



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Kentucky Ecological Services Field Office
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July 30, 2025

Mr. Edwin Boone
Kentucky Division of Abandoned Mine Lands
300 Sower Boulevard
Frankfort, KY 40601

Subject: FWS 2025-0112531; 25011AML, Perry County, Kentucky

Dear Mr. Boone:

The U.S. Fish and Wildlife Service's (Service) Kentucky Field Office (KFO) has reviewed the request for concurrence for the above-referenced action received by our office on June 24, 2025. The Kentucky Division of Abandoned Mine Lands (KDAML) is proposing an abandoned mine land reclamation action in Perry County, Kentucky. The KFO offers the following comments in accordance with the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

Proposed Action

The KDAML is proposing an action for abandoned mine lands that will consist of reclaiming a relict sediment structure in Perry County, Kentucky (37.266549°N, -83.253528°W). The proposed action will include the draining of the relict sediment structure, conversion of approximately 600 linear feet of an intermittent stream channel (Laurel Branch) to rock-lined ditch below the relict sediment structure, followed by 180 linear feet of 48-inch diameter culvert beneath the residential lawn, another 90 linear feet of rock-lined ditch, followed by an additional 60 linear feet of 48-inch diameter culvert. Additionally, a secondary drainage system will include clearing approximately 200 linear feet of existing roadside ditch, installation of approximately 40 linear feet of 15-inch diameter culvert, and 200 linear feet of subdrain. Additionally, the water within the relict sediment structure will be treated to achieve a pH of between 6.0 and 9.0 standard units prior to release. An intermittent stream (Laurel Branch) will be directly impacted as a result of this action. A stringently formulated erosion and sediment control program will be implemented to prevent significant amounts of sediment from entering area streams. The action area consists of forested habitat, abandoned mine lands, and residential homes. Forested habitat will be removed as a result of this action. This action will require an individual permit under Section 404 of the Clean Water Act.

Federally Listed Species

The KDAML obtained an official species list from the Information for Planning and Consultation (IPaC) website and determined the proposed action has the potential to affect the gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), and Kentucky arrow darter (*Etheostoma spilotum*).

Gray Bat

The KDAML evaluated potential effects to the gray bat from the proposed action and reached a “may affect” determination for this species utilizing the Kentucky Statewide Determination Key on the Service’s IPaC website. Based on information from the KDAML, no open mine portals, rock shelters, karst features, suitable sinkholes, or caves that could serve as hibernacula or roosting habitat for this species were identified within the action area. Additionally, the KFO does not have any records of known gray bat hibernacula or roosting habitat within or adjacent to the action area. As a result, no effects to hibernating or roosting gray bats or their hibernacula or roosting habitat are anticipated from the proposed action.

The forested habitat was identified as suitable foraging and commuting habitat for this species, and the proposed action will require removal of 1.3 acres of this habitat. However, because the gray bat is a cave dwelling species that commutes over long linear distances, and sufficient commuting habitat is available outside the action area, removal of this habitat would not result in significant adverse effects on the gray bat. This action will have direct impacts to Laurel Branch due to the installation of 690 linear feet of rock-lined ditch and 240 linear feet of 48-inch diameter culvert; however, a stringently formulated erosion and sediment control program will be implemented in order to prevent significant amounts of sediment from entering the stream. Based on the lack of impacts to potential hibernacula and roosting habitat, insignificant effects to the species from commuting habitat impacts, and the implementation of an erosion and sediment control plan to protect water quality important for foraging, we concur with your determination that the proposed action “may affect, is not likely to adversely affect” the gray bat.

Indiana Bat and Northern Long-eared Bat

The KDAML evaluated potential effects to the Indiana bat and northern long-eared bat from the proposed action and reached a “may affect” determination for these species utilizing the Indiana Bat Determination Key and Northern Long-eared Bat and Tricolored Bat Rangewide Determination Key on the Service’s IPaC website.

According to the KDAML, no open mine portals, rock shelters, karst features, suitable sinkholes, or caves that could serve as hibernacula or non-forested roosting habitat for these species were identified within the action area. Additionally, the KFO does not have any records of known Indiana bat or northern long-eared bat hibernacula or non-forested roosting habitat within or adjacent to the action area. As a result, no effects to hibernating or non-tree roosting Indiana or northern long-eared bats or their hibernacula or non-forested roosting habitat are anticipated from the proposed action.

The forested habitat located within the action area was identified as suitable summer roosting, foraging, and commuting habitat for these species, and the proposed action will require the removal of 1.3 acres of this habitat. Based on potential impacts to suitable summer roosting,

foraging, and commuting habitat, we concur with your determination that the proposed action “may affect, is likely to adversely affect” the Indiana bat and northern long-eared bat.

The applicant has chosen to make a voluntary payment to the Imperiled Bat Conservation Fund (IBCF) as part of the proposed action to address Indiana bat and northern long-eared bat habitat loss. A voluntary payment to the IBCF is a conservation measure that is identified in the KFO’s 2016 Revised Conservation Strategy for Forest-Dwelling Bats (Conservation Strategy). The proposed action is located within “Potential” habitat for the Indiana bat and northern long-eared bat, and the applicant proposes to remove this habitat during any time of the year, excluding the non-volant period (June 1 to July 31). Based on the Conservation Strategy, the voluntary payment to the IBCF should be \$6,890.00¹.

We have determined that the proposed action is consistent with the actions evaluated in the 2015 Biological Opinion: *Kentucky Field Office’s Participation in Conservation Memoranda of Agreement for the Indiana Bat and/or Northern Long-eared Bat* (BO) that supports the Conservation Strategy. Any incidental take of Indiana or northern long-eared bats resulting from forested habitat removal is not prohibited. The BO concludes that this incidental take is not likely to jeopardize the continued existence of the Indiana bat and northern long-eared bat.

To complete the voluntary IBCF payment, the action proponent should mail a check or money order to the Kentucky Natural Lands Trust, which administers the IBCF. The check or money order should be made payable to Kentucky Natural Lands Trust with “Imperiled Bat Conservation Fund” in the memo line. Payments can only be received by standard mail or USPS Priority Mail at the address below. Please note that KNLT cannot provide a signature upon delivery. Payment cannot be received by other delivery services (i.e., FedEx, UPS, etc.).

Mail to:
Imperiled Bat Conservation Fund
c/o Kentucky Natural Lands Trust
433 Chestnut Street
Berea, KY 40403

A cover letter should be included with the check or money order with the following information: the action proponent’s name, the FWS action code referenced in the subject line of this letter, and a contact name and email address for receipt of payment.

Kentucky Arrow Darter

The KDAML evaluated potential effects to the Kentucky arrow darter from the proposed action and reached a “may affect” determination for this species utilizing the Kentucky Statewide Determination Key on the Service’s IPaC website. This action will have direct impacts to Laurel Branch due to the installation of 690 linear feet of rock-lined ditch and 240 linear feet of 48-inch diameter culvert. According to the KDAML, Laurel Branch is not suitable habitat for this

¹ The calculated amount is based on the current average value of farm real estate in Kentucky as reported annually by the U.S. Department of Agriculture in the Land Values and Cash Rents document (\$5,300). Action request received after Sept 1 of each calendar year will be calculated at the updated rate.

species because it is a heavily embedded 1st order head-water stream that has been heavily impacted by previous coal mining operations and residential developments. This action will eliminate a current source of sedimentation into the stream, thereby improving the quality of the stream. A stringently formulated erosion and sediment control program will be implemented in order to prevent significant amounts of sediment from entering the stream. Additionally, the KFO has no records of this species occurring within the action area. Based on the lack of suitable habitat within the action area, implementation of an erosion and sediment control program, and no records of this species occurring within the action area, we concur with your determination that the proposed action “may affect, is not likely to adversely affect” the Kentucky arrow darter.

Proposed Species

The KDAML has determined that the proposed action has the potential to affect the proposed endangered tricolored bat (*Perimyotis subflavus*). The Service proposed to list the tricolored bat as endangered under the ESA on September 13, 2022.

Tricolored Bat

According to the KDAML, no open mine portals, rock shelters, karst features, suitable sinkholes, or caves that could serve as hibernacula or non-forested roosting habitat for this species were identified within the action area. Additionally, the KFO does not have any records of known tricolored bat hibernacula or non-forested roosting habitat within the action area. As a result, no effects to hibernating or non-tree roosting tricolored bats, or their hibernacula or non-forested roosting habitat are anticipated from the proposed action.

The forested habitat located within the action area was identified as suitable summer roosting, foraging, and commuting habitat for this species. The KDAML is proposing to remove 1.3 acres of this habitat during any time of the year, excluding the non-volant period (May 15 to July 31). Based on the lack of potential hibernacula and non-forested roosting habitat in the action area, removal of suitable summer roosting, foraging, and commuting habitat during outside the non-volant period, and the small size of the action compared to the large range of the species, the KFO does not believe the action would affect a substantial number of individuals of the species. Thus, we concur with your determination that the proposed action is “not likely to jeopardize the continued existence” of the tricolored bat.

Summary

The KFO concurs that the proposed action “may affect, is not likely to adversely affect” the gray bat and the Kentucky arrow darter. The KFO concurs that the proposed action “may affect, is likely to adversely affect” the Indiana bat and northern long-eared bat, and that the action is consistent with the actions evaluated in the 2015 BO. We also acknowledge use of a voluntary payment to the IBCF as a compensatory mitigation measure for adverse effects to the Indiana bat and northern long-eared bat. The KFO also agrees that the action is “not likely to jeopardize the continued existence” of the tricolored bat. In view of these findings, we believe that the Section 7 requirements of the Endangered Species Act are fulfilled for this action. The KDAML should reconsider its Section 7 obligation if: (1) new information reveals that the proposed action may affect listed species in a manner or to an extent not previously considered; (2) the proposed

action is subsequently modified to include activities that were not considered during this consultation; or (3) new species are listed or critical habitat is designated.

We appreciate the opportunity to review the proposed action. If you have any questions, please contact Kyle Sams of my staff at stephen_sams@fws.gov.

Sincerely,

JOSHUA

LILLPOP

Joshua Lillpop

Acting Field Supervisor

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