



Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R3-ES-2012-0036]

[FXES11120300000F2-123-FF03E15000]

Availability of a Draft Environmental Impact Statement and Habitat Conservation Plan; Receipt of an Application for an Incidental Take Permit, Buckeye Wind Power Project, Champaign County, Ohio

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Buckeye Wind, LLC (applicant), for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA), for its Buckeye Wind Power Project (project). If approved, the ITP would be for a 30-year period and would authorize the incidental take of an endangered species, the Indiana bat. The applicant has prepared a habitat conservation plan (HCP) that describes the actions and measures the

applicant would implement to avoid, minimize, and mitigate incidental take of the Indiana bat. The ITP application also includes a draft implementing agreement (IA). We also announce the availability of a draft Environmental Impact Statement (EIS) that has been prepared in response to the permit application in accordance with the requirements of the National Environmental Policy Act (NEPA). We request public comment on the application and associated documents.

DATES: *Public Meeting:* July 12, 2012, 4–8 p.m., Champaign County Community Center Auditorium, 1512 S. U.S. Highway 68, Urbana, OH 43078.

Comments: We will accept comments received or postmarked on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:*

- *Internet:* You may obtain copies of the documents on the Internet at <http://www.regulations.gov> (**Docket Number FWS-R3-ES-2012-0036**) or <http://www.fws.gov/midwest/endangered/permits/hcp/r3hcps.html>.
- *U.S. Mail:* You can obtain the documents by mail from the Ecological Services Office in the Midwest Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

- *In-Person:* To view hard copies of the documents in person, go to one of the Ecological Services Offices (8 a.m. to 4 p.m.) listed under **FOR FURTHER INFORMATION CONTACT**, or to one of the following libraries during normal business hours: Champaign County Library, 1060 Scioto Street, Urbana, OH 43078-2228; or North Lewisburg Branch, 161 Winder Street, North Lewisburg, OH 43060.

Public Meeting: See **DATES**.

Comment submission: In your comment, please specify whether your comment addresses the HCP, the draft EIS, both the HCP and draft EIS, or other supporting documents. You may submit written comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal:
<http://www.regulations.gov>. In the Search box, enter **FWS-R3-ES-2012-0036**, which is the docket number for this notice. Then, on the left side of the screen, under the Document Type heading, click on the Notices link to locate this document and submit a comment.
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R3-ES-2012-0036; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Megan Seymour, Fish and Wildlife Biologist, Ohio Ecological Services Field Office, U.S. Fish and Wildlife Service, 4625 Morse Road, Suite 104, Columbus, OH 43230; 614-416-8993, extension 16; or Rick Amidon, Fish and Wildlife Biologist, Ecological Services, Midwest Regional Office, U.S. Fish and Wildlife Service, 5600 American Blvd., West, Suite 990, Bloomington, MN 55437-1458; 612-713-5164.

SUPPLEMENTARY INFORMATION: We have received an application from Buckeye Wind, LLC, for an incidental take permit (TE66315A) under the ESA (16 U.S.C. 1531 et seq.). If approved, the ITP would be for a 30-year period and would authorize incidental take of the Indiana bat (*Myotis sodalis*).

The applicant has prepared a draft HCP to cover the construction, operation, maintenance, and decommissioning of the project. The project consists of a wind-powered electric generation facility located in an approximately 80,051-acre area (the action area) located in portions of Union, Wayne, Urbana, Salem, Rush, and Goshen Townships, in Champaign County, Ohio. The draft HCP describes the following: (1) biological goals and objectives of the HCP; (2) the covered activities; (3) permit duration; (4) permit area; (5) alternatives to the taking that were considered; (5) public

participation; (6) life history of the Indiana bat; (6) a quantification of the take for which authorization is requested; (7) an assessment of direct and indirect effects of the taking on the Indiana bat within the action area and within the Midwest Recovery Unit (as delineated in the 2007 Indiana Bat Draft Recovery Plan, USFWS); (8) a conservation program consisting of avoidance and minimization measures, mitigation, monitoring, and adaptive management; (9) funding for the HCP; (10) procedures to deal with changed and unforeseen circumstances; and (11) methods for ITP amendments.

In addition to the draft HCP, the applicant has prepared an Implementing Agreement (IA) to document the responsibilities of the parties. The USFWS invites comment on the IA as well as the applicant's HCP.

Under the NEPA (43 U.S.C. 4321 et seq.) and the ESA, the Service announces that we have gathered the information necessary to:

1. Determine the impacts and formulate alternatives for an EIS related to:
 - a. Issuance of an ITP to the applicant for the take of the Indiana bat, and
 - b. Implementation of the associated HCP; and
2. Evaluate the application for ITP issuance, including the HCP, which provides measures to minimize and mitigate the effects of the proposed incidental take of Indiana bat.

Background

Buckeye Wind, LLC, is a wholly owned subsidiary of EverPower Wind Holdings, Inc. (EverPower).

The project has been in the planning and development phase since 2006. Indiana bats were discovered in and around the Buckeye Wind action area during pre-construction wildlife surveys in 2008 and 2009. Because wind power projects across the eastern United States have been documented to cause mortality of bats in general, and Indiana bats specifically, Buckeye Wind determined it was appropriate to develop an HCP and apply for an ITP to authorize the potential incidental take of Indiana bats from construction, operation, maintenance, and decommissioning of the project. The HCP was developed by Buckeye Wind and their consultants, in coordination with the Service.

The HCP provides a detailed conservation plan to ensure that the incidental take caused by the project will not appreciably reduce the likelihood of the survival and recovery of the covered species in the action area or in the recovery unit, and provides mitigation to fully offset the impact of the taking. Further, the HCP provides a long-term monitoring and adaptive management strategy to ensure that the ITP terms are satisfied, and to account for changed and unforeseen circumstances.

Purpose and Need for Action

In accordance with NEPA, the Service has prepared an EIS to analyze the impacts to the human environment that would occur if the requested ITP were issued and the associated HCP were implemented.

Proposed Action

Section 9 of the ESA prohibits the “taking” of threatened and endangered species. However, provided certain criteria are met, the Service is authorized to issue

permits under section 10(a)(1)(B) of the ESA for take of federally listed species when, among other things, such a taking is incidental to, and not the purpose of, otherwise lawful activities. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered and threatened species, or to attempt to engage in any such conduct. Our implementing regulations define “harm” as an act which actually kills or injures wildlife, and such act may 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 (50 CFR 17.3). Harass, as defined, means “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering” (50 CFR 17.3).

The HCP analyzes, and the ITP would cover, take from harassment, harm, and killing of bats due to the construction, operation, maintenance, and decommissioning associated with the project. If issued, the ITP would authorize incidental take consistent with the applicant’s HCP and the permit. To issue the ITP, the Service must find that Buckeye Wind’s application, including its HCP, satisfies the criteria of section 10(a)(1)(B) of the ESA and the Service’s implementing regulations at 50 CFR parts 13 and 17.22. If the ITP is issued, the applicant would receive assurances under the Service’s No Surprises policy, as codified at 50 CFR 17.22(b)(5).

Buckeye Wind proposes to construct and operate a maximum of 100 wind turbines and associated facilities (described below) for a period of 30 years in eastern Champaign County, Ohio. The project will consist of wind turbines, associated access

roads, an underground and aboveground electrical collector system, a substation for connection of the wind turbines to the local transmission system, four permanent meteorological towers, and an operations and maintenance building. In addition, up to four temporary construction staging areas will be created during development. Project facilities and infrastructure will be placed on private land via long-term easement agreements between Buckeye Wind and respective landowners.

While approximately 80,051 acres are located within the Buckeye Wind action area, a relatively small portion of that land, approximately 0.16 percent (129.8 acres), will be permanently occupied by the project facilities. Beyond the approximately 129 acres of occupied area, as described in Section 2.2 of the HCP, the project will not impact or change the existing land use.

The draft HCP describes the impacts of take associated with Buckeye Wind's activities and includes measures to avoid, minimize, mitigate, and monitor the impacts of incidental take on the Indiana bat. Buckeye Wind will be mitigating for take and associated impacts through permanent preservation, enhancement, and restoration of suitable Indiana bat habitat within 7 miles of a Priority 2 Indiana bat hibernaculum (USFWS, 2007, Draft Indiana Bat Recovery Plan) in Ohio. Mitigation will occur on private lands and will be permanently protected by a conservation easement held by a third-party conservation organization. Section 6.3 of the HCP describes the details of compensatory mitigation and its implementation. The HCP also includes numerous avoidance and minimization measures, as described in sections 6.1 through 6.2, as well as adaptive management, as described in section 6.5, which will limit the take of the Indiana bat.

The Service is soliciting information regarding the adequacy of the HCP to avoid, minimize, mitigate, and monitor the proposed incidental take of the covered species and to provide for adaptive management. In compliance with section 10(c) of the ESA (16 U.S.C. 1539(c)), the Service is making the ITP application materials available for public review and comment as described above.

We invite comments and suggestions from all interested parties on the draft documents associated with the ITP application (HCP, HCP Appendices, and IA), and request that comments be as specific as possible. In particular, we request information and comments on the following topics:

1. Whether adaptive management and monitoring provisions in the Proposed Action alternative are sufficient;
2. Any threats to the covered species that may influence its population over the life of the ITP that are not addressed in the HCP or EIS;
3. Any new information on white-nose syndrome effects on the covered species;
4. Whether the models and model inputs used to estimate risk to the covered species are appropriate; and
5. Any other information pertinent to evaluating the effects of the proposed action on the Indiana bat.

Alternatives in the Draft EIS

The draft EIS contains an analysis of four alternatives: (1) No Action (no permit issuance); (2) Proposed Action - Modified Operations Alternative, including implementation of the HCP and Issuance of a 30-year ITP; (3) Maximally Restricted

Operations Alternative, without an HCP or ITP; and (4) Minimally Restricted Operations Alternative and Issuance of a 30-year ITP. The draft EIS considers the direct, indirect, and cumulative effects of the alternatives, including any measures under the Proposed Action alternative intended to minimize and mitigate such impacts. The draft EIS also identifies additional alternatives that were considered but were eliminated from consideration as detailed in Section 2.3 of the EIS.

The Service invites comments and suggestions from all interested parties on the content of the draft EIS. In particular, information and comments regarding the following topics are requested:

1. The direct, indirect, or cumulative effects that implementation of any alternative could have on the human environment;
2. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed; and
3. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

Public Comments

You may submit your comments and materials concerning the notice by one of the methods listed in **ADDRESSES**. We request that you send comments only by one of the methods described in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a

hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as documents associated with the notice, will be available for public inspection on <http://www.regulations.gov> at **Docket No. FWS-R3-ES-2012-0036**, or by appointment, during normal business hours, at the Ohio Ecological Services Field Office in Columbus, Ohio (see **FOR FURTHER INFORMATION CONTACT**).

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR Part 46).

Dated: June 21, 2012

Signed:

Lynn Lewis,

**Assistant Regional Director,
Ecological Services,
Midwest Region.**

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