

**JOINT FACT-SHEET BETWEEN UNITED STATES FISH AND WILDLIFE SERVICE
COLUMBUS OHIO ECOLOGICAL SERVICES OFFICE, BUFFALO, HUNTINGTON,
AND PITTSBURGH UNITED STATES ARMY CORPS OF ENGINEERS DISTRICTS
AND OHIO ENVIRONMENTAL PROTECTION AGENCY FOR TREE CLEARING
CONSIDERATIONS ASSOCIATED WITH PROJECTS REQUIRING
DEPARTMENT OF THE ARMY PERMITS**

The Endangered Species Act (ESA) requires the United States Army Corps of Engineers (Corps) to consult with the United States Fish and Wildlife Service (FWS) if an activity that requires a Department of the Army (DA) permit may affect an endangered or threatened species or designated critical habitat. Section 7 of the ESA specifies that federal agencies must ensure that any action it authorizes does not cause jeopardy to any federally listed species or cause an adverse modification of designated critical habitat (See 50 CFR parts 402.01(a) and 402.02).

The entire State of Ohio lies within the range of the federally endangered Indiana bat (*Myotis sodalis*) and the federally threatened northern long-eared bat (*Myotis septentrionalis*); there is no designated critical habitat for these species in the State of Ohio. In Ohio, presence of the Indiana bat and northern long-eared bat is assumed wherever suitable habitat occurs unless a presence/absence survey has been performed to document absence. Suitable summer habitat for Indiana bats and northern long-eared bats consists of a wide variety of forested/wooded habitats where they roost, forage, and travel and may also include some adjacent and interspersed non-forested habitats such as emergent wetlands and edges of agricultural fields, old fields and pastures. This includes forests and woodlots containing potential roost trees (i.e., live trees and/or snags ≥ 3 inches diameter at breast height (dbh) that have any exfoliating bark, cracks, crevices, hollows and/or cavities), as well as linear features such as fencerows, riparian forests, and other wooded corridors. These wooded areas may be dense or loose aggregates of trees with variable amounts of canopy closure. Individual trees may be considered suitable habitat when they exhibit the characteristics of a potential roost tree and are located within 1,000 feet (305 meters) of other forested/wooded habitat. Northern long-eared bats have also been observed roosting in human-made structures, such as buildings, barns, bridges, and bat houses; therefore, these structures should also be considered potential summer habitat. In the winter, Indiana bats and northern long-eared bats hibernate in caves and abandoned mines.

If you are planning work in waters of the United States (i.e. river, stream, wetland), a DA permit from the Corps may be required. Prior to issuing a DA permit, the Corps **must** consult with the FWS under the ESA if listed species or their habitats may be affected. Even projects that would otherwise qualify for "non-notifying" Nationwide Permits would require Pre-Construction Notification to the Corps if listed species or their habitats may be affected. This is required under Nationwide Permit General Condition 18, which expressly prohibits any activity which may affect a listed species or its critical habitat, unless consultation has been completed between the Corps and FWS addressing the effects of the proposed activity.

In order to minimize impacts to the Indiana bat and the northern long-eared bat, the FWS often recommends removal of any trees ≥ 3 inches dbh as well as linear features such as fencerows, riparian forests and other wooded corridors only occur between October 1 and March 31, the

period of year when these bat species are not using trees for roosting. However, there are situations where seasonal tree clearing may not avoid adverse effects to the Indiana bat and the northern long-eared bat.

Early coordination between the FWS and the project proponent, or permit applicant, is encouraged to assist the Corps in the ESA consultation process. Applicants and proponents should provide a short project description, GPS coordinates, mapping, and representative photos of the site to the FWS at Ohio@fws.gov. The FWS will review each individual project and provide recommendations for protecting federally-listed endangered and threatened species within 30 days. While the comments provided in the FWS technical assistance letters can provide project specific guidance, applicants must be aware that these letters do not serve as completed Section 7 ESA documentation.

If you plan to coordinate with the FWS in advance of submitting a permit application to the Corps, no tree clearing should occur on any portion of the project area until you have been notified that Section 7 consultation under the ESA between the FWS and the Corps is complete. As a result of the consultation process, the Corps may add special conditions to the DA permit to ensure that the activity either avoids adverse effects, does not jeopardize endangered or threatened species, or destroy or adversely modify critical habitat.

In addition to Section 7 ESA consultation, there are many additional reasons you should wait to clear trees on your project site. Tree clearing before obtaining a DA permit could impede the review process and authorization of the project.

WHY WAIT TO CLEAR TREES?

- Consultation between the Corps and the FWS is required for projects that may affect federally listed species or designated critical habitat prior to impacts occurring in order to be in compliance with the ESA.
- Unauthorized discharges of dredged and/or fill material into waters of the United States may occur prior to receiving your Corps authorization.
- Other alternatives could be precluded that have less impact to aquatic resources.
- Ohio Rapid Assessment Method wetland scores or the Qualitative Habitat Evaluation Index /Headwater Habitat Evaluation Index scores could be affected.
- The DA permitting processes could be delayed.
- The Ohio Environmental Protection Agency's Section 401 Water Quality Certification evaluation process could be delayed.
- Minimization measures may be precluded for resources that must be addressed during the Corps' application evaluation.
- After-the-fact permitting or compensatory mitigation may be required.
- ESA violations may occur.
- Mechanized clearing prior to receiving a DA permit could cause issues with Section 106 National Historic Preservation Act consultation, if required.

CONTACTS

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BUFFALO DISTRICT

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HUNTINGTON DISTRICT

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LOUISVILLE DISTRICT

Address: U.S. Army Corps of Engineers, Louisville District
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PITTSBURGH DISTRICT

Address: U.S. Army Corps of Engineers, Pittsburgh District
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OHIO ENVIRONMENTAL PROTECTION AGENCY

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