



Illinois Department of Natural Resources

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Rod R. Blagojevich, Governor

Joel Brunsvold, Director

Authorization for Incidental Take and Implementing Agreement

Pursuant to the Illinois Endangered Species Protection Act (Act) (520 ILCS 10/5.5) and the regulations adopted to implement the Act (17 Ill. Adm. Code, Part 1080), authorization is hereby granted to the Vermilion County Highway Department (hereinafter referred to as Vermilion County) for the incidental take of the threatened purple wartyback (*Cyclonaias tuberculata*). The Illinois Department of Natural Resources (hereinafter referred to as the Department) has determined that this taking is incidental to activities associated with the replacement of the Township Road 38 bridge over the Salt Fork of the Vermilion River in Vermilion County, Illinois¹.

Procedural History

A conservation plan, draft public notice, and Vermilion County’s request for incidental take of the purple wartyback were received by the Department on December 17, 2004. Initial review of the conservation plan resulted in a Department request for additional information. A revised conservation plan was received by the Department on January 20, 2005. Public notice of Vermilion County’s request for authorization of incidental take was published in the Edwardsville Intelligencer on January 28, February 4 and February 11, 2005 and in the Danville Commercial News on January 28, February 4 and February 11, 2005. Public comments on Vermilion County’s conservation plan were accepted by the Department until March 13, 2005. No comments were received from the public.

Compliance with the Illinois Endangered Species Protection Act

The Act includes six criteria which must be satisfied for the authorization of incidental take of an endangered or threatened species. These criteria and the Department’s determination for each 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:

¹ The project location is more specifically described as: 2nd Principal Meridian, Township 19 North, Range 13 West, SW 1/4 of the NW 1/4 of Section 31 in Vermilion County, Illinois.

The stated and apparent purpose of this proposed action is to replace the Township Road 38 bridge over the Salt Fork of the Vermilion River in order to provide a safe passage for the traveling public. The take that could result from this project is not the purpose of Vermilion County's activities, but is incidental to the carrying out of an otherwise 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 Vermilion County describes measures that will be taken to minimize the potential adverse effects of their project on the purple wartyback. Vermilion County plans to relocate any purple wartybacks found within the existing and proposed right-of-way to suitable habitat outside of the right-of-way and to limit construction activities to the existing right-of-way.

Post-project surveys will be conducted to determine if freshwater mussels are able to repopulate the project area.

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

Vermilion County estimates that the cost for this bridge replacement will be \$1,100,000. Funds for carrying out the terms of this authorization are included in the overall project budget.

4. Based on the best available scientific data, the Department has determined that the taking will not reduce the likelihood of 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:

The Township Road 38 construction project consists of the replacement of the bridge over the Salt Fork of the Vermilion River. Movement of equipment and personnel within the Salt Fork and the temporary deposition of debris during construction could result in the take of any purple wartybacks that occupy the Salt Fork within the highway right-of-way. Pre-construction relocation of mussels will minimize the number of individual animals within the right-of-way, but it is likely that a small number of mussels will be overlooked during the relocation effort and be at risk of incidental take during construction.

The purple wartyback is on the Illinois list of endangered and threatened species because of their limited distribution in the state and the reduction in their range and abundance relative to the species' historic status. The species has been recorded from the Salt Fork of the Vermilion River in the vicinity of the Township Road 38 bridge.

The relocation of purple wartybacks as proposed by Vermilion County in their conservation plan will reduce the number of mussels in the project area to the lowest practicable level. Despite the relocation effort, it is possible that a few individuals will remain in the project area and be at risk of harm during bridge replacement.

After the relocation effort, the small number of mussels remaining in the project area will not comprise a significant portion of the purple wartyback population in the Salt Fork of the Vermilion River or in Illinois. The potential loss of a very small number of mussels will not reduce the likelihood of 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.

5. Any measures required under Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5 - Section 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 Vermilion County's signature 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:

Public notice of Vermilion County's request for authorization of incidental take was published in the Edwardsville Intelligencer on January 28, February 4 and February 11, 2005 and in the Danville Commercial News on January 28, February 4 and February 11, 2005. Public comments on Vermilion County's conservation plan were accepted by the Department until March 13, 2005. No comments were received from the public.

Authorization

It is the determination of the Department that the measures that will be implemented by Vermilion County will adequately minimize and mitigate the anticipated taking of purple wartybacks. Further, it is our opinion that the take authorized herein will not diminish the likelihood of the survival of the purple wartyback 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 and Ill. 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 eight (8) years from the date of the Department signature, unless terminated pursuant to Section 5.5 of the Illinois Endangered Species Protection Act (520 ILCS 10/5.5 and Ill. Adm. Code Part 1080.80).

2. Prior to replacement of the Township Road 38 bridge, Vermilion County shall conduct, or cause to be conducted, a thorough survey of the area to be directly affected by the bridge replacement and shall relocate or cause to be relocated any freshwater mussels found within that area to the nearest suitable habitat within the Salt Fork of the Vermilion River that will not be affected by this project. Handling of mussels shall be in compliance with any and all conditions and/or protocols included in the federal and state authorizations for the work. Relocated mussels shall be identified to species and enumerated and the length of each mussel shall be measured to the nearest millimeter. A report on the species, numbers and sizes of mussels relocated, including a length-frequency histogram for each species and location(s) at which they were released shall be provided to the Department within 60 days of the completion of the relocation.

3. Vermilion County shall conduct, or cause to be conducted, a thorough survey of the project area and the area(s) in which mussels are relocated in the second and fifth year following completion of the bridge replacement project. For example, if bridge replacement is completed in 2005, these surveys shall be conducted in 2007 and 2010. These surveys shall be of an intensity adequate to determine: 1) if mussels have recolonized the project area, 2) the estimated density of mussels in the release area(s), and 3) changes in the estimated density of mussels in the project area and the release area(s) since the previous survey. A report on the results of each survey including the species and numbers of mussels found in both the project area and the release area shall be provided to the Department within 60 days of completion of the survey.

4. The effective period of this authorization may be altered by mutual agreement between Vermilion County and the Department.

5. This authorization may be revoked pursuant to Section 5.5 of the Illinois Endangered Species Protection Act (520 ILCS 10/5.5 and Ill. Adm. Code Part 1080.80) if the Department finds that Vermilion County has failed to comply with any of these terms and conditions or has been responsible for the taking of purple wartybacks beyond that which is incidental to the replacement of the Illinois Route 49 bridge over the Salt Fork of the Vermilion River in Champaign County.

6. The Vermilion County official identified below is authorized to execute this agreement. Execution by Vermilion County indicates acceptance of all terms and conditions as described in this document.

For the Illinois Department
of Natural Resources

Mike Conlin

Mike Conlin, Director (Acting)
Office of Resource Conservation

4.28.05

Date Signed

For the Vermilion County
Highway Department

Robert B. Andrews

Signature

Robert B. Andrews
County Engineer

Printed Name and Title

April 20, 2005

Date Signed

