



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Kentucky Ecological Services Field Office
330 West Broadway, Suite 265
Frankfort, Kentucky 40601

(502) 695-0468

July 16, 2010

Mr. David Waldner
Division of Environmental Analysis
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, Kentucky 40622

Re: FWS 2007-B-0904; Amended Biological Assessment (BA) and effects determination for listed species in association with the Louisville – Southern Indiana Ohio River Bridges Project in Jefferson County, Kentucky and Clark County, Indiana; KYTC Item No. 5-118; INDOT Des. No. 9803640

Dear Mr. Waldner:

The U.S. Fish and Wildlife Service (Service) Kentucky and Indiana Field Offices have reviewed the referenced document and have a number of issues that should be considered prior to our concurrence with your effects determination on federally listed species. These issues focus primarily on the potential effects of the proposed road on gray and Indiana bats, the proposed avoidance and minimization measures for federally listed species, and other minor clarifications within the document. These comments are being provided by the Kentucky FO (designated as the lead Service office for project consultation), and incorporate the comments and concerns of both Service Field Offices in accordance with section 7 of the Endangered Species Act (ESA).

A BA for the proposed project was completed in January of 2003. At that time, it was determined that the only species that had the potential to be impacted by the proposed project were the gray bat and Indiana bat, and concurrence of a “not likely to adversely affect” determination was provided by the Service in a letter dated March 2003. In compliance with the FHWA NEPA process, the BA is being amended to re-evaluate potential effects on federally listed species and consider any project modifications that were not considered during the original informal consultation. The amended BA considered previous information and data collected from additional species surveys during the effects analysis on the gray bat, Indiana bat, running buffalo clover, Short’s goldenrod, several federally listed mussel species, American burying beetle, Louisville cave beetle, interior least tern, and piping plover. Upon review of this information, the Service agrees with the analysis and believes the information supporting the effects determinations for all of the aforementioned species is adequate with the exception of the gray bat and Indiana bat.

Species Specific Comments

- 1) Page 28 of the document states that the nearest nesting colony for interior least tern is in Gibson County, IN approximately 100 miles away from the proposed project. While this statement is true in terms of a stable tern colony, the species has also been a sporadic nester on shoals or small islands in the Ohio River, including two sites in Spencer County, IN. Both sites have had multiple nesting attempts with some success. The amended BA identified potential interior least tern habitat within the project area and, while surveys did not identify the species, this does not conclusively establish that the species may not occupy those habitats at a later time prior to construction. Therefore, we recommend that the BA include a provision committing to survey any suitable nesting areas during subsequent nesting seasons prior to construction. This approach would ensure that suitable least tern habitat areas are not occupied and would fully address potential adverse affects on the interior least tern. The results of such surveys should be coordinated with our office in order to determine if further consultation is required.
- 2) Based upon the 2007 mussel reconnaissance and habitat assessment, we agree that the proposed project is unlikely to adversely affect federally listed mussel species; however, if the proposed project is not built for many years, then there may be potential for listed species to re-occupy the study area. Therefore, we request that if bridge construction does not begin within five years, our office be contacted to assess the need for re-evaluation of the potential to adversely affect federally listed mussel species.
- 3) The effects analysis for the gray bat was well written and addressed several potential direct, indirect, and cumulative impacts on the species and its foraging habitat. However, it is unclear if the avoidance and minimization measures proposed within the amended BA are adequate and/or support a “not likely to adversely affect” determination for the gray bat. The BA did not demonstrate that the proposed measures would reduce the identified impacts to an insignificant or discountable level. Avoidance and minimization measures should be linked back to specific effects and an analysis of how the measure minimizes each effect should be discussed. Minimization measures should also be as specific as possible, and an active commitment should be stated instead of a passive general condition. For a project of this size, conservation and protective measures should also be considered on a cumulative level for ephemeral and intermittent streams and not limited to just those larger streams that gray bats may utilize as foraging corridors. Impacts to those smaller streams ultimately affect the overall ecology of the occupied foraging habitat for the gray bat.
- 4) The A-15 alignment portion of the proposed project is within the home range of a known Indiana bat maternity colony. “Maternity habitat” refers to suitable summer habitat used by juveniles and reproductive (pregnant, lactating, or post-lactating) females. This habitat is an essential component of the Indiana bat’s lifecycle. Pregnant females migrate to their maternity habitat, forming colonies of up to 100 or more individuals, and roost on “suitable roost trees”. Trees with a DBH of 5-inches or greater and are not “suitable roost trees”, as previously defined, still serve as an important component of foraging habitat for the Indiana bat.

Typically for a project of this nature, the Service would recommend seasonal tree clearing or the completion of a mist net survey before construction activities take place. However, we already know that Indiana bats are present within the aforementioned portion of the proposed project area, and that this portion of the project area falls within the home range of a known maternity colony. We do not believe additional surveys are necessary for the proposed project. Also, seasonal tree clearing for the project could result in indirect and/or cumulative effects to the maternity colony (as analyzed within the amended BA) through changes to the landscape and the removal of potential foraging and roosting habitat while the bats are hibernating. Currently, the available forested habitat within the maternity colony is relatively low and determined sensitive, so even seasonal removal of habitat is likely to result in significant or non-discountable effects to the Indiana bat. Due to these concerns, we cannot concur with a determination of "not likely to adversely affect" for the Indiana bat at this time.

In order to address these concerns and be in compliance with the ESA, we recommend one of the following options:

A) The project proponent can further modify the proposed project to eliminate impacts to Indiana bat habitat and thus avoid impacts;

B) The project proponent can request formal section 7 consultation through the FHWA (i.e., the lead Federal Action Agency associated with the proposed project); or

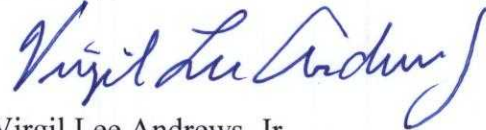
C) The project proponent may have the option to enter into a Conservation Memorandum of Agreement (MOA) with the Service to account for the incidental take of Indiana bats. If further discussions reveal that this option is feasible, a Conservation MOA with the Service would allow the project proponent flexibility in project timing with regard to the removal of suitable Indiana bat habitat. In exchange for this flexibility, the project proponent would provide recovery-focused conservation benefits to the Indiana bat through the implementation of minimization and mitigation measures that are described in the Indiana Bat Mitigation Guidance for the Commonwealth of Kentucky. For additional information about this option, please notify our office.

General Comments

In the subject heading of the cover letter to the amended BA, reference was made to "waste sites". Our review did not identify any discussion of waste sites associated with the proposed project or analysis of the potential adverse effects of these sites on federally listed species. If the proposed project requires the use of waste sites, then those areas should also be addressed within the amended BA. Please clarify and/or advise us as to the need for waste sites outside of the proposed project corridor as discussed in the amended BA.

Thank you again for your request. Your concern for the protection of endangered and threatened species is greatly appreciated. If you have any questions regarding the information that we have provided, please contact Phil DeGarmo at (502) 695-0468 extension 110.

Sincerely,

A handwritten signature in blue ink, reading "Virgil Lee Andrews, Jr.", written in a cursive style.

Virgil Lee Andrews, Jr.
Field Supervisor

Cc: Mr. Duane Thomas, FHWA
Mr. Anthony Goodman, FHWA
Mr. Michael Litwin, USFWS, INFO