

Nationwide Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportation Lands

Frequently Asked Questions

March 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.

Data collected this past year indicated that the eastern population of monarchs overwintering in Mexico have increased¹. Although this is great news, these same populations can fluctuate greatly from year-to-year, and have still declined by as much as 80 percent over the last twenty years². By comparison, western populations of monarchs are declining at an even faster rate than that of their eastern counterparts. California, for example, is observing its lowest numbers ever recorded. Population data collected in 2019 indicated that monarch numbers have dropped 99.4 percent since the 1980's².

For infrastructure operations, 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:

- **Demonstrates conservation commitment** – partners enrolled in the CCAA can quantify and demonstrate their conservation commitments, which can be communicated more clearly with the public and incorporated into sustainability initiatives.
- **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.
- **Established 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

¹ NPR. Uptick in Butterfly Census Could Be A Fluke, Researchers Caution. Accessed online at: <https://www.npr.org/2019/01/31/690230691/researchers-caution-uptick-in-butterfly-census-could-be-a-1-year-fluke>

² Xerces Society for Invertebrate Conservation. Monarch Butterflies in Western North America in Jeopardy. Accessed online at: <https://xerces.org/2019/01/17/monarch-butterflies-in-western-north-america-in-jeopardy/>

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.

In considering the potential listing of the monarch, the USFWS is likely to consider three possible general alternatives:

- 1) Listing as Threatened or Endangered under the Endangered Species Act
- 2) Listing is Not Warranted
- 3) Listing is Warranted, But Precluded

Each of these scenarios presents different values of enrollment in the Agreement. If listed, the CCAA provides conservation and receives incidental take coverage for partners. If precluded, or determined to not be warranted, the CCAA provides the same conservation commitment and still provides regulatory certainty amidst potential future changes in the monarchs status.

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. 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 butterfly despite the USFWS determination, or if the species becomes subject to 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.

In February 2019, a cost-benefit evaluation of the Draft CCAA under an “if not listed” scenario was conducted by five potential partners. None of the participants forecasted significantly increased costs, since many are able to incorporate conservation measures into “what they do” already. Their analysis yielded a return on investment by all five organizations. Typical cost-benefit ratios resulting from this exercise range from 1.2-to-1 up to 10-to-1. All participants agreed that a higher yield was expected if monarchs are determined to warrant listing.

Q: Who developed the Nationwide Candidate Conservation Agreement for Monarch Butterfly on 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. Through this working group, UIC has brought together over 40 organizations representing a range of energy and transportation uses from across the nation. These partners have dedicated in-kind time and technical expertise to support the CCAA development. These partners, along with the USFWS, industry experts, and other collaborators make up the CCAA Advisory Team. The Advisory Team is supported by Cardno and the Environmental Policy Innovation Center.

Q: How can we become involved?

A: There are a number of opportunities to support the CCAA, depending on your role:

- Anyone can support the CCAA as it undergoes public review. Send letters or comments supporting this unique conservation opportunity.
- As a representative of an energy or transportation organization, support the CCAA as it undergoes public review and consider enrolling in the CCAA, once finalized.

Please contact Iris Caldwell with the UIC Energy Resources Center at iriscald@uic.edu or 312-355-1483 to discuss your organization’s participation in more detail.

Q: As a business, what is the value of the Agreement if the monarch is (or isn’t) listed as a threatened or endangered species?

A: Committing to the Agreement provides regulatory assurances to your organization in the event that the monarch is listed as endangered or threatened under the federal Endangered Species Act. For businesses managing field operations, this provides clear and lasting benefits by streamlining regulatory requirements and minimizing disruptions that can occur from a listing under the Endangered Species Act.

If the monarch is determined to not warrant listing by the USFWS, the Agreement may still provide multiple benefits to your organization, including but not limited to:

- Regulatory assurance, in the event that a court decision could result in an immediate or expedited listing of monarch butterfly at a later date.
- Potential to preclude the need for a future listing decision, if conservation efforts are cited as a consideration for not warranting a listing.

- Documenting and demonstrating company conservation efforts.
- Positive public perception created by the public-private partnership involvement.
- Added positive public acknowledgement by UIC and industry groups for commitments made under the Agreement.
- Creating motivation to adopt cost savings and best management practices while receiving regulatory acknowledgement for those commitments.
- Involvement in an Agreement that may be amended later to incorporate future protections for additional species or industry needs.

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.
4. Pay an annual enrollment fee that supports the CCAA Programmatic Administrator.

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. 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 included 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 "Partner" as "Companies, agencies, and other organizations working in the energy or transportation sectors that are landowners or manage vegetation through an easement, permit, or other access and management type agreement..."

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, 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:

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