

National Monarch Butterfly Candidate Conservation Agreement with Assurances (CCAA) for Energy and Transportation Lands

Frequently Asked Questions

September 12, 2018

Q: Why is a CCAA Needed?

A: The monarch butterfly has experienced drastic population losses over the past 20 years. Preventing the endangered status, or ultimate loss of the species, requires an “all-hands-on-deck” approach to ensure long-term conservation and enhancement of its habitat.

A CCAA provides certainty and reliability. If a CCAA was *not* pursued, *and* the monarch became a Federal-listed species in July 2020, energy and transportation organizations might expect regulatory uncertainty and project delays. As with any new listing, rights-of-way (ROW) managers will need to adjust to a “new norm” of managing lands to avoid and minimize incidental take. This adjustment process can take weeks or months of staff time to learn, adapt, and communicate with their teams.

A CCAA provides multiple benefits to its participants:

- **Regulatory certainty** – assurances provided by the agreement define commitments and expectations
- **Avoid delays** – addressing the species proactively avoids the possibility of project delays resulting from a listing
- **Incidental take coverage** – coverage for take issued with the plan allows for operations, maintenance, and projects to continue as they currently do, without the added need of more minimization or permitting requirements.
- **Establish conservation measure BMPs** – the CCAA establishes consistent recommendations for industry-wide conservation measures. This builds consistency amongst partners.

Q: What is a CCAA?

A: A Candidate Conservation Agreement with Assurances (CCAA) is a voluntary conservation agreement intended to benefit the candidate species, the U.S. Fish & Wildlife Service (USFWS), and the participating land managers. It is a formal agreement to address the conservation needs of at-risk species before they become listed as endangered or threatened. Landowners (including property owners, easement holders, and lease holders) voluntarily commit to conservation actions that will help stabilize or restore the species with the goal that listing will become unnecessary. More specifically, a CCAA provides participating property owners with a permit containing assurances that if they engage in certain conservation actions for species included in the agreement, they will not be required to implement additional conservation measures beyond those in the CCAA even if the species is listed. (Source: USFWS Candidate Conservation Agreements, available here: <https://www.fws.gov/endangered/esa-library/pdf/CCAs.pdf>)

Q: What would happen if the CCAA is in place and the monarch doesn't get listed? Are we still obligated to keep the commitments?

A: The CCAA is a voluntary pre-listing agreement and organizations can only join before listing. Being voluntary, participants can terminate their involvement in the agreement at any time.. If the CCAA is identified as key consideration in the decision listing, termination of multiple partner agreements could result in a “changed circumstance”, which may warrant

reconsideration of listing. If this were to occur, re-enrollment may be difficult to achieve prior to the effective listing date.

Current public interest in endangered species and environmental protection creates added regulatory uncertainty. Even if USFWS does not list the monarch, the decision is likely to be challenged in the courts. For example, gray wolves have been listed, de-listed, and then relisted again over the past decades. This causes confusion and ongoing adaptation needs for entities conducting activities potentially affecting wolves. In the event of a similar situation occurring for the monarch butterfly, enrollment in the CCAA would help provide regulatory certainty for its participants regardless of any ongoing legal challenges. Having the CCAA in place can help reduce regulatory uncertainty in the event a court rules in favor of listing the monarch despite the USFWS determination, or if the species becomes subject to ongoing legal challenges. For example, gray wolves have been listed, de-listed, and then relisted again on over the past decades. In the event of a similar situation occurring for the monarch butterfly, enrollment in the CCAA would help provide regulatory certainty for its participants regardless of any ongoing legal challenges.

Q: What conservation measures are required of us?

A: Conservation measures that benefit monarchs include many practices that are already undertaken by many land managers. Management actions such as brush removal, conservation-timed mowing, seeding or planting of native wildflowers, and pollinator-focused integrated vegetation management (IVM) are some of the conservation measures included in the Draft CCAA.

Applicants are only required to conduct conservation measures that address the key threats to the species that are within their control. As a result, some conservation measures may apply differently to land managers depending on your management ability, land ownership, easement requirements, or other constraints on management abilities. In addition, participants will be required by the USFWS to conduct some tracking of where conservation measures occur, and undertake some simple monitoring protocols to verify their on-the-ground results.

Q: How much will these conservation measures cost to implement?

A: In many cases, we expect the conservation measures involved under a CCAA to present a minimal cost to land managers. At this time, we anticipate simple actions such as changing the timing of vegetation management practices, avoiding habitat areas, or other similar actions can have large contributions to monarch conservation. It will ultimately be the responsibility of each partner to determine which key threats they have control over and which strategies they can implement.

Q: Who is developing the monarch CCAA for energy and transportation lands?

A: The Rights-of-Way as Habitat Working Group facilitated by the University of Illinois at Chicago (UIC) is leading the development of the collaborative CCAA. UIC established a joint fund in January 2018 to pool resources from partners across the energy and transportation sectors. In addition, partners are providing in-kind time and technical expertise to support the CCAA development. These partners, along with the U.S. Fish & Wildlife Service USFWS, industry experts, and other collaborators make up the CCAA Task Force. The task force is guided by formal bylaws. The task force is supported by Cardno, the University of Georgia Business Law Clinic, and the Environmental Policy Innovation Center.

Q: What is the timeframe for the development of the monarch CCAA?

A: The collaborative CCAA development is occurring in three phases.

- Phase 1: Draft CCAA Preparation (February 2018 – November 2018): Beginning in February 2018, the CCAA Task Force began identifying the conservation measures and covered activities, developing a quantification framework to demonstrate net conservation benefits, and other work to establish the relevant requirements and the

CCAA approach. This work will continue throughout the year. The draft CCAA is expected to be completed by November 2018.

- **Phase 2: CCAA Finalization** (December 2018 – June 2019): The USFWS will perform its final review of the CCAA documentation, including both intra-Service and external public comment reviews, and publish its final agreement decision in the Federal Register. Based on discussions with the USFWS, it is estimated that 30 days will be required for review by the Midwest Regional Office and an additional three months will be required for the USFWS headquarters and Department of Interior to perform their reviews and approvals. An external 30-day public comment period will follow the intra-Service reviews and updates. The final review and approval are expected to be completed by June 2019.
- **Phase 3: Application Period** (July 2019 – July 2020): Once the CCAA is finalized, landowners and managers can apply for coverage up until the effective listing date for the monarch butterfly, regardless of their prior involvement in the project or on the CCAA Task Force. If the USFWS determines that the monarch butterfly is warranted for listing in June 2019, the effective listing date is anticipated by July 2020. If the determination is made not to list the monarch butterfly in June 2019, the CCAA application period will remain open as long as the species is not listed.

Q: How can we become involved?

A: There are a number of opportunities for your organization to support the collaborative monarch CCAA, such as:

- Making a financial contribution to the joint fund,
- Serving on the Advisory Team and providing high-level review and input on the CCAA development process, and/or
- Serving on a sector team and/or technical team to shape the development of key elements of the CCAA.

To join the CCAA Task Force, we request a letter of commitment describing your organization's intended participation and preferably committing to provide some form of either financial and/or in-kind contribution. We also welcome participation from organizations that do not directly own or manage energy or transportation lands (e.g., ROW, power generation sites, etc.) as valued supporters and technical experts.

Please contact Iris Caldwell with the UIC Energy Resources Center at iriscald@uic.edu or 312-355-1483 to request a template letter of commitment or to discuss your organization's participation in more detail.

Q: Is there a minimum financial contribution?

A: No. The recommended funding level is \$10,000 to \$25,000 per year. However, we recognize that available funding varies significantly by organization. Partners are encouraged to contribute at a level representative of the size of their organization and the potential benefit or value that the monarch CCAA will provide to their organization. Commitments of in-kind time and resources are also accepted.

Q: Can we join at any time? Do we need to contribute to all three phases of the CCAA development?

A: Contributions to the joint fund and participation on the CCAA Task Force are completely voluntary. Partners are encouraged to contribute throughout all three phases; however, commitments can be made during any phase and for whatever timeframe your organization is able and willing to contribute.

Q: Why should I contribute to the collaborative CCAA development process?

A: Contributing to development of the collaborative monarch CCAA has multiple benefits including:

- **Regulatory certainty** – A CCAA provides regulatory assurances that cannot be changed after the listing of a species. This helps projects and maintenance operations to continue with minimal disruption. By engaging in the

CCAA development process, you can shape the conservation measures that will be considered by the USFWS and will be most suitable to your organization's operations.

- Public outreach opportunities – A CCAA documents your organization's voluntary and proactive contributions towards conservation of a declining species. Telling this story can generate good publicity and recognition amongst regulating agencies and the general public.
- Influencing listing decision – Adoption of a CCAA and the other conservation measures associated with it could provide long-term benefits to the monarch precluding the need to list the species.
- Risk management – There is a low overall risk to participation, but a high potential reward if the monarch becomes listed.
- Lower cost – Dollar for dollar, contributing to the development of a collaborative CCAA (either Umbrella or Programmatic) can provide a cost savings, produce a high quality agreement, and help streamline USFWS authorization compared to pursuing an Individual CCAA.
- Help shape development of the agreement – As a committed partner, you have the opportunity to sit at the table and join conversations that help define aspects of the CCAA. Your involvement helps contribute to, and shape, what the final agreement may look like.

Q: What are the administrative obligations of CCAA applicants?

A: Applicants are required to provide some baseline information as part of their initial application. This generally includes a map of their system of lands being enrolled, a description of activities conducted on these lands, and a selection of conservation measures which will be implemented through the agreement.

Participants in the CCAA will then be required to:

1. Track when and where conservation measures are implemented,
2. Conduct effectiveness monitoring for conditions on the ground where conservation measures have been conducted, and
3. Report on activities annually.

If a Programmatic CCAA is issued, participants will coordinate with the programmatic agreement administrator, and be required to provide an annual enrollment fee that supports the reporting and monitoring requirements of the agreement.

Q: How much will this CCAA add to my organization's workload?

The CCAA is intended to minimize the additional workload placed on participants. As a voluntary conservation agreement, the CCAA is intended to encourage early adoption of conservation measures that will ultimately benefit the species. Working together, USFWS, UIC, and its partners have developed a CCAA implementation approach that reduces tracking, monitoring, and reporting requirements to the minimum necessary for the agreement. In a recent survey of CCAA development partners, 13 of 14 partners believed the expectations outlined are achievable and appropriate.

Participants select the conservation measures that best address the key threats within their control. Many of these are activities that can be easily incorporated into current operations. Monitoring requirements are intended to be conducted quickly and easily. Our intent is that monitoring would be conducted in areas already being visited for other operational and maintenance purposes. As a result, this would be a minimal addition to workload for individuals in the field at these locations.

Annual compliance reporting is also intended to be concise, consisting of short narrative summaries and simple form completion. Assuming annual tracking of activities is up to date, this should require very little time to complete on a yearly

basis.

Q: What is the difference between a Programmatic versus Umbrella CCAA?

A: CCAAs can either be individual agreements with a single property owner, or they can be "programmatic" or "umbrella" agreements involving multiple property owners. The Service has generally used the term "programmatic" to describe any single CCAA that involves the Service and multiple property owners (Source: USFWS CCAA Handbook).

Under an Umbrella CCAA, the Service administers permits based on individual applications from land owners. All applicants are required to use the Umbrella CCAA as a framework and process for their application. Ultimately, each individual applicant is responsible for their own administration and reporting of their obligations under the CCAA permit.

Under a Programmatic CCAA, Certificates of Inclusion or other similar written instruments are sub-agreements to the CCAA under which the property owner obligates themselves to implement the conservation measures specified in the CCAA. The Certificates of Inclusion are administered by a Programmatic CCAA Administrator. The Programmatic CCAA Administrator is an organization that acts as the CCAA permit holder, and is therefore ultimately responsible for management and compliance of the CCAA agreement.

The advantages of a Programmatic CCAA versus Umbrella CCAA are:

- A single Federal Register notice is issued. This reduces time for application processing to individual organizations, and prevents individual organizations from needing to wait for publication and public comment periods.
- Administrative support for the CCAA. Under a Programmatic CCAA, the CCAA Administrator oversees the implementation of the overall agreement and can provide logistical and technical support to participants as time and funding allows.
- Ongoing Information Sharing and Collaboration. Under a Programmatic CCAA, participants are united under the CCAA Administrator organization. As part of this, collaboration and information sharing are encouraged as a means to foster ongoing improvements in implementation, monitoring, and reporting related to the CCAA.
- Adaptability. Operating under a Programmatic CCAA allows greater flexibility on part of the CCAA Administrator to be able to adapt and respond to needs and concerns. Under an Umbrella CCAA, participants would report directly to USFWS, which may allow for less ability to support or adapt to concerns.

At this time, UIC is pursuing a Programmatic CCAA, to help partners obtain the benefits noted here. Initial discussions have begun between UIC, USFWS, and the CCAA Advisory Team regarding this approach. The university and the CCAA Advisory Team will continue to evaluate its applicability and benefits. Details on the requirements of the programmatic agreement are forthcoming.

Q: What is the cost of doing a CCAA individually versus under an Umbrella or Programmatic agreement?

A: The collaborative development of a CCAA is expected to be less costly and more productive than pursuing an Individual CCAA. Partner contributions to a CCAA effort go towards not only technical development of the CCAA and accompanying Environmental Assessment (EA), but also having dedicated staff to help facilitate its approval within the USFWS.

As an example, if a ROW organization was to fund development of their own CCAA and EA, costs could equate to \$100,000 or more. However, a contribution of \$10,000 to \$25,000 per year to the monarch CCAA (for up to 3 years) yields a lower cost, and leverages a greater investment in the CCAA process.

Q: How can I apply for coverage under this CCAA?

A: Once the Final CCAA is published in the Federal Register, the USFWS will begin accepting applications for regulatory permits with assurances under the CCAA. Prior participation in the CCAA Task Force is not required in order to apply for coverage.

If approved as an Umbrella CCAA, individual partners will complete their own applications.

If approved as a Programmatic CCAA, the Programmatic CCAA Administrator will be the sole permit applicant. Any organization interested in applying for coverage would do so under an application for a “certificate of inclusion” under the authorization by the Programmatic CCAA Administrator.

Q: Could the CCAA process help contribute to either consideration of a 4(d) Rule or prevent listing of the monarch?

A: If a CCAA is in place before a final (or even proposed) listing decision, its role in addressing threats to monarchs would be considered in the decision. The CCAA is noted as an official “plan” within the USFWS’ Monarch Conservation Database. At this time, it is unclear whether the CCAA can contribute to the point where a Federal Threatened listing, or avoidance of listing altogether, is a possible result. However, the quantification and strategies developed during the Draft CCAA can help inform these types of decisions.

Q. Does the CCAA provide incidental take coverage for non-federal actions on federal lands? For example, many maintenance and modernization activities require work located on easements across federal lands that may, or may not, require permit authorization by federal agencies.

A. The CCAA is intended to cover incidental take for non-federal partners including state agencies, companies, utilities, and other organizations involved in energy or transportation land management. Under Section 7(a)(2) of the ESA, federal agencies are required to consult with the Service to ensure that actions they fund, authorize, or otherwise permit, do not jeopardize a listed species. Should the monarch be listed, any non-federal entity conducting activities on easements across federal lands, or requiring a federal permit (e.g. 401/404 permits), would require the federal agencies involved to complete consultation with the USFWS.

As a CCAA Partner, organizations can point to the conference opinion completed by USFWS for the conservation measures and covered activities included in the agreement. Assuming the proposed activities are aligned with those included in the CCAA, it should allow for a more efficient and streamlined Section 7 consultation response by the federal agencies. To aid in facilitating this process, we intend to include an accompanying CCA (a Candidate Conservation Agreement without Assurances) that aligns in scope and intent with the CCAA. CCAs are voluntary conservation agreements between the Service and one or more private or public property owners (including federal agencies) that provide conservation benefits to unlisted species. However, while a CCA does not provide the property owners or any cooperators with regulatory assurances or take authorization should the species become listed, it does acknowledge the conservation contribution of the partner and recognizes that analysis of potential impacts has been considered. The combination of a CCAA/CCA authorization is intended to minimize the consultation burden and timeline for CCAA Partners in the event that the monarch is listed.

Q. Does federal funding pose a different approach to how we consider incidental take within the context of the CCAA?

A. No, the Service is preparing a conference opinion report that will address impacts to monarch butterflies due to covered

activities of the CCAA. This does not distinguish between projects/impacts that are federally funded.

Q. Does federal funding present a different process by which CCAA Partners will need to conduct Section 7 consultation for activities within the CCAA?

A. For projects with a federal nexus, there is no change for how partners will consult. The federal agency involved will still be obligated to consult; however, the CCAA and conference report will streamline review for monarch-related consultation. If/when a biological opinion (BO) is necessary in these scenarios, there will be fewer opportunities for surprises because monarch BMPs will have been established through the implementation of the CCAA.

Q. Can leased lands or other easements be included within the CCAA? What considerations need to be made by applicants managing lease or easement lands?

A. Yes, leased lands and management easements may be included in the CCAA. The Draft CCAA defines a “property owner” as “Any person or entity with a fee simple, easement, leasehold, or other property interest (including owners of water or other natural resources) sufficient to carry out the Conservation Measures described in this CCAA and the attached Certificate of Inclusion, subject to applicable State law, on non-Federal land.”

CCAA Partners are required to implement conservation measures on their enrolled lands that address the key threats to monarchs that are within the management control of your organization. We understand that the degree to which ROW operators can control threats such as habitat loss through mowing, herbicide application, and land conversion can vary depending on ownership, easement, or lease agreement.

The adoption rates and rates of incidental take anticipated for each sector’s participation consider the opportunities and constraints that each sector broadly encounters given typical land ownership, or lease or easement agreements. We understand that there is potential for landowners on leased or easement lands to “undo” some of the conservation benefits that are taken on by the CCAA Partner. However, our intent is that the adoption rate and range of conservation measures allow for adaptation appropriate to the location and network of lands managed by the CCAA partner.

For More Information, Contact:

Iris Caldwell
Energy Resources Center
University of Illinois at Chicago
iriscald@uic.edu
312-355-1483