

Ms. Lori Pruitt
U.S. Fish and Wildlife Service
Ecological Services Field Office
620 South Walker Street
Bloomington, IN 47403-2121

Dear Ms. Pruitt,

In response to the U.S. Fish and Wildlife Service (FWS) announcement in the Federal Register (72 FR 19015, April 16, 2007), the Office of Surface Mining Reclamation and Enforcement (OSM) offers the following information and recommendations concerning the draft revised recovery plan for the Indiana bat (*myotis sodalis*).

1. The recovery plan omits the interagency agreement between FWS and OSM concerning the 1996 Biological Opinion for protecting endangered and threatened species during permitting of active coal mines.

Under Part 1 Background Information, Conservation Efforts, Inter- and Intra-agency Consultations, there is no mention that in accordance with the Endangered Species Act, OSM and the FWS developed an agreement, the 1996 Biological Opinion which outlines the procedures to be followed in order to protect endangered and threatened species during permitting of active coal mines.

On September 24, 1996, the FWS completed its review of OSM's request for formal consultation and issued a Biological Opinion regarding the impact of current and future surface coal mining operations on listed Threatened or Endangered species. In the Biological Opinion, FWS concluded that surface coal mining and reclamation operations, conducted in accordance with properly implemented Federal and State regulatory programs under the Surface Mining Control and Reclamation Act (SMCRA), are not likely to jeopardize the continued existence of listed or proposed species and designated or proposed critical habitats. The Biological Opinion also included an Incidental Take Statement that authorized the taking of a limited, but unquantifiable, number of listed individuals when the taking is incidental to, and not the intended purpose of, the surface coal mining and reclamation operations. In addition, the Biological Opinion identified specific Terms and Conditions that must be met by mining companies and SMCRA regulatory agencies, in order to minimize incidental take of listed species. It also includes specific Reasonable and Prudent Measures and Terms and Conditions that must be met, in order to remain exempt from the prohibitions against take contained in section 9 of ESA. The Biological Opinion contains specific provisions for

resolution of disagreements between the State Regulatory Authority and FWS concerning implementation of species-specific protection measures recommended by FWS. Compliance with SMCRA and the Biological Opinion ensures that mining companies and regulatory agencies will provide protection for the Indiana bat during the coal mining process.

In recent years, several States and the OSM Tennessee Federal Regulatory Program have been working with FWS to establish standard State-wide practices for protection of Indiana bats on coal mines. The OSM Knoxville Field Office and the States of Ohio and West Virginia have each entered into Memoranda of Understanding with FWS regarding general coordination under the Biological Opinion. We believe that these agreements will lead to better protection of Indiana bats and should be recognized in the recovery plan for their contribution to the protection strategy.

2. Additional protection efforts on summer habitat are premature without the research data defining the relationships of various size, type and spatial distribution of summer habitat disturbances to bat life history needs.

OSM compared information provided by Clawson (2004) and (2007) on the trends in the Indiana bat population between 1965-2007 with coal production data from 1970, 1980, 1990, and 2006. OSM could not find a consistent pattern or trend in data between coal mining and bat population related to changes in levels of coal mining activity, total coal production (size of the mining industry), or mining method (surface versus underground). In addition, OSM and the coal mining state programs have completed two workshops on Indiana bats and Coal Mining (June 20, 2007, in Indianapolis, Indiana, and November 16, 2004, in Louisville, Kentucky). These workshops have demonstrated the paucity of sound research evidence regarding how summer habitat disturbances like those caused by coal mining impact Indiana bat populations. We are concerned that the arrangement of the Recovery Action Outline which places the “Plan and Conduct Research” actions (Item 3.0) after the “Conserve and Protect Summer Habitat” actions (Item 2) places emphasis on designing summer habitat protection measures without first identifying the actions needed through new research. Research should be aimed at identifying the elements and resources needed for conservation and/or enhancement of summer habitat. We believe that research results will lead to improved species-specific protection measures and provide additional regulatory certainty.

**OSM Recommendations to FWS
Concerning the draft Revised Recovery Plan for the Endangered Indiana Bat**

1. The U.S. Fish and Wildlife Service, in partnership with the State Coal Mining Regulatory Programs and OSM, develop species specific conservation guidelines and procedures for Indiana bats under the existing authority of SMCRA and the 1996 FWS Biological Opinion consistent with those already approved in Ohio, West Virginia, and Tennessee.
2. FWS revise the draft recovery plan to clearly show that additional research is needed and should be initiated regarding bat life history and summer habitat usage before or concurrent with new summer habitat protection efforts to ensure that they are well designed and effective.

3. OSM and FWS continue to cooperate on studies that would increase our knowledge base concerning actual impacts to the Indiana bat population related to coal mining and reclamation to ensure that mitigation measures proposed at coal mines positively impact those same populations.

Sincerely,

Ervin J. Barchenger
Acting Regional Director