

West Virginia Field Office (WVFO)

Frequently Asked Questions

Bats:

What is an Indiana bat buffer zone?

An Indiana bat buffer zone is an area of known bat use – an area where completed survey efforts have demonstrated federally listed bat species are present.

Known Indiana bat habitat includes habitat located 1) within 5 miles of an Indiana bat female (reproductive or non-reproductive) or juvenile capture record without an identified maternity roost tree; 2) within 2.5 miles of an Indiana bat maternity roost or male bachelor colony record; 3) within 5 miles of a priority 3 or 4 Indiana bat hibernaculum; and 4) within 10 miles of a priority 1 or 2 Indiana bat hibernaculum.

What is suitable Indiana bat habitat?

Suitable habitat consists of:

- a. **roosting habitat**- live, dead, or dying trees with exfoliating bark, split tree trunks, split branches, holes, cracks, crevices, or hollow trunks or branches
- b. **foraging habitat**- within and on the edges of wooded areas. Frequently associated with streams, floodplain forests, forested wetlands, and impounded water bodies
- c. **travel corridors**- areas that link roosting and foraging habitat, including open-understory forest, wooded fence-rows, and open paths through wooded areas, including streams, trails, and small roads with canopy cover.
- d. **hibernacula**- caves or underground mines.
- e. **swarming habitat** – suitable roosting and foraging habitat and travel corridors within 10 miles of a priority 1 or 2 Indiana bat hibernaculum or within 5 miles of a priority 3 or 4 Indiana bat hibernaculum.

How many acres can I clear before needing Indiana bat surveys?

Currently in West Virginia, projects clearing less than 17 acres of forest that are OUTSIDE of known Indiana bat buffer zones do not need surveys. Projects with greater than 17 acres of forest will need to complete an Indiana Bat Conservation Plan or perform summer mist netting or acoustic surveys.

When can I clear trees?

If your project is clearing *less than 17 acres of forest* and *is outside a known Indiana bat buffer zone*, and no other threatened or endangered species are potentially present, forest can be cleared at any time.

If your project is *outside of a known Indiana bat buffer zone* and proposes to *clear greater than 17 acres of trees* then your project may clear seasonally (between November 15 and March 31) after an Indiana bat

Conservation Plan has been developed and approved, or do summer mist netting or acoustic surveys to determine presence/absence of bats. If survey efforts demonstrate that federally listed bats are present at the project site, the site must be cleared seasonally and an Indiana Bat Conservation Plan should be developed. If survey efforts demonstrate that federally listed bats are not likely to be present at the project site then the project may be cleared at any time of year.

If your project is *within a known Indiana bat buffer zone*, then an Indiana bat Conservation Plan should be developed and approved. In addition, the project must be cleared seasonally no matter how much clearing is occurring.

What happens if I am in an Indiana bat buffer and need to clear trees?

Projects occurring within known Indiana bat buffer zones that propose to clear suitable bat habitat should devise an Indiana Bat Conservation plan that outlines how the project will avoid, minimize, and offset potential impacts to bat habitat. Additionally, the project proponent will need to clear the habitat seasonally (between November 15 and March 31) when bats are not present on the landscape.

If implementation of a Plan is not sufficient to avoid potential adverse effects, incidental take would be exempted or authorized only via the issuance of biological opinions pursuant to Section 7 of the ESA, or incidental take permits pursuant to Section 10 of the ESA.

What happens if I catch an endangered bat?

The WVFO and the West Virginia Division of Natural Resources should be notified within 48 hours of capture. The applicant and Federal Action Agency would then consult with the Service to determine what measures could be implemented to avoid adversely affecting Indiana bats. If adverse effects could not be avoided, or minimized so that they are insignificant or discountable, formal consultation with the Service would be required.

Do surveys for bats need approval from your office?

Yes. Please send in your survey plan proposal. When we concur with the proposal, you may continue. A report will need to be sent to our office following survey efforts for concurrence, as well.

How do I do a cave/mine portal survey?

This is *both* a desktop analysis **AND** an on-site assessment.

Further details can be found in these documents: [Phase I Cave/Mine Portal Survey Data Sheet & Draft Protocol for Assessing Abandoned Mines/Caves for Bat Use](#)

Important points to consider regarding bats:

Some important points to keep in mind when addressing section 7 consultation for Indiana bats are:

1. Clearing suitable habitat during the winter may not always avoid adverse effects.

2. A negative mist-net survey (no Indiana bats captured) may not always indicate that adverse effects to Indiana bats would be avoided if trees are removed during the summer.

3. Surveys and seasonal clearing have specific seasonal windows in which they can be conducted. Being conscious of these windows will help avoid unnecessary delays in the consultation process. Some important windows include:

<i>Summer mist-netting season:</i>	<i>June 1 to August 15</i>
<i>Summer acoustic survey season:</i>	<i>May 15 to August 15</i>
<i>Winter clearing of summer habitat:</i>	<i>November 15 to March 31</i>
<i>Winter clearing of habitat within known use areas:</i>	<i>November 15 to March 31</i>

The preceding discussion is not intended to incorporate all conceivable scenarios that may arise during section 7(a)(2) consultation for the Indiana bat. It is presented to offer general technical assistance to Federal Action Agencies, applicants, and their consultants. Some situations may require alternative procedures to fully and adequately evaluate all effects of the Federal Action. In all cases, the Service will use the best available scientific and commercial data to come to its conclusions. In instances where data are not available, the Service will heed its Congressional Mandate to give the benefit-of-the-doubt to listed species. Following the procedures outlined in this document does not constitute consultation under section 7(a)(2) of the ESA. Consultation must occur through direct contact with the Service.

Other questions:

What do I need to include in my project review request?

A full list of what to include in a project review request can be found here:

<http://www.fws.gov/westvirginiafieldoffice/projectreview.html>

Additionally, if you know ahead of time that your project will be in a known use area for bats (bat buffer zone) then include information that demonstrates how you have avoided and minimized impacts to bat habitat (i.e. detailed habitat assessment, minimizing the area of disturbance, avoidance of roost trees, conservation measures for trees that cannot be avoided) and that you will clear seasonally.

If you know your project will be crossing a federally listed mussel stream or will occur in close proximity to a federally listed mussel stream, then include information about how you plan to cross the stream and avoid impacting any mussel habitat. Include a frac-out plan if you plan to cross by HDD or include information on proposed surveys if you'll be doing a mussel survey. Additionally, provide all erosion and sedimentation BMPs that will be applied to the project to protect sensitive aquatic habitats.

What information on water withdrawals do I need to include?

Please provide the exact location of the proposed withdrawal site and the amount and frequency of the proposed withdrawals. In addition, describe the type of structure you plan to use, information on how the structure interacts with the bank/river bed, information on the type of screening on the intake structure, and at what velocity it will draw in water. Additionally, a statement committing to only withdraw when

the WVDEP withdrawal tool (<http://www.dep.wv.gov/WWE/wateruse/Pages/WaterWithdrawal.aspx>) states that withdrawals are permitted from a specific waterbody.

How long is concurrence good for?

Concurrence is good until a new species is listed or until the proposed project changes. If the project plans have changed or a new species becomes listed, the concurrence will need to be re-evaluated.

Survey results for bats and mussels are considered valid for no more than 5 years (the summer they are completed and the following four summer seasons; for example, if completed in 2014, they would expire in 2019).

What do you mean when you say “whole project” and “no piecemealing”?

The Service reviews whole projects and does not accept project piecemealing. It is important to note that “project” includes all project features, not just the portion of the project prompting the submittal of a permit application (*e.g.*, to WVDEP or the Corps). For example, a residential development would include all features of the development, including all forest or wooded areas to be affected or encroached upon by roads, utility lines, houses, driveways, septic areas, detention basins, stormwater basins, yards, lots, *etc.* An oil or gas project would include not only the well and well pad, but also the roads, staging areas, impoundments and holding pits, and oil and gas lines associated with the well or well field.

Our office *will not* provide concurrence on pieces of a project; we concur on a whole and complete project. If a “piece” is added to a project later, the “piece” will have to follow commitments that were made during the original concurrence for the project.

How do you define a linear or non-linear project?

Linear projects are things like waterlines, pipelines, or new road projects. These are projects that have a distinct start and end point.

Non-linear projects are things like well pads, impoundments, *etc.* Access roads associated with these projects are also considered non-linear as they are a part of the whole project and cannot function without other pieces of the project.

What happens if “take” of a species occurs?

An Office of Law Enforcement Criminal Investigator is collocated in our office and has duties which include visits to project sites to ensure that project proponents are complying with Federal wildlife laws. Unlawful take of a federally listed endangered or threatened species can result in civil or criminal penalties such as fines of up to \$200,000 for an organization and potentially jail time, and forfeiture of vehicles and equipment.

Our office coordinates closely with other Federal and State agencies, as well. These partners do not hesitate to contact our office if they have questions pertaining to projects that may be adversely affecting listed species. In the past, we have also received complaints and information about potential project violations from private citizens, as well.