**Section 1816.97 Protection of Fish, Wildlife, and Related Environmental Values**

a) The operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and related environmental values, and shall achieve enhancement of such resources where practicable.

b) No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary of the United States Department of the Interior (Secretary) or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The operator shall immediately report to the Department any State- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the Department shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

c) No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the Department any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the Department shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and after consultation, shall identify whether, and under what conditions, the operator may proceed in order to ensure that the operation is not in violation of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 et seq.).

d) Nothing in these regulations shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 et seq.), or the Bald Eagle Protection Act, as amended, (16 U.S.C. 668 et seq.).

e) Each operator shall, to the extent possible using the best technology currently available:

1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the Department determines that such requirements are unnecessary, due to factors such as the absence of raptors;

2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law specified in 62 Ill. Adm. Code 1773.12;

3) Design fences, overland conveyers, and other potential barriers to permit passage for large mammals, except where the Department determines that such requirements are unnecessary, due to factors such as the absence of large mammals; and

4) Fence, cover, or use of other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

f) The operator conducting surface mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Surface mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife such as wetlands and riparian vegetation.

g) Where fish and wildlife habitat is to be a post-mining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

1) Their proven nutritional value for fish or wildlife.

2) Their use as cover for fish or wildlife.

3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

h) Where cropland is to be the post-mining land use, where appropriate for wildlife and crop management practices, the operator shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

i) Where residential, public service, or industrial uses are to be the post-mining land use, and where consistent with the approved post-mining land use, the operator shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

(Source: Amended at 20 Ill. Reg. 2027, effective January 19, 1996)