

From: [Lennon, Tiernan](#)
To: [Smith, Glenn](#)
Cc: [Cindy Schulz](#); [Troy Andersen](#); [Robyn Niver](#); [Sumalee Hoskin](#); [Barbara Douglas](#); [John Schmidt](#)
Subject: Re: Conservation Measure
Date: Friday, October 20, 2017 9:14:20 AM

Good points Glenn.

For all those who can make the internal call at 9:30 here's the call-in info (should be a quick call):

Dial: [REDACTED]

Participant: [REDACTED]

And for the call at 10:00 with MVP:

Dial: [REDACTED]

Participant: [REDACTED]

On Fri, Oct 20, 2017 at 8:22 AM, Smith, Glenn <glenn_s_smith@fws.gov> wrote:

Not to be intentionally contrary, but I have an appointment this morning so can't talk at 9:30 but am probably available at 10:00 and am scheduled to be off this afternoon. I may be oversimplifying things, but it seems to me that if they want to keep consultation informal and as simple as possible, but can't guarantee surveys at all caves, there is still a clear path forward. For those caves that are somehow deemed "suitable" but that won't be surveyed, we have to assume presence (if that is the reasonable thing to do) and they have to implement the 0.5 mile avoidance measure to get to NLAA.

I don't know the "science" of construction impacts on caves, whether causing direct impacts or by impacts from nearby blasting, but we need a defensible analysis to say there is a reasonable certainty of "take" if we are going formal for construction, with or without blasting, for caves within 0.5 miles, keeping in mind, the immediate internal question will be "where does that 0.5 miles come from?"

So the 0.5 miles may be a good distance at which we are pretty confident of a NLAA determination, but less than 0.5 miles is not necessarily the distance at which we have reasonable certainty of take, so there may need to be additional cave-by-cave analysis of some type to have solid rationale for determining take is reasonably certain for the unsurveyed caves that we think are suitable habitat and likely occupied in order to significantly narrow the gray area b/w insignificant/discountable and reasonable certainty of take. Not necessarily an easy task, but that's what we may need to do.

Glenn

On Thu, Oct 19, 2017 at 5:13 PM, Cindy Schulz <cindy_schulz@fws.gov> wrote:

I can talk @ 9:30. I cannot talk @ 10 am, but you can have the all w/o me.

Sumalee will likely not be available on Friday.

From: Lennon, Tiernan [mailto:tiernan_lennon@fws.gov]

Sent: Thursday, October 19, 2017 5:09 PM

To: Cindy Schulz; Glenn Smith; Troy Andersen; Niver, Robyn; Sumalee Hoskin; Barbara Douglas

Cc: Schmidt, John

Subject: Re: Conservation Measure

Hey All - I just got off the phone with MVP and they are not opposed to the conservation measure, but they do have some questions/concerns and are hoping to have a call with us tomorrow at 10:00 to go over them. The sentence that is of particular concern to them is the first sentence:

"MVP has agreed to conduct surveys on all unsurveyed potential hibernacula within the **action area prior to construction.....**"

If MVP were to survey all potential hibernacula within the action area they would need to survey approx. 65 caves/portals. They are requesting a smaller scope. Perhaps we could take a closer look at all potential hibernacula within X ft (not sure what an appropriate distance is yet) of the LOD and add a table to the conservation measure that cites by name which caves/mines they would agree to survey prior to construction??

Their other concern is that even with imminent domain they may not be able to gain access to areas outside of their workspace in the action area for surveys.

If you all are available I'd like to have a call @ 9:30 to brief you on my conversation and outline a plan prior to the call with MVP @ 10. If 9:30 doesn't work let me know and I can ask MVP to change the meeting time.

Thank you everyone for your help on this!

On Thu, Oct 19, 2017 at 2:21 PM, Lennon, Tiernan <tiernan_lennon@fws.gov> wrote:

I'll send this version to Megan then and cc all of you.

On Thu, Oct 19, 2017 at 2:20 PM, Cindy Schulz <cindy_schulz@fws.gov> wrote:

Good idea to change it to listed bats.

From: Smith, Glenn [mailto:glenn_s_smith@fws.gov]
Sent: Thursday, October 19, 2017 2:07 PM
To: Lennon, Tiernan
Cc: Cindy Schulz; Sumalee Hoskin; Troy Andersen
Subject: Re: Conservation Measure

Maybe that is better.

On Thu, Oct 19, 2017 at 2:03 PM, Lennon, Tiernan <tiernan_lennon@fws.gov> wrote:

I could just say listed bats instead of Ibat?

"MVP has agreed to conduct surveys on all unsurveyed potential hibernacula within the action area prior to construction to determine suitability and/or occupancy for **listed bats** using protocols approved by the Service's West Virginia or Virginia Field Office (depending on location of the potential hibernacula). If potential hibernacula are determined to be suitable to support **listed bats** (Phase I) and/or MVP is unable to complete presence/absence surveys (Phase 2), MVP shall assume presence and reroute the Project so that all subactivities are at least 0.5 mile away from all cave or mine passages/openings to avoid adverse effects to **listed bats**. Or, if Phase 2 surveys document the presence of **listed bats**, MVP agrees to reroute the Project so that all subactivities are at least 0.5 mile away from all cave passages/openings to avoid adverse effects to **listed bats**. In certain site specific situations a distance of less than 0.5 mile may be acceptable, but MVP will not begin any activities within 0.5 mile of a hibernacula until the Service provides such approval in writing."

On Thu, Oct 19, 2017 at 1:47 PM, Smith, Glenn <glenn_s_smith@fws.gov> wrote:

Suppose we ought to mention NLEB too.

On Thu, Oct 19, 2017 at 12:30 PM, Cindy Schulz <cindy_schulz@fws.gov> wrote:

Tiernan – Sumalee is taking leave today and will not be able to review. I made changes below in red text and strike through. If these suggested edits are amenable to you and Glenn please call MVP to discuss this conservation measure. If you have questions about the edits, please let me know.

Cindy

From: Lennon, Tiernan [mailto:tiernan_lennon@fws.gov]
Sent: Thursday, October 19, 2017 11:50 AM
To: Cindy Schulz; Sumalee Hoskin
Cc: Glenn Smith
Subject: Conservation Measure

"MVP has agreed to conduct surveys on all unsurveyed potential hibernacula within the action area prior to construction to determine suitability and/or occupancy for the Indiana bat using protocols approved by the Service's West Virginia or Virginia Field Office (depending on location of the potential hibernacula). If potential hibernacula are determined to be suitable to support listed bats (Phase I) **and/or** MVP is unable to complete presence/absence surveys (Phase 2), MVP shall assume presence of Indiana bat and reroute the Project so that all subactivities are at least 0.5 mile away from all cave or mine passages/openings to avoid adverse effects to **Indiana bats hibernacula**. Or, if Phase 2 surveys document the presence of an Indiana bat, MVP agrees to reroute the Project so that all subactivities are at least 0.5 mile away from all cave passages/openings to avoid adverse effects to **Indiana bats hibernacula**. In certain site specific situations a distance of less than 0.5 mile may be acceptable, but MVP will not begin **any activities within 0.5 mile of a hibernacula construction** until the Service **provides such approval in writing** concurs that the Project is not likely to adversely affect that hibernacula."

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Tiernan Lennon

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