

*Resolution*  
*Interstate Mining Compact Commission*

**Re: Development of Protection and Enhancement Plan Guidelines for Proposed and Listed Threatened and Endangered Species Under the Endangered Species Act**

***BE IT KNOWN THAT:***

***WHEREAS***, the Interstate Mining Compact Commission (IMCC) is a multi-state governmental organization representing the natural resource and related environmental protection interests of its 25 member states; and

***WHEREAS***, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), states serve as primary regulators and permitting authorities of mining operations within their borders; and

***WHEREAS***, the state regulatory authorities (RAs) are responsible for assuring that permits are issued in accordance with the environmental and species protection requirements contained in SMCRA, the Endangered Species Act (ESA), and the 1996 Biological Opinion, including ensuring that any required species protection measures are included in permits issued within their state for mining operations whenever a species that has been proposed for listing or listed as threatened or endangered under the ESA is present on the permit; and

***WHEREAS***, the federal Office of Surface Mining and Reclamation Enforcement (OSMRE) in the Department of the Interior (DOI) has oversight authority over the state regulatory programs under SMCRA, and the U.S. Fish and Wildlife Service (USFWS) in DOI has regulatory authority related to implementation of the Endangered Species Act (ESA); and

***WHEREAS***, the 1996 Biological Opinion requires USFWS approval of any species specific protection and enhancement plans (PEPs) to be included in a mining permit prior to the permit being issued by the state RA; and

***WHEREAS***, given the states' many years of experience and expertise with mining policies, processes, and practices, it is essential for the state RAs, OSMRE, and USFWS to coordinate and work cooperatively in the development and implementation of PEP guidelines for species that are proposed for listing or listed as threatened or endangered under the ESA; and

***WHEREAS***, in the past, when the Indiana Bat (IBAT) was listed by the USFWS as an "endangered" species under the ESA, a joint work group effort between OSMRE, USFWS and the state RAs was successfully developed a species specific PEP for the IBAT; and

***WHEREAS***, OSMRE and the states attempted to initiate a similar joint work group effort with USFWS to develop species specific PEP guidelines for the Northern Long-Eared Bat (NLEB) soon

after the species was proposed for listing as threatened or endangered under the ESA on October 2, 2013, and prior to it finally being listed as “Threatened with a 4(d) Rule” on April 2, 2015; and

**WHEREAS**, the states were informed that the PEP measures would be developed once the Final 4(d) Rule for the NLEB was released, which occurred on January 14, 2016, and PEP guidelines for the NLEB have still not been developed as of the date of this resolution; and

**WHEREAS**, not having final species specific measures and guidelines available early in the process creates uncertainty and leaves the agencies, state RAs, and the mine operators vulnerable to future permitting challenges

**NOW THEREFORE BE IT RESOLVED:**

That the Interstate Mining Compact Commission urges OSMRE and the USFWS to engage in a joint work group effort with the states without delay for the purpose of developing Species Specific Protection and Enhancement (PEP) guidelines in a timely and expedient manner once an affected species is proposed for listing under the ESA.



Issued this 19<sup>th</sup> day of October, 2016

ATTEST:

  
Executive Director