

Authorization for Incidental Take and Implementing Agreement

Pursuant to the Illinois Endangered Species Protection Act (520 ILCS 10/5.5) the Illinois Department of Transportation's (IDOT) authorization for the incidental take of the State threatened marsh rice rat (*Oryzomys palustris*) in Alexander County, Illinois (as described/shown in the conservation plan received by the Department on January 28, 2009) is hereby granted, subject to the terms and conditions described in the attached Authorization and Implementing Agreement. The Illinois Department of Natural Resources has determined that this authorized take is incidental to the construction/repair of the IL 146 (FAP 312), highway project in Alexander County, Illinois.

Procedural History

IDOT [District 9 - Carbondale, IL. Office] prepared a conservation plan as described by the Illinois Endangered Species Protection Act (520 ILCS 10/5.5). That plan and IDOT's request for authorization for incidental take of the marsh rice rat were received by the Illinois Department of Natural Resources (Department) on January 28, 2009. Public notice of IDOT's request for authorization of incidental take of the marsh rice rat was published in the Northwest Daily Herald (Official State newspaper) and the Gazette Democrat (Alexander County) on March 5, 2009, as well as on March 12, 2009 and March 19, 2009. Public comments on IDOT's conservation plan were accepted by the Department until April 20, 2009. No comments were received by the public during the period of March 5, 2009 through April 20, 2009.

Compliance with the Endangered Species Protection Act

The Illinois Endangered Species Protection Act includes six (6) criteria which must be met for the authorization of incidental take of an endangered or threatened species. These criteria and the Department's determination for each criteria are listed below.

1. The taking will not be the purpose of, but will only be incidental to, the carrying out of an otherwise lawful activity:

The stated and apparent purpose of this proposed action is strategic expansion of Illinois Route 146 in southern Illinois, involving the potential taking of the state listed marsh rice rat. This expansion project begins at the intersection of IL Route 3 with IL 146 1.7 miles south of McClure (McClure Quadrangle 7.5', Township 14 South/Range 3 West/Section 16, 3rd Principal Meridian), continues west along Illinois Route 146, and ends near the intersection with Bader Lane in East Cape Girardeau, IL. (McClure Quadrangle 7.5', Township 14 South/Range 3 West/Section 18, 3rd Principal Meridian) The proposed improvement and resulting impacts will occur within the proposed project limits that required an additional 23 acres of IDOT right-of-way adjacent to the existing right-of-way limits.

The marsh rice rat (*Oryzomys palustris*) occurs from Texas, Oklahoma, and southeastern Kansas eastward to the Atlantic coast, and north to Pennsylvania and southern New Jersey. Their range within Illinois includes the area south of the Shawnee Hills Section and extends northward along the Mississippi River on the west and through the Shawnee Hills Section by way of the Big Muddy River valley into the poorly drained upland of the Mt. Vernon Hill Country. According

to the Illinois Natural Heritage Database (INHD), the rice rat has been found in 12 Southern Illinois counties. In addition, there are 14 records for Alexander and Union Counties alone. This species is known to occupy a variety of wetland types including swamps, drainage ditches, farm ponds, and wet meadows.

Wetlands provide habitat for rice rats. For this project, the Illinois Natural History Survey (INHS) found this species at trapping line B only (i.e. found at only one [1] trap line within the project corridor), no rice rats were found at the other traplines. It is anticipated that most rice rats will leave or can move away from the construction zone once work begins. However, there may be an incidental taking from construction activity on those rice rats unable to move out of harms way such as nesting young. It is anticipated that the project will adversely impact rice rats due to habitat loss and potential for harming individual species. Such taking is not the purpose of the activities proposed by IDOT, but is incidental to the carrying out of a lawful activity.

2. The parties to the conservation plan will, to the maximum extent practicable, minimize and mitigate the impact caused by the taking.

The conservation plan prepared by IDOT, in conjunction with Illinois Natural History Survey/INHS staff, and received by the Department on January 28, 2009 stated that impacts to the marsh rice rat should for the most part be minimized since this project is an improvement and affects wetlands only adjacent to the project. Impacts would have been much greater if this project was on a new alignment affecting previously undisturbed land. It is difficult to positively determine if any individuals will be taken by construction activity since they typically may move away from construction activity, except nesting young. While there are a total of nine (9) jurisdictional wetlands in the project area and a total of 2.3 acres of wetlands converted for highway right-of-way, only three (3) wetlands were successfully trapped for rice rats by INHS staff. The amount of impact to these three wetlands totals 0.51 acres of habitat affected.

IDOT is converting only a small percentage of each wetland impacted by this project. The rest of the wetland will be available for use by the rice rat as well as all other wetland plants and animals. As mentioned above, 2.3 acres of wetlands will be permanently converted to highway right-of-way. The remaining habitat will be held in private ownership. The new roadside ditches will provide habitat and replace those ditches previously used by rice rats.

IDOT helped minimize the take of rice rat habitat by minimizing the ditch backslopes and adjusting the ditch grades. Restoring wetland habitat in an on-site wetland compensation site will for the most part, mitigate the take of rice rats and their habitat. A total of 7.6 acres of wetlands will be restored at an on-site parcel adjacent to the project to compensate the loss of 2.3 acres.

Overall, the rice rat is listed as threatened in Illinois and is covered by the Illinois Endangered Species Act of 1971 only. Therefore, compliance under the federal Endangered Species Act of 1973 is not required. Wetland impacts will be compensated per the rules of the Interagency Wetland Policy Act of 1989. No known local regulations are pertinent to this conservation plan.

3. The parties to the conservation plan will ensure that adequate funding for the conservation plan will be provided:

In an official correspondence to the Department dated January 28, 2009, IDOT verified that adequate funding exists to support and implement all (mitigation) activities described in the official Conservation Plan. The project cost for constructing the (IL 146 - FAP 312) wetland mitigation site is estimated at \$84,000. This correspondence states that the FAP 312 (IL 146) project is authorized by the Illinois Department of Transportation, which receives its funding from the Illinois General Assembly and the Federal Government in carrying out its programs. In addition, funding for this project was granted by the Delta Regional Authority with additional funding from the Federal Highway Administration. IDOT has committed to budget and authorize adequate funding to provide for project construction activities and implementation of all mitigation activities (via INHS staff) required and described in the official conservation plan.

Overall, District 9 of the IDOT will be responsible for the funding, construction, and maintenance of the compensatory wetland/rice rat habitat site. The INHS will provide technical information and will perform follow-up surveys for the rice rat and determine the quality of the compensation site. The Illinois State Geological Survey (ISGS) will perform hydrologic studies of the wetland compensation site and send these annual reports to IDOT. The monitoring reports will be coordinated with the IDNR and US Army Corps of Engineers. The activities in the approved conservation plan will be implemented concurrently with the contract for the highway work.

4. Based on the best available scientific data, the Department has determined that the taking will not reduce the likelihood of the survival or recovery of the endangered species or threatened species in the wild in Illinois, the biotic community of which the species is a part, or the habitat essential to the species' existence in Illinois:

Construction and expansion of the IL 146 (FAP 312) roadway in Alexander County, Illinois will not reduce the likelihood of the survival of the state-listed threatened marsh rice rat in Illinois. Once construction is complete, INHS will re-survey the project area to determine any affect on rice rats by the highway project. Also, the compensatory wetland site will be monitored for its overall performance and the presence of rice rats for five (5) years. These reports will be coordinated with IDNR, Division of Natural Resource Review and Coordination and the IDNR, Division of Natural Heritage.

As a point of reference, this species (marsh rice rat) has been trapped in twelve (12) counties in Southern Illinois (Alexander, Franklin, Hamilton, Jackson, Johnson, Massac, Pope, Pulaski, Saline, Union, White, and Williamson). This species has been recently found in the project areas of numerous IDOT highway projects. Two (2) examples are the IL 127 improvement in Union and Alexander Counties and the widening and proposed reconstruction of the Herrin-Johnston City Blacktop.

Locally, there are fourteen (14) INHD (Illinois Natural Heritage Database) records in Alexander and Union Counties, including four (4) locations in the vicinity of the IL Route 146 project area where rice rats were trapped by the Illinois Natural History Survey in 2007. Furthermore, a nest was found at the Union County Conservation Area in 1993 and rice rats were trapped in the conservation area in 1998 and 2008. Rice rats also were trapped along Clear Creek drainage

ditch, just southeast of McClure, IL and more were trapped just northeast of McClure also in 1998. Therefore, this species is not isolated in one geographic area but is distributed in other locations.

IDOT is converting only a small percentage of each wetland impacted by this project. The rest of the wetland will be available for use by the rice rat as well as all other wetland plants and animals. As mentioned, 2.3 acres of wetlands will be permanently converted to highway right-of-way. The remaining habitat will be held in private ownership. The new roadside ditches will provide habitat and replace those ditches previously used by rice rats.

Also, IDOT essentially minimized the take of rice rat habitat by minimizing the ditch backslopes and adjusting the ditch grades. Restoring wetland habitat in an on-site wetland compensation site will for the most part, mitigate the take of rice rats and their habitat. A total of 7.6 acres of wetlands will be restored at an on-site parcel adjacent to the project to compensate the loss of 2.3 acres.

Lastly, IDOT will ensure that the wetland compensation site/rice rat habitat meets performance goals approved by the IDNR and the US Army Corps of Engineers and IDOT will remedy any failure(s) so that all performance goals are met.

5. Any measures required under Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5 - 17 IL. Adm. Code Part 1080.40(b)], will be performed:

Additional measures are listed below under "Authorization." This authorization is, by definition, subject to those terms and conditions and official IDOT signature(s) on this authorization indicates their commitment to performing those measures.

6. The public has received notice of the application and has had the opportunity to comment before the Department made any decision regarding the application:

IDOT [District 9 - Carbondale, IL. Office] prepared a conservation plan as described by the Illinois Endangered Species Protection Act (520 ILCS 10/5.5). That plan and IDOT's request for authorization for incidental take of the marsh rice rat were received by the Illinois Department of Natural Resources (Department) on January 28, 2009. Public notice of IDOT's request for authorization of incidental take of the marsh rice rat was published in the Northwest Daily Herald (Official State newspaper) and the Gazette Democrat (Alexander County) on March 5, 2009, as well as on March 12, 2009 and March 19, 2009. Public comments on IDOT's conservation plan were accepted by the Department until April 20, 2009. No comments were received by the public during the period of March 5, 2009 through April 20, 2009.

Authorization

It is the determination of the Department that the measures to be implemented by IDOT and the INHS will adequately minimize and mitigate for the anticipated taking of a small number of marsh rice rats due to the construction/expansion of the IL 146 roadway (FAP 312), in Alexander County, Illinois. Further, it is our opinion that the take authorized herein would not diminish the likelihood of the survival of the marsh rice rat in the wild within the State of Illinois, the biotic community of which the species is a part or the habitat essential to the species' existence in Illinois.

Pursuant to Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5 - 17 IL. Adm. Code Part 1080.40(b)], this authorization is issued subject to the following additional terms and conditions:

1. This authorization is effective upon signature of the Department and shall remain in effect for a period of five (5) years after IDOT approval of the project punch list (otherwise referred to as the “project completion date”) for the proposed IL 146 road expansion (Alexander County, IL.), unless terminated pursuant to Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5 - 17 IL. Adm. Code Part 1080.80].

2. District 9 of the IDOT shall be responsible for the funding, construction, and maintenance of the compensatory wetland/rice rat habitat site. The INHS shall provide technical information and will perform follow-up surveys for the rice rat and determine the quality of the compensation site (See Authorization Number 3 below). The Illinois State Geological Survey (ISGS) shall perform hydrologic studies of the wetland compensation site and send these annual reports to IDOT. The monitoring reports will be coordinated with the IDNR and US Army Corps of Engineers. The activities in the approved conservation plan shall be implemented concurrently with the contract for the highway work. IDOT shall ensure that the wetland compensation site/rice rat habitat meets performance goals approved by the IDNR and the US Army Corps of Engineers and IDOT shall remedy any failure(s) so that all performance goals are met.

3. IDOT/INHS shall conduct, or cause to be conducted, a thorough survey of both the construction area (within existing right-of-way) and all (wetland) mitigation sites for five (5) consecutive years following completion of the IL 146 (FAP 312) expansion. “Completion” shall be defined as the date the full extension is officially open for public use. A report on the number, age, and sex of marsh rice rats found (or not found) during each survey shall be provided to the Department within 90 days of the completion of each survey. Each report shall also include a qualitative evaluation of the habitat for marsh rice rats being provided by the construction/impacted area and all (wetland) mitigation site(s) and the manner in which that habitat has changed since the previous survey. IDOT shall ensure that the wetland compensation site/rice rat habitat meets performance goals approved by the IDNR and the US Army Corps of Engineers and IDOT shall remedy any failure(s) within 120 days of discovery (or alternate period developed in concert with the IDNR) so that all performance goals are met.

4. A minimum of 7.6 acres of wetlands shall be restored at an on-site parcel adjacent to the project to compensate the loss of 2.3 acres. Per IDOT signature of this Authorization document, this 7.6 acre parcel shall be placed under permanent protection (formal enrollment in a recognized IDNR land protection program is not necessary though) and once restoration/mitigation is complete on this parcel, this parcel may not be altered, developed, and/or impacted by any future IDOT, Alexander County, or State of Illinois approved and/or funded project (except activities to enhance wildlife habitat as approved by the IDNR). IDOT shall ensure that the wetland compensation site /rice rat habitat meets performance goals approved by the IDNR and the US Army Corps of Engineers and IDOT shall remedy any failure(s) within 120 days of discovery (or alternate period developed in concert with the IDNR) so that all performance goals are met.

5. The effective period of this authorization may be altered by mutual agreement between IDOT and the Department.

6. This authorization may be revoked pursuant to Section 5.5 of the Act if the Department finds that IDOT has failed to comply with any of these terms and conditions or has been responsible for the take of any marsh rice rats beyond that which is incidental to the construction/expansion of the FAP 312 (IL 146) roadway in Alexander County, Illinois.

7. The IDOT official identified below is authorized to execute this agreement. Execution by IDOT indicates acceptance of all terms and conditions described in this document.

For the IL Department of Natural Resources

Mike Conlin

Mike Conlin, Acting Director
Office of Resource Conservation

6/18/09

Date Signed

For the IL Department of Transportation

Mary C. Lamie

Signature

Mary C. Lamie Region 5 Engineer

Please print name and official title

6-16-09

Date Signed