



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Indiana

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), Department of Interior (DOI).

SUMMARY: This notice announces actions taken by the FHWA and the USFWS that are final pursuant to the statute. The actions relate to the proposed highway project for a 26-mile segment of Interstate 69 (I-69) in the Counties of Morgan, Johnson, and Marion, State of Indiana, and grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public that the FHWA and the USFWS have made decisions that are subject to 23 U.S.C. 139(l)(1) and are final within the meaning of that law. A claim seeking judicial review of those Federal agency decisions on the proposed highway project will be barred unless the claim is filed on or before **[INSERT DATE 150 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then the shorter time period applies.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Ms. Michelle Allen, Federal Highway Administration, Indiana Division, 575 North Pennsylvania Street,

Room 254, Indianapolis, IN 46204-1576; telephone: (317) 226-7344; email: Michelle.Allen@dot.gov. The FHWA Indiana Division Office's normal business hours are 7:30 a.m. to 4:00 p.m., est. For the USFWS: Mr. Scott Pruitt, Field Supervisor, Indiana Field Office, USFWS, 620 South Walker Street, Bloomington, IN 47403-2121; telephone: (812) 334-4261; email: Scott_Pruitt@fws.gov. Normal business hours for the USFWS Indiana Field Office are: 8 a.m. to 4:30 p.m., est. You may also contact Laura Hilden, Director – Environmental Services, Indiana Department of Transportation (INDOT), 100 North Senate Avenue, Room N642, Indianapolis, IN 46204; telephone: (317) 232-5018; email: lhilden@.indot.in.gov. Normal business hours for INDOT are: 8:00 a.m. to 4:30 p.m., est.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has approved a Tier 2 Final Environmental Impact Statement (FEIS) for Section 6 of the I-69 highway project from Evansville to Indianapolis and issued a Record of Decision (ROD) for Section 6 on **February 1, 2018**. Section 6 of the I-69 project extends from SR 39 south of Martinsville and proceeds north for approximately 26 miles to Interstate 465 (I-465) in Indianapolis. As part of the I-69 project, improvements to I-465 will also be made from Mann Road to U.S. Route 31.

The ROD selected the Refined Preferred Alternative for Section 6, as described in the I-69 Evansville to Indianapolis, Indiana, Tier 2 Final Environmental Impact Statement, Martinsville to Indianapolis, Indiana (FEIS). The ROD also approved the locations of the interchanges, grade separations, and access roads (which include new roads, road relocations, and realignments). The FHWA had previously issued a Tier 1 FEIS and

ROD for the entire I-69 project from Evansville to Indianapolis, Indiana. A Notice of Limitation on Claims for Judicial Review of Actions by FHWA and USFWS, DOI, was published in the Federal Register on April 17, 2007. A claim seeking judicial review of the Tier 1 decisions must have been filed by October 15, 2007, to avoid being barred under 23 U.S.C. 139(1). Decisions in the FHWA Tier 1 ROD that were cited in that Federal Register notice included, but were not limited to, the following:

1. Purpose and need for the project.
2. Range of alternatives for analysis.
3. Selection of the Interstate highway build alternative and highway corridor for the project, as Alternative 3C.
4. Elimination of other alternatives from consideration in Tier 2 NEPA proceedings.
5. Process for completing the Tier 2 alternatives analysis and studies for the project, including the designation of six Tier 2 sections and a decision to prepare a separate environmental impact statement for each Tier 2 section.

The Tier 1 ROD and Notice of Limitation on Claims specifically noted that the ultimate alignment of the highway within the corridor and the locations and number of interchanges and rest areas would be decided in the Tier 2 NEPA proceedings. Those proceedings for Section 6 of the I-69 project from Evansville to Indianapolis have culminated in the **February 1, 2018**, ROD and this Notice. Interested parties may consult the Tier 2, Section 6 ROD and FEIS for details about each of the decisions

described above and for information on other issues decided.

The Tier 2, Section 6 ROD can be viewed and downloaded from the project Web site at <http://www.i69indyevn.org/>. People unable to access the Web site may contact FHWA or INDOT at the addresses listed above. Decisions in the Section 6, Tier 2 ROD that have final approval include, but are not limited to, the following:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]
2. Endangered Species Act [16 U.S.C. 1531–1544].
3. Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
4. Clean Air Act, 42 U.S.C. 7401–7671(q).
5. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
6. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.].
7. Bald and Golden Eagle Protection Act [16 U.S.C. 688–688d].

Notice is hereby given that, subsequent to the earlier FHWA notices cited above, the USFWS has taken three final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing: 1) Conference Opinion for the northern long-eared bat (*Myotis septentrionalis*) “Amendment 3 to the Revised Programmatic Biological Opinion (dated August 24, 2006, previously amended July 24, 2013 and May 25, 2011) for the I-69, Evansville to Indianapolis, Indiana highway” dated April 1, 2015, which was adopted as

a Biological Opinion on May 4, 2015, upon the effective date of the rule listing the northern long-eared bat; 2) an individual Biological Opinion, dated October 30, 2017, for the Tier 2, Section 6, 26-mile I-69 project in Morgan, Johnson, and Marian counties, that concluded that the Section 6 project was not likely to jeopardize the continued existence of the Indiana bat (*Myotis sodalis*) or the northern long-eared bat; and, 3) concurrence with the FHWA's determination that the I-69 project is not likely to adversely affect the rusty patched bumble bee (*Bombus affinis*).

Previous actions taken by the USFWS for the Tier 1, I-69 project, pursuant to the Endangered Species Act, 16 U.S.C. 1531–1544, included its concurrence with the FHWA's determination that the I-69 project was not likely to adversely affect the eastern fanshell mussel (*Cyprogenia stegaria*) and that the project was likely to adversely affect, but not jeopardize, the bald eagle. The USFWS also concluded that the project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat's designated Critical Habitat.

These USFWS decisions were described in the Programmatic Biological Opinion issued on December 3, 2003, the Revised Programmatic Biological Opinion issued on August 24, 2006, including subsequent amendments, and other documents in the Tier 1 project records. A Notice of Limitation on Claims for Judicial Review of these actions and decisions by the USFWS, DOI, was published in the Federal Register on April 17, 2007. The USFWS affirmed its decisions in the Amendment to the Revised Programmatic Biological Opinion issued on May 25, 2011. Notices of Limitation on Claims for Judicial Review of these actions and decisions by the USFWS, DOI, were published in the

Federal Register on July 20, 2011, and August 27, 2013. Any claim seeking judicial review of the previous Amendments to the Revised Programmatic Biological Opinion must have been filed by January 17, 2012, and January 24, 2014, respectively to avoid being barred under 23 U.S.C. 139(l).

On April 15, 2015, USFWS issued “Amendment 3 To the Tier 1 Revised Programmatic Biological Opinion (RPBO dated August 24, 2006, previously amended July 24, 2013, and May 25, 2011) for the I-69, Evansville to Indianapolis, Indiana highway.” USFWS issued their Conference Opinion on the northern long-eared bat as Amendment 3 to the RPBO due to the pending listing of the northern long-eared bat under the ESA. The Conference Opinion was adopted as a Biological Opinion on May 4, 2015, upon the effective date of the listing of the northern long-eared bat. The amendment added an exempted level of incidental take for the northern long-eared bat and added terms and conditions associated with the northern long-eared bat along with reasonable and prudent measures to be implemented to protect this species. Based on analysis of the information on the northern long-eared bat, USFWS concluded that while potential incidental take of some individuals may result from the construction, operation, and maintenance of the I-69 Evansville to Indianapolis, Indiana highway, it is not likely to jeopardize the continued existence of the northern long-eared bat. USFWS did not conduct any new analysis for either the bald eagle or eastern fanshell mussel (*Cyprogenia stegaria*), and the non-jeopardy conclusion regarding impacts to the bald eagle still stands as stated in the original Tier 1 Biological Opinion (dated December 3, 2003). The Amendment 3 to the Tier 1 Revised Programmatic Biological Opinion (RPBO dated August 24, 2006,

previously amended July 24, 2013, and May 25, 2011) for the I-69, Evansville to Indianapolis, Indiana highway can be found and downloaded from the project website at <http://www.i69indyevn.org>.

For the Tier 2, Section 6, 26-mile I-69 Project in Morgan, Johnson, and Marion Counties, an individual Biological Opinion was issued on October 30, 2017, which concluded that the Section 6 project was not likely to jeopardize the continued existence of the Indiana bat or the northern long-eared bat. In addition, the USFWS issued an Incidental Take Statement subject to specific terms and conditions. The Biological Opinions and other project records relating to the USFWS actions, taken pursuant to the Endangered Species Act, 16 U.S.C. 1531–1544, are available by contacting the FHWA, INDOT, or USFWS at the addresses provided above. The Tier 2, Section 6 Biological Opinion can be viewed in Appendix GG2 in the Section 6 FEIS.

The USFWS concurrence with the FHWA’s determination that the I–69 project is not likely to adversely affect the rusty patched bumble bee (*Bombus affinis*) was based on the fact that the project is outside of the “high potential” zones developed in Indiana for the rusty patched bumble bee and thus the species is not likely to be present within the project area.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Mayela Sosa,

Division Administrator, Indianapolis, Indiana.

[FR Doc. 2018-04067 Filed: 3/1/2018 8:45 am; Publication Date: 3/2/2018]