



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[Docket No. FWS–R3–ES–2020–0046; FXES11140300000–201–FF03E00000]**

**Draft Environmental Assessment and Draft Habitat Conservation Plan; Receipt of an Application for an Incidental Take Permit, Hog Creek Wind Project, Hardin County, Ohio**

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received an application from Hog Creek Wind Project, LLC (the applicant), for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended, for the Hog Creek Wind Farm Project. If approved, the ITP would authorize the incidental take of the Indiana bat and the northern long-eared bat for a 30-year term. The applicant has prepared a draft habitat conservation plan, which is available for public review. We also announce the availability of a draft environmental assessment, which has been prepared in accordance

with the requirements of the National Environmental Policy Act. We request public comment on the application and associated documents.

**DATES:** We will accept comments received or postmarked on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** *Obtaining documents:* Electronic copies of the documents this notice announces will be available online in Docket No. FWS–R3–ES–2020–0046 at <http://www.regulations.gov>. Public comments will also be available online at <http://www.regulations.gov>.

*Submitting comments:* Please specify whether your comment addresses the draft habitat conservation plan, draft environmental assessment, any combination of the aforementioned documents, or other supporting documents. Please submit written comments by one of the following methods:

- *Online:* <http://www.regulations.gov>. Search for and submit comments on Docket No. FWS–R3–ES–2020–0046.
- *By hard copy:* Submit comments by U.S. mail to Public Comments Processing, Attn: Docket No. FWS–R3–ES–2020–0046; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

For more information, see **Public Comments**.

**FOR FURTHER INFORMATION CONTACT:** Keith Lott, Wildlife Biologist, or Patrice Ashfield, Project Leader, via phone at 614-416-8993, via the Federal Relay Service at 800-877-8339, or via U.S. mail at the U.S. Fish and Wildlife Service, Ohio Ecological Services Office, 4625 Morse Road, Suite 104, Columbus, OH 43230.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Hog Creek Wind Project, LLC (the applicant), for an incidental take permit (ITP) under the Endangered Species Act (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 endangered Indiana bat (*Myotis sodalis*) and the threatened northern long-eared bat (*Myotis septentrionalis*).

The applicant has prepared a draft habitat conservation plan (HCP), which covers the operation of the Hog Creek Wind Farm Project (project). The project consists of a wind-powered electric generation facility located in an approximately 236-acre area in Hardin County, Ohio. The draft HCP describes the following:

1. Permit duration;
2. Covered lands;
3. Covered species;
4. Project description and covered activities;
5. Environmental baseline and affected species;
6. Impact assessment and take authorization request for Indiana bats and northern long-eared bats;

7. Conservation plan, which includes the Biological Goals and Objectives, and measures to avoid, minimize, and mitigate the impact of the taking;
8. Monitoring and adaptive management;
9. Funding assurances;
10. Alternatives to the taking; and
11. Changed and unforeseen circumstances.

Under the National Environmental Policy Act (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 EA related to:
  - a. Issuance of an ITP to the applicant for the take of the Indiana bat and the northern long-eared 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 the Indiana bat and the northern long-eared bat.

## **Background**

The project includes 30 wind turbines, with a total energy-generating capacity of 66 megawatts (MW). The project began commercial operation in December of 2017. The need for the proposed action (i.e., issuance of an ITP) is based on the potential that operation of the project could result in take of Indiana bats and northern long-eared bats.

The HCP provides a detailed conservation plan to ensure that the incidental take caused by the operation of the project will not appreciably reduce the likelihood of the survival and recovery of the Indiana bat and northern long-eared bat, and includes 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 a DEA to analyze the impacts to the human environment that would occur if the requested ITP is issued and the associated HCP is 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 in title 50 of the Code of Federal Regulations (CFR) 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).

The HCP analyzes, and the ITP would authorize, take from killing of bats due to the operation of the project. If issued, the ITP would authorize incidental take consistent with the applicant's HCP and the ITP. To issue the ITP, the Service must find that the application, including the associated HCP, satisfies the criteria of section 10(a)(1)(B) of the ESA and the Service's implementing regulations at 50 CFR part 13 and § 17.22. If the ITP is issued, the applicant would receive assurances under the Service's No Surprises policy, codified at 50 CFR 17.22(b)(5).

The applicant proposes to operate a maximum of 30 wind turbines and associated facilities for a period of 30 years in Hardin County, Ohio. The project consists of wind turbines, associated gravel pads and access roads, underground and above-ground electrical collection circuits, one substation, a generator lead line, one permanent meteorological tower, and an operations and maintenance facility.

The draft HCP describes the impacts of take associated with the operation of the project and includes measures to avoid, minimize, mitigate, and monitor the impacts of incidental take on the Indiana bat and the northern long-eared bat. The applicant will mitigate for take and associated impacts through one or more methods, including restoration, if necessary, and permanent protection of documented maternity colony habitat and/or swarming habitat, and/or gating of a hibernaculum. Habitat mitigation, including any restored habitat, will occur on private land and be permanently protected by a conservation easement, fee simple acquisition with deed restrictions, or another site protection instrument that provides an equivalent level of protection, and will be

approved by the Service. Chapter 5 of the HCP describes the avoidance, minimization measures, and compensatory mitigation that will limit and mitigate for the take of Indiana bats and northern long-eared bats. This chapter also includes the monitoring and adaptive management plans to ensure that the level of take stays within permitted levels and mitigation sites are maintained as suitable habitat for the Indiana bat and northern long-eared 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 and HCP appendices), and request that comments be as specific as possible. In particular, we request information and comments on the following topics:

1. Whether adaptive management, mitigation, and monitoring provisions in the proposed action alternative are sufficient;
2. Any threats to the Indiana bat and the northern long-eared bat that may influence their populations over the life of the ITP that are not addressed in the draft HCP or DEA;
3. Any new information on white-nose syndrome effects on the Indiana bat and the northern long-eared bat; and
4. Any other information pertinent to evaluating the effects of the proposed

action on the Indiana bat and the northern long-eared bat.

### **Alternatives in the Draft Environmental Assessment**

The DEA contains an analysis of four alternatives:

1. No Action alternative, in which the Service would not issue a permit to the applicant, and the project turbines would be feathered until wind speeds reach 6.9 m/s from a half-hour before sunset to a half-hour after sunrise during the entirety of the fall migration season (August 1 through October 31) and spring migration season (March 15 through May 15), under which conditions take of listed species is unlikely to occur;
2. The applicant's Proposed Alternative, in which the Service would issue an ITP to authorize incidental take of covered species associated with the project's operations as described in the applicant's HCP. In this alternative, the project turbines would be feathered until wind speeds reach 3.0 m/s during the spring migration (April 1 through May 15) from a half-hour before sunset to a half-hour after sunrise, and during the fall migration season (August 1 through October 15), project turbines would be feathered until wind speeds reach 5.0 m/s from a half-hour before sunset to a half-hour after sunrise. While take is not anticipated during the summer (May 16 – July 31), turbines will be feathered until wind speeds reach 3.0 m/s from a half-hour before sunset to a half-hour after sunrise. Minimization measures would be applicable until the temperature was greater than 10 degrees Celsius (°C). In this alternative, the applicant

estimated take of Indiana and northern long-eared bats using an approach that addresses inherent uncertainty in take estimates by incorporating a 50 percent confidence bound around the mean estimate, and a 50 percent reduction in take from application of the proposed cut-in speed regime. The various phases of this project began and will end in different years; thus, different numbers of turbines will be operational during the three different phases, which will change the amount of take during each of the phases. Thus, the estimated fatality rates under this alternative are 3.3 Indiana bats per year, and 1 northern long-eared bat per year. This results in a total of 97 Indiana bats and 30 northern long-eared bats over the 30-year permit term.

3. More Restrictive Operations alternative, in which the Service would issue an ITP for the HCP, but turbine operations would be different than under the applicant's proposed project. All turbines would be feathered when the ambient temperature is above 10°C based on a 5-minute rolling average from one half-hour before sunset to one half-hour after sunrise during the spring migration season (April 1 through May 15) up to 3.0 m/s, summer (May 16 through July 31) up to 3.0 m/s, and during the fall migration season (August 1 through October 15) up to 6.5 m/s. The estimated fatality rates for this alternative are 1.5 Indiana bats and 0.5 northern long-eared bats per year. This results in a total of 44.9 Indiana bats and 13.8 northern long-eared bats over the 30-year permit term. The quantity of mitigation needed to offset the impact of the taking and the

level of effort of monitoring varies between the alternatives, although mitigation, monitoring, adaptive management, and funding assurances are components of all three action alternatives.

The DEA considers the direct, indirect, and cumulative effects of the alternatives, including any measures intended to minimize and mitigate such impacts. The DEA also identifies additional alternatives that were considered but were eliminated from analysis as detailed in section 2.4 of the DEA.

The Service invites comments and suggestions from all interested parties on the content of the DEA. 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 related to the draft HCP, DEA, or other supporting documents by one of the methods listed in **ADDRESSES**. We request you send comments using only one of the methods described in **ADDRESSES**.

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 ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

We provide this notice under section 10(c) of the ESA (16 U.S.C.1539(c)) and its implementing regulations (50 CFR 17.22) and the NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

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