



UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. Fish and Wildlife Service
Ecological Services Office
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May 18, 2018

Timothy M. Hill, Administrator
Ohio Department of Transportation
Office of Environmental Services
1980 West Broad Street, Mail Stop 4170
Columbus, OH 43223

TAILS: 03E15000-2018-F-1286 (PID 108166)
03E15000-2018-F-1294 (PID 107805)
03E15000-2018-F-1295 (PID 107885)
03E15000-2018-F-1296 (PID 107882)

Attn: Matt Raymond, Chris Staron, Megan Michael

RE: **ATH-144-4.92 (PID 108166); ATH-124-2.12 (PID 107805); ATH-550-15.70 (PID 107885);
ATH-550-14.95 (PID 107882)**

Dear Mr. Hill,

The U.S. Fish and Wildlife Service (Service) is responding to your requests dated April 16 and April 17, 2018 to verify that the subject projects (the Projects), PIDs **108166**, **107805**, **107885**, and **107882** may rely on the February 29, 2016 Framework Programmatic Biological Opinion (2016 PBO) for the Ohio Department of Transportation (ODOT) Federal-Aid Highway Program projects that may affect the federally listed, endangered Indiana bat (*Myotis sodalis*) and/or federally listed, threatened northern long-eared bat (NLEB) (*Myotis septentrionalis*),¹ as revised.

This letter provides the Service's response as to whether ODOT may rely on the 2016 PBO to comply with Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) for the Projects' effects on the Indiana bat and/or NLEB. ODOT has determined that these four (4) projects will have no effect on any other federally listed species or designated critical habitat other than the Indiana bat and NLEB. However, please note that Athens County is located within the range of the **timber rattlesnake** (*Crotalus h. horridus*), a federal species of concern. From early March through late October, the species could possibly be found traveling through or basking within the project area. Therefore, all workers should be instructed not to harm or kill the snakes and to use caution, as the timber rattlesnake is a venomous species.

ODOT has determined that the Projects are *likely to adversely affect* the Indiana bat and/or the NLEB. The Service concurs with this determination, because all four (4) of the Projects meet the criteria under Consultation Category CC2-c, as described in the *Description of the Proposed Action* in the 2016 PBO, except that the projects also impact small amounts of SWH between 100 and 300 feet from the roadway edge of pavement (EOP).

Conclusion

The Service has reviewed the April 16 and April 17, 2018 emails and supporting materials submitted by your office, which describe the effects of the proposed Projects and include ODOT's commitment to

¹ Note: The Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-Eared Bat and Activities Excepted from Take Prohibitions is included in the 2016 PBO by reference.

implement the impact avoidance, minimization, and compensation measures as described for CC2-c projects in the 2016 PBO. These measures include the implementation of:

- CM-1a, which will offset the total acreage of SWH to be removed for the combined four (4) Projects, all of which are located in the Eastern Management Unit, as follows:
 - a total of 2.99 acres of SWH will be removed during the **active** season within 100 feet from the edge of pavement; this acreage will be replaced at a ratio of 1.25:1; and
 - a total of 0.84 acre of SWH will be removed during the **active** season between 100 and 300 feet from the edge of pavement; this acreage will be replaced at a ratio of 2:1; and
 - Therefore, a total of 5.42 acres of credits will be subtracted from the acreage credit available at the SCCC2 Bat Conservation Area (BCA).

We confirm that the proposed Projects' effects are consistent with those analyzed in the PBO. The Service has determined that projects consistent with the conservation measures and scope of the program analyzed in the 2016 PBO are not likely to jeopardize the continued existence of the Indiana bat and/or the NLEB.

Incidental Take

Indiana Bat

The Service anticipates that tree removal associated with the proposed Projects will cause incidental take of Indiana bats. As described in the Framework Incidental Take Statement (ITS) of the 2016 PBO, such taking will be difficult to detect. The Service determined that it is appropriate to measure the amount or extent of incidental take resulting from 2016 PBO projects using the proposed acreage of tree removal from Indiana bat suitable habitat as a surrogate for the numbers of individuals taken.

The proposed Projects will remove a total of 3.83 acres of SWH for the Indiana bat, as defined by the 2016 PBO.

The Service will add the acreage of Project-related tree removal to the annual total acreage attributed to the PBO as a surrogate measure of Indiana bat take and exempted from the prohibitions against incidental taking. Such exemption is effective so long as your agency implements the reasonable and prudent measure (RPM) and accompanying terms and conditions of the PBO's ITS.

Northern Long-eared Bat

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of NLEBs. However, the Project is consistent with the PBO, and such projects will not cause take of NLEB that is prohibited under the final 4(d) rule for this species (50 CFR §17.40(o)). Therefore, this taking does not require exemption from the Service.

Reporting Dead or Injured Bats

Please note that removal of SWH during the bats' active season could result in felling trees in which individual bats or maternity colonies of female bats and their pups are roosting. In addition, pups may not be volant when the tree clearing activity is conducted. Therefore, if workers at the project site observe any bats flying from the trees being felled, all work should cease, and our office must be notified and consulted immediately for guidance on how best to proceed. Such inter-agency coordination can avoid or reduce the direct, mortal take of Indiana or northern long-eared bats as a result of the tree clearing activity.

ODOT, its Local cooperators, and any contractors must take care when handling dead or injured Indiana bats and/or NLEBs, or any other federally listed species that are found at the Project sites to preserve

biological material in the best possible condition and to protect the handler from exposure to diseases, such as rabies. Project personnel are responsible for ensuring that any evidence about determining the cause of death or injury is not unnecessarily disturbed. Reporting the discovery of dead or injured listed species is required in all cases to enable the Service to determine whether the level of incidental take exempted by this PBO is exceeded, and to ensure that the terms and conditions are appropriate and effective. Parties finding a dead, injured, or sick specimen of any endangered or threatened species must promptly notify this Service Office.

Reinitiation Notice

This letter concludes consultation on the four (4) proposed Projects addressed in this letter, which qualify for inclusion in the PBO issued to Ohio on February 26, 2016. To maintain this inclusion, a reinitiation of this Project-level consultation is required if:

1. the amount or extent of incidental take of Indiana bat is exceeded; *or bats are observed flying from trees during felling, as described in the first paragraph under "Reporting Dead or Injured Bats" above;*
2. new information reveals that a Project may affect listed species or critical habitat in a manner or to an extent not considered in the PBO;
3. a Project is subsequently modified in a manner that causes an effect to listed species or designated critical habitat not considered in the PBO; or
4. a new species is listed or critical habitat is designated that a Project may affect.

Per condition #1 above, the anticipated incidental take is exceeded when:

- the Projects remove trees from more than a combined total of 3.83 acres of SWH for the Indiana bat.

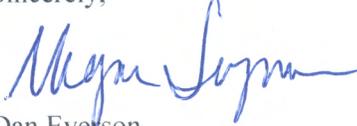
In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

As of this date, our records indicate that projects coordinated under the 2016 PBO have resulted in take of 311.38 acres of SWH:

Management Unit	IT for this project	Cumulative IT to date
Statewide	3.83 acres	311.38 acres

We appreciate your continued efforts to ensure that these Projects are fully consistent with all applicable provisions of the PBO. If you have any questions regarding our response or if you need additional information, please contact Karen Hallberg at extension 23 in this office.

Sincerely,


Dan Everson
Field Supervisor

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