



United States Department of the Interior Fish and Wildlife Service



Bloomington Field Office (ES)
620 South Walker Street
Bloomington, IN 47403-2121
Phone: (812) 334-4261 Fax: (812) 334-4273

March 27, 2018

Mr. Kevin Turner, OSC
U.S. Environmental Protection Agency
8588 Rt 148
Marion, IL 62959

Dear Mr. Turner:

On March 22, 2018, the U.S. Environmental Protection Agency USEPA initiated an emergency consultation under the Endangered Species Act (ESA) with the U.S. Fish and Wildlife Service (FWS) concerning the fat pocketbook pearly mussel (*Potamilus capax*) for the OPA emergency response for the Marathon Pipeline diesel spill (NRC#: Incident Report # 1207323) into Big Creek near Solitude, Posey County, Indiana.

These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) and are consistent with the intent of the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, and the U.S. Fish and Wildlife Service's Mitigation Policy.

The emergency response activities included the deployment of containment booms, absorbent booms, retrieval of the majority of the diesel fuel spilled using vacuum trucks as it was corralled by these booms, and the instream pipeline crossing construction / repair work.

Endangered Species

Big Creek and its confluence with the Wabash River (Posey County) is within the range of the federally endangered fat pocketbook pearly mussel (*Potamilus capax*), Indiana bat (*Myotis sodalis*), and the federally threatened northern long-eared bat (*Myotis septentrionalis*).

Indiana bats hibernate in caves, then disperse to reproduce and forage in relatively undisturbed forested areas associated with water resources during spring and summer. Recent research has shown that they will inhabit fragmented landscapes with adequate forest for roosting and foraging. Young are raised in nursery colony roosts in trees, typically near drainage ways in undeveloped areas. Like all other bat species in Indiana, the Indiana bat diet consists exclusively of insects.

During the summer, northern long-eared bats typically roost singly or in colonies in cavities, underneath bark, crevices, or hollows of both live and dead trees and/or snags (typically ≥ 3 inches dbh). Males and non-reproductive females may also roost in cooler places, like caves and mines. This bat seems opportunistic in selecting roosts, using tree species based on presence of cavities or crevices or presence of peeling bark. It has also been occasionally found roosting in structures like barns and sheds (particularly when suitable tree roosts are unavailable). They forage for insects in upland and lowland woodlots and tree lined corridors. During the winter, northern long-eared bats predominately hibernate in caves and abandoned mine portals.

The upper reaches of Big Creek consist primarily of agricultural cropland. There are several areas of riparian forest along / near Big Creek that has high value for aquatic and terrestrial wildlife, especially in the lower few miles near its confluence with the Wabash River. These wetlands provide nesting habitat for migratory birds and breeding/foraging habitat for woodland amphibians. Loss and fragmentation of habitat will reduce the quality of the habitat, therefore the amount of tree removal should be the minimum necessary for construction of the pipeline repair and or replacement. If required, we recommend that tree-clearing be avoided during the period April 1 – September 30 to avoid incidental take of federally listed bats from removal of an occupied roost tree.

The fat pocketbook pearly mussel are known to occur in Big Creek and in the Wabash River. Recent records suggest that the fat pocketbook were found near Indiana Highway 69, just downstream of where Marathon Pipe Line LLC (MPL) Robinson, IL to Mt. Vernon, IN 10-inch, the pipeline crosses Big Creek. Approximately 1,400 barrels of low sulfur diesel fuel was released from a 10-inch Marathon Pipeline beginning approximately at 18:24 hours on Tuesday, March 20, 2018. Recently, MPL had submitted permit applications to the U.S. Army Corps of Engineers, Indiana Department of Natural Resources, and the Indiana Department of Environmental Management to repair and improve the pipeline cross at Big Creek in the weeks prior to this pipeline failure.

This instream pipeline crossing construction / repair work was a may affect likely to adversely affect fat pocketbook mussels in the absence of such a significant discharge of acutely toxic diesel fuel. In the aftermath of the discharge, it is unlikely that fat pocketbook mussels would have survived in the immediate vicinity of this needed repair activity. Activities proposed temporary placement of “supersacks” (large sandbags approximately 4’ by 4’ by 4’) to form a coffer dam to isolate where the pipeline enters from the north bank. The small area surrounding the pipeline could be pumped to remove standing water to allow for repairs made. The coffer dam would extend out toward but short of the center of the flowing channel. All of the supersacks would be removed upon completion of the repair work. If necessary, this work would be repeated on the south bank where the pipeline enters Big Creek.

The FWS concurs that the emergency response activities are a may affect but are not likely to adversely affect the fat pocketbook mussel due to the prior significant discharge of acutely toxic diesel that would have resulted in the loss of any mussels present.

This concludes ESA consultation for the emergency response activities. The FWS will continue to evaluate the impacts to federally listed species due to the diesel discharge itself.

Thank you for the opportunity to assist with this emergency response effort. For further discussion please contact Dan Sparks at (812) 334-4261 ext. 219 or daniel_sparks@fws.gov.

Sincerely yours,



Scott E. Pruitt
Field Supervisor

cc: IDEM Office of Water Quality, Indianapolis, IN
IDNR Division of Water, Indianapolis, IN
Keith Wildeman, IDNR, Posey County, IN
Andy Stinchfield, IDEM Emergency Response, Indianapolis, IN
Elizabeth Admire, IDEM, Indianapolis, IN
John Davis, IDNR, Indianapolis, IN
Jason W. Rhodes, US Army Corps of Engineers, Louisville, KY