



## Interstate Mining Compact Commission

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### EXECUTIVE DIRECTOR

GREGORY E. CONRAD

March 8, 2013

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

Re: Indiana Bat Summer Survey Guidelines

To Whom It May Concern:

The letter represents the comments of the Interstate Mining Compact Commission (IMCC) concerning draft revised summer survey guidelines for the Indiana bat (*Myotis sodalists*), notice of which appeared in the Federal Register on January 9, 2013 at 78 Fed. Reg. 1879. IMCC is a multi-state governmental organization representing the natural resource and environmental protection interests of its 25 member states. We appreciate the opportunity to submit these comments.

We understand that the revised summer survey guidelines were developed by a state/federal working group, similar in constitution to the state/federal working group that recently completed work on revised range-wide Indiana bat protection and enhancement plan guidelines for surface coal mining operations (PEP guidelines) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The latter guidelines were posted to the Office of Surface Mining (OSM) and Fish and Wildlife Service (FWS) websites on March 1. Our understanding is that the same individuals from state and federal agencies were not involved in both processes, which may explain why the two guideline documents are so divergent in their approaches and recommendations. This is particularly true with respect to determining presence or absence of Indiana bats.

While the FWS proposed revisions to the summer habitat guidelines rely heavily on acoustic identification, the OSM/FWS revised PEP guidelines allow coal mine operators to assume presence of the bat, thereby avoiding the time-consuming, expensive and often unreliable process of acoustic monitoring. And although the OSM/FWS PEP guidelines reference approved survey protocols listed on the FWS Region 3 webpage, there was never an expectation that a single protocol like acoustic identification or mist-net surveys would take precedence over the assumption of presence.

Our concern with an over-reliance on acoustic surveys is that it will push more and more mine operators toward assuming presence, which in turn can lead

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to increased use of preemptive clear cutting of trees. The ultimate result is exactly the opposite of what these guidelines are all about – preserving habitat for summer roosting and mating. Clear cutting, at times initiated by landowners without FWS consultation, permanently destroys bat habitat. This reliance on assuming presence by mine operators is triggered primarily by the cost associated with acoustic surveys and the often time-consuming nature of the process.

State agencies have concerns about acoustic monitoring based on the unreliability of the protocol, as evidenced by recent studies and reports by experts in the field, including Chris Corben who designed the original Anabat methodology. Once again, the OSM/FWS PEP guidelines specifically address the tree clearing concern and include recommendations for how landowners and mine operators can handle it so as to avoid running afoul of liability under Section 9 of the Endangered Species Act. A large number of false positives using unproven scientific techniques can provide a skewed characterization of the range of the Indiana bat. This, in turn, could result in undue impacts to both land and resource use and development and may undermine the credibility of state and federal agencies that are tasked with protecting Indiana bat habitat.

Another concern with regard to acoustic detection is whether it triggers mist-net surveys or simply substitutes for them. Should acoustic detection become the standard, there is the potential for declaring large areas of states as known habitat, thereby triggering protections well beyond the intent of either guideline document. While state mine permitting agencies generally do not involve themselves with survey protocols, we do utilize these surveys to determine whether a mine operator must prepare a protection and enhancement plan (PEP) pursuant to the OSM/FWS PEP guidelines. Hence the importance of effectively coordinating the survey protocols in the FWS summer survey guidelines with the OSM/FWS PEP guidelines.

Given the potential conflicts between the two guideline documents, it is incumbent on FWS to closely compare the two documents and address those conflicts, ideally through deference to the OSM/FWS PEP guidelines.<sup>1</sup> Additionally, the states strongly recommend that the FWS Regional and District Offices coordinate with national headquarters to insure that the guideline documents are accurately applied as “range-wide”, national guidelines. In some states, we are experiencing a serious disconnect between what the guidelines require and what District Offices believe they can dictate based on the “discretion” that is incorporated in the two documents.<sup>2</sup> While that discretion is supposedly tied to site-specific data or studies, we believe the constantly evolving interpretations in the field undercut the need for consistent, uniform standards across the range that lead to a level-playing field among states.

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<sup>1</sup> Another example of potential conflict includes dbh triggers for potential roosting trees (5 inches in the PEP guidelines and 3 inches in the summer survey guidelines).

<sup>2</sup> For instance, with respect to the default radii for bat habitat, the PEP guidelines recommend 5 and 10 miles, whereas the Commonwealth of Pennsylvania, based on findings from the local FWS District Office, currently requires 10 and 20 miles.

In addition to these comments, we also endorse and recommend for your serious consideration the comments being filed by several of our member states.

We welcome the opportunity to work with you to address the matters raised in this letter, including an attempt to reconcile the differences between the summer survey guidelines and the PEP guidelines. I would be happy to facilitate a session between affected states and FWS, including OSM if needed. Should have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory E. Conrad", with a long horizontal flourish extending to the right.

Gregory E. Conrad  
Executive Director