



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS-R3-ES-2023-0248; FXES1114030000-245-FF03E00000]

### Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sweet Acres Wind Project, White County, IN; Categorical Exclusion

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of documents; request for comment and information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received an application from Indiana Crossroads Wind Farm II LLC (applicant), for an incidental take permit (ITP) under the Endangered Species Act, for its Sweet Acres Wind Project (project). If approved, the ITP would be for a 6-year period and would authorize the incidental take of the federally endangered Indiana bat, the federally endangered northern long-eared bat, and the tricolored bat and little brown bat, both of which are proposed for listing. The applicant has prepared a habitat conservation plan in support of the application. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

**DATES:** We must receive your written comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES: *Obtaining Documents:*** The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS-R3-ES-2023-0248 at <https://www.regulations.gov>.

***Submitting Comments:*** If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R3-ES-2023-0248.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R3-ES-2023-0248; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

**FOR FURTHER INFORMATION CONTACT:** Susan Cooper, Field Supervisor, Indiana Ecological Services Field Office, by email at [susan\\_cooper@fws.gov](mailto:susan_cooper@fws.gov) or by telephone at 812–334–4261, extension 214; or Andrew Horton, Regional HCP Coordinator, by email at [andrew\\_horton@fws.gov](mailto:andrew_horton@fws.gov) or by telephone at 612–713–5337.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Indiana Crossroads II Wind Farm LLC (applicant) for a 6-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*), both federally listed as endangered, and the proposed as endangered tricolored bat (*Perimyotis subflavus*) and little brown bat (*Myotis lucifugus*), being considered for

listing. Take would be incidental to the operation of 42 wind turbines, with a total generating capacity of 201.6 megawatts (MW), at the Sweet Acres Wind Project in White County, Indiana. While the ITP would be for 6 years, the operational life of most new wind energy facilities is 30 years; therefore, intensive monitoring conducted during the 6-year permit term would inform the need for future avoidance or a future new or revised long-term ITP for the remaining life of the project that would comply with a new NEPA analysis and habitat conservation plan (HCP). The applicant has prepared an HCP that describes the actions and measures that the applicant would implement to avoid, minimize, and mitigate incidental take of the covered species for the first 6 years.

We request public comment on the application, which includes the applicant's proposed HCP, and on the Service's preliminary determination that this HCP qualifies as "low effect," and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

## **Background**

Section 9 of the ESA and its implementing regulations prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in any such conduct" (16 U.S.C. 1532). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (16 U.S.C. 1539). Regulations governing incidental take permits for endangered and threatened species, respectively, are

found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 50 CFR 17.32.

### **Applicant's Proposed Project**

The applicant requests a 6-year ITP to take the federally endangered Indiana bat (*Myotis sodalis*), federally endangered northern long-eared bat (*Myotis septentrionalis*), proposed endangered tricolored bat (*Perimyotis subflavus*) and under discretionary review, the little brown bat (*Myotis lucifugus*). The applicant determined that take is reasonably certain to occur incidental to operation of 42 previously constructed wind turbines in White County, Indiana, covering approximately 11,646 hectares (28,778 acres) of private land. The proposed conservation strategy in the applicant's proposed HCP is designed to avoid, minimize, and mitigate the impacts of the covered activity on the covered species. The biological goals and objectives are to minimize potential take of covered bat species through on-site minimization measures and to provide habitat conservation measures to offset any impacts from project operations. The HCP provides on-site avoidance and minimization measures, which include turbine operational adjustments. The authorized level of take from the project is 18 Indiana bats, 2 northern long-eared bats, 18 tricolored bats, and 18 little brown bats bat over the 6-year permit duration. To offset the impacts of the taking of the species, the applicant will implement one or more of the following mitigation options:

- Purchase credits from an approved conservation bank;
- Contribute to an in-lieu fee mitigation fund;
- Implement a permittee-responsible mitigation project; or
- Contribute to a white-nose syndrome treatment fund.

### **National Environmental Policy Act**

The issuance of an ITP is a Federal action that triggers the need for compliance with NEPA. The Service has made a preliminary determination that the applicant's proposed project, and the proposed mitigation measures, would individually and

cumulatively have a minor effect on the covered species and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the species and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low-effect ITP is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

### **Next Steps**

The Service will evaluate the application and the comments received to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicant.

### **Request for Public Comments**

The Service invites comments and suggestions from all interested parties on the proposed HCP and screening form during a 30-day public comment period (see **DATES**). In particular, information and comments regarding the following topics are requested:

1. Whether the adaptive management, monitoring, and mitigation provisions in the proposed HCP are sufficient;
2. The requested 6-year ITP term;
3. Any threats to the covered bat species that may influence their populations over the life of the ITP that are not addressed in the proposed HCP or

- screening form;
4. Any new information on white-nose syndrome effects on covered bat species;
  5. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed; and
  6. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

### **Availability of Public Comments**

You may submit comments by one of the methods shown under **ADDRESSES**. We will post on <https://regulations.gov> all public comments and information received electronically or via hardcopy. All comments received, including names and addresses, will become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

### **Authority**

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1539) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508; 43 CFR part 46).

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