DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

3-201
(1/97)

FEDERAL FISH AND WILDLIFE PERMIT

2. AUTHORITY-STATUTES
16 USC 668a

REGULATIONS
50 CFR 13
50 CFR 22.28

1. PERMITTEE

FEDERAL HIGHWAY ADMINISTRATION
C/O INDIANA DEPT OF TRANSPORTATION
100 N SENATE AVE
IGCN/ROOM N642
INDIANAPOLIS, IN 46204
U.S.A.

3. NUMBER
MB218918-0

4. RENEWABLE
[X] YES
[ ] NO

5. MAY COPY
[X] YES
[ ] NO

6. EFFECTIVE
06/25/2009

7. EXPIRES
INDEFINITE

8. NAME AND TITLE OF PRINCIPAL OFFICER *(If #1 is a business)*
MICHELLE B ALLEN
MANAGER, ENVIRONMENTAL SERVICES

9. TYPE OF PERMIT
BALD EAGLE TAKE EXEMPTED UNDER ESA

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED
Indiana counties of Gibson, Warrick, Pike, Daviess, Greene, Monroe, Morgan, Johnson, and Marion

11. CONDITIONS AND AUTHORIZATIONS:

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

D. You are authorized to take bald eagles (*Haliaeetus leucocephalus*) in accordance with the terms and conditions of the Endangered Species Act (ESA) section 7 incidental take statement and Revised Programmatic Biological Opinion titled " Proposed Construction, Operation, and Maintenance of Alternative 3C of Interstate 69 (I -69) from Evansville to Indianapolis" dated August 24, 2006.

E. During any period when the eagles covered by this permit also are listed under the ESA, you must comply with the terms and conditions of both the ESA take statement and this permit.

F. Unless the expiration date is modified as noted under D., above, this permit is valid until the end date specified in the ESA take statement. If no date is listed on the take statement, this permit is valid until the action that will take eagles, as described above, is completed, provided you comply with the terms and conditions of the permit, including any modified terms and conditions.

[X] ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS
ANNUAL REPORT DUE: 1/31

ISSUED BY	TITLE	DATE
Andrea J. Fox	CHIEF - MIGRATORY BIRD PERMITS	06/25/2009

U.S. Fish and Wildlife Service
Migratory Bird Permit Office
ATTN: Andrea Kirk
One Federal Drive
Fort Snelling, MN 55111
Tel. (612) 713-5436
Fax (612) 713-5393
Email *permitsR3MB@fws.gov*

SUBJECT: Eagle Act Permit under regulations at 50 CFR 22.28

Ms. Kirk,

The Federal Highway Administration and the Indiana Department of Transportation are planning and constructing Interstate 69 from Evansville, Indiana, to Indianapolis, Indiana. This 142-mile interstate is undergoing tiered Biological Assessments and Biological Opinions. In Tier 1 of the project planning, which determined the location of the project corridor, the Biological Opinion that evaluated the construction, maintenance, and operation of the entire route found that the activity was "likely to adversely affect" bald eagles, due to the possibility of collisions with vehicles when I-69 is operational. An incidental take statement (ITS) was issued within the Revised Biological Opinion dated August 24, 2006.

Based on this previous determination, the Federal Highway Administration and the Indiana Department of Transportation seek the issuance of an expedited Bald and Golden Eagle Protection Act (Eagle Act) permit pursuant to the new regulations at 50 CFR 22.28 (see 73 FR 29075, May 20, 2008). This permit is needed to provide take authorization under the Eagle Act, as our project was previously exempted from the take prohibition for bald eagles under Section 7 of the Endangered Species Act (ESA). The level of take, duration, conditions, monitoring, and reporting of the permit are requested to reflect those of the original ITS. No reevaluation of the ITS is requested at this time.

In order to apply for the requested permit, a copy of the ITS and a statement that certifies compliance with the ITS terms are attached/enclosed, as directed by regulations at 50 CFR 22.28.

Thank you,

Copy: Robin McWilliams-Munson, USFWS-BFO

CERTIFICATION OF COMPLIANCE WITH MY INCIDENTAL TAKE STATEMENT

The Federal Highway Administration and Indiana Department of Transportation submit the following certification of compliance with the Incidental Take Statement for bald eagles issued on August 24, 2006 within the Revised Programmatic Biological Opinion for the proposed construction, maintenance, and operation of Interstate 69 from Evansville, Indiana, to Indianapolis, Indiana. This statement is being submitted as part of an application for an expedited Bald and Golden Eagle Protection Act (Eagle Act) permit pursuant to the new regulations at 50 CFR 22.28, which apply to projects previously exempted from the take prohibition for bald eagles under section 7 of the Endangered Species Act (ESA).

"I certify that I am in full compliance with the terms, conditions, and conservation measures of my incidental take statement issued under section 7 of the Endangered Species Act (16 U.S.C. 1531 et seq.) (including measures incorporated into the proposed activity or project design on which the ITS was based) with regard to impacts on bald eagles."

Signed: _____ Date: 6/16/09

Max Azizi, Assitant Division Administrator

_____ Date: 6/16/09

Jim Poturalski, Deputy Commissioner of Highway Management

REVISED PROGRAMMATIC BIOLOGICAL OPINION

on the

PROPOSED CONSTRUCTION, OPERATION, AND MAINTENANCE OF ALTERNATIVE 3C OF INTERSTATE 69 (I-69) FROM EVANSVILLE TO INDIANAPOLIS

FOR THE FEDERALLY ENDANGERED INDIANA BAT (*Myotis sodalis*) AND THE FEDERALLY THREATENED BALD EAGLE (*Haliaeetus leucocephalus*)

traversing portions of

GIBSON, WARRICK, PIKE, DAVIESS, GREENE, MONROE, MORGAN, JOHNSON, AND MARION COUNTIES, INDIANA

Submitted to the Federal Highway Administration

August 24, 2006

Prepared by:
R. Andrew King
U.S. Fish and Wildlife Service
Bloomington Field Office
620 S. Walker Street
Bloomington, IN 47403

(812) 334-4261

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are **non-discretionary**, and must be undertaken by the FHWA or their designee (e.g., INDOT) for the exemption in section 7(o)(2) to apply. The FHWA has a continuing duty to regulate the activity covered by this incidental take statement. If the FHWA fails to assume and implement the terms and conditions of the incidental take statement, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the FHWA must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement [50 CFR §402.14(i)(3)].

BALD EAGLE

AMOUNT OR EXTENT OF TAKE

The Service anticipates that incidental take of bald eagles will occur in the form of death or injury resulting from collisions with vehicles once I-69 is operational. Based on the best available scientific data, the actual number of eagles that may be struck and killed/injured from vehicles traveling on I-69 between Evansville and Indianapolis can not be precisely quantified. The Service anticipates that collisions with eagles would most likely occur during the winter

when food is more scarce and eagles are more apt to scavenge on carrion from roadkilled animals. Once I-69 is operational, we anticipate that all eagles that are struck by vehicles will be killed or injured and that the number of deaths and/or injuries would not exceed 3 bald eagles during any five-year period. Because bald eagles are large birds and would be widely recognized by most motorists and maintenance workers, we anticipate most roadkilled or injured eagles would eventually be reported to the Service, and therefore, the actual level of incidental take could be fairly accurately monitored over time.

The amount of forested habitat that will be permanently cleared for construction of bridges at the two major river crossings (E. Fork of White River and Patoka River, where bald eagles are most likely to occur) was not quantified in the Tier1 BA. However, from our review of aerial photos and maps of the project area, we anticipate that the total combined amount of forest that will be lost at these two river crossing will be equal to or less than 50 acres and that an ample amount of habitat will remain available to bald eagles in these areas. Furthermore, the potential for incidental take from loss of future eagle habitat will be minimized by the proposed forest and wetland mitigation efforts. Therefore, we believe that if forest loss at these sites is equal to or less than 50 acres, then the impact will be insignificant in size and not likely to adversely affect nesting or wintering eagles.

EFFECT OF THE TAKE

In the accompanying biological opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to bald eagles. No critical habitat has been designated for bald eagles, so none would be impacted.

REASONABLE AND PRUDENT MEASURES

The Service believes the following reasonable and prudent measures are necessary and appropriate to further minimize take of bald eagles:

1. In the Tier1 BA, the FHWA proposed to investigate and/or implement numerous conservation measures and mitigation efforts as part of their proposed action and these measures are hereby incorporated by reference. These measures will benefit a variety of wildlife species, including bald eagles. The Service will take the necessary steps to ensure that the FHWA successfully implements all the conservation measures to the fullest extent practicable.

2. The implementation status of all the proposed conservation measures, mitigation efforts, and research and any related problems need to be monitored and clearly communicated to the Service on an annual basis.

3. All I-69 construction workers and INDOT maintenance staff need to be made aware of potential issues concerning bald eagles and construction and maintenance of I-69.

4. The FHWA needs to ensure that the impacts of take associated with future Tier 2 project-section specific actions are appropriately minimized and that the exemption of incidental take is appropriately documented and anticipated levels of incidental take will not be exceeded or that any new forms of take may occur that were not anticipated in Tier 1.

The Service believes that the measures above are necessary, appropriate, and reasonable for minimizing take of bald eagles.

TERMS AND CONDITIONS

In order to be exempt from the prohibitions of section 9 of the Act, the FHWA (and/or INDOT and their contractors or assigns) must comply with the following terms and conditions, which implement the reasonable and prudent measures. These terms and conditions are non-discretionary.

1. The FHWA must implement all proposed mitigation and conservation measures, as detailed in the "Tier 1 Forest and Wetland Mitigation and Enhancement Plan" and "Conservation Measures for Impacts to Threatened and Endangered Species" sections and Appendix B of the Tier 1 BA or alternative measures that are of equal or greater benefit to bald eagles as developed in consultation with the Service during Tier 2.

2. The FHWA will prepare an annual report detailing all conservation measures, mitigation efforts, and monitoring that have been initiated, are ongoing, or completed during the previous calendar year and the current status of those yet to be completed. The report will be submitted to the Service's BFO by 31 January each year (the first report will be due 1/31/07) and reporting will continue for at least 5 years post-construction or until otherwise agreed to with the Service.

   If proposed conservation measures or mitigation goals can not be realized (e.g., lack of willing-sellers), then FHWA will investigate and propose alternative solutions that can be realized and are of equal or greater benefit to bald eagles within the Bald Eagle Action Area.

3. All I-69 engineering supervisors , equipment operators, and construction workers and INDOT (and/or concessionaire) maintenance staff will attend a mandatory environmental awareness training that discloses where known bald eagle nests are located in the project area, addresses any other concerns regarding bald eagles, and presents a protocol for reporting any eagle nests, and any live, sick, injured, or dead eagles observed or found within or near the construction limits or right-of-way during construction, operation, and maintenance of I-69. Project personnel will also be instructed about the terms and conditions of the ITS and the restrictions imposed by them before construction and operation begins.

4. To ensure that the impacts of take associated with future Tier 2 project-section specific action are appropriately minimized and that the exemption of incidental take is appropriately documented, the FHWA and the U.S. Fish and Wildlife Service will implement an appended programmatic consultation approach for I-69. Under that approach this programmatic Biological Opinion and Incidental Take Statement will exempt incidental take that result from the implementation of site-specific actions that result from implementation of the proposed action as detailed in the Tier 1 BA. However, specific impacts within each Tier 2 Project Section must be individually reviewed by the Service to determine if they are consistent with this programmatic Incidental Take Statement's reasonable and prudent measures and associated terms and conditions, and to ensure that site-specific impacts of the resulting incidental take are minimized. If effects of an individual Tier 2 Project Section are found to be consistent with those analyzed in the programmatic consultation, then it will be appended to this programmatic Biological Opinion and Incidental Take Statement, along with any additional project section-specific reasonable and prudent measures and terms and conditions that are needed to fulfill the requirements of section 7(a)(2). No incidental take shall be exempted until after a Tier 2 Project Section's BA has been reviewed, found to be complete and consistent with Tier 1 findings, and has been appended to the programmatic BO by the Service.

   Because acreages of lost bald eagle habitat are being used to insure that habitat loss in eagle use areas (Patoka River and E. Fork White River crossings) does not reach the scale where take will occur, the FHWA will provide the Service's Bloomington Field Office with a detailed description of each project sections contribution to habitat loss by preparing Tier 2 Biological Assessments for each project section. The Tier 2 Biological Assessments must include: maps of the preferred final alignment and all associated development; methods and results of Tier 2 bald eagle surveys (i.e., current IDNR data should be sufficient), exact locations of all known and newly discovered eagle nests, night roosts, and other important areas; the total acreages and relative quality of forest (i.e., as compared to the maturity of forests and estimated suitability for nesting, perching, roosting in the immediate area) and wetland habitats that will be permanently cleared/filled. Tier 2 BAs must also describe any additional direct or indirect affects that were not considered during the programmatic consultation. To reduce redundancy, Tier 2 BAs should summarize or simply reference sections of the Tier 1 BA that would otherwise be repetitive.

   Each Tier 2 BA must track how the individual Tier 2 Project Section contributes to the forest acres quantified in the AMOUNT OR EXTENT OF TAKE section above and report how much total acreage is remaining per section and the project as a whole. Your cover letters requesting Project-Section specific reviews must include your determination that the proposed project is consistent with this programmatic Biological Opinion and Incidental Take Statement and request that the proposed Tier 2 BA be appended to this programmatic Biological Opinion. The cover letter, and one bound hard copy and an electronic copy of the Tier 2 BA should be submitted to the BFO when requesting a project section review.

5. Any dead bald or golden eagles found within the construction limits, right-of-way, rest stops, or mitigation areas of I-69, should be reported to BFO [(812) 334-4261] as soon as possible and subsequently transported (frozen or on ice) to BFO.

   Any sick or injured bald or golden eagle located within the construction limits, right-of-way, rest stops, or mitigation areas of I-69 should immediately be reported to BFO (and an Indiana Conservation Officer or the State Police if outside of normal business hours or on weekends). If possible, attempts should be made to remove an injured eagle from harms way, until a trained person arrives to safely capture and transport the bird. Sick and injured eagles will be transported to a veterinarian or a rehabilitation center that has a valid Federal permit to treat and rehabilitate eagles.

   BFO will contact the appropriate Service Law Enforcement office to report that a sick, injured, or dead eagle has been found.

   The FHWA will keep track of all known bald eagles killed or injured from vehicle collisions to ensure that the anticipated amount of incidental take, 3 killed/injured bald eagles during any five-year period, is not exceeded.

   The Service will not refer the incidental take of any migratory bird or bald eagle for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-712), or the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. §§ 668-668d), if such take is in compliance with the terms and conditions specified herein.

In conclusion, the Service anticipates that the number of deaths and/or injuries from vehicle collisions would not exceed 3 bald eagles during any five-year period. If this level of take or less occurs, we expect that the effects to Indiana breeding and wintering bald eagle populations will be negligible. We anticipate that if 50 or less acres of forested habitat that will be permanently cleared for construction of bridges at the two major river crossings, East Fork of the White River and the Patoka River, where bald eagles are most likely to occur, then the impact will be insignificant in size and not likely to adversely affect nesting or wintering bald eagles. Impacts to eagle habitat will also be minimized by the proposed conservation measures and forest and wetland mitigation efforts. The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. If, during the course of the action, this level of incidental take is exceeded such incidental take represents new information requiring reinitiation of consultation and review of the reasonable and prudent measures provided. The FHWA must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.