on each side of stream, TOTAL stream preservation 2.91 AC.)

Project (CRS) PID	USACE ID NO. OEPA ID NO. Or USFWS Letter Date	IB Forested Impacts (ac)	IB Habitat Mitigation (ac)	404/401 Wetland Impacts (ac)	404/401 Wetland Mitigation (ac)	404/401 Stream Impacts (lf)	404/401 Stream Mitigation (lf)	MITIGATION BALANCES		
								IB Balance (ac)	404/401 Wetland Balance (ac)	404/401 Stream Mitigation (lf)
								Original Balance = 10.44	Original Balance = 0.32	Original Balance = 1333
MOT-70/75-22.89/31.54 PID 19069	Poplar Creek - LRL 200101060	0	0	0.12	0.18	590	590	10.44 ac	0.14 ac	743 lf

Continued on reverse

