

Informational Memo

To: Federal Land Managers
From: U.S. Fish and Wildlife Service
Subject: Nationwide CCAA/CCA for Monarch Butterfly on Energy and Transportation Lands – Notice of Enrollment and Section 7 Consultation
Date: November 4, 2020

The informational memo is intended to document (1) the Service's programmatic Conference Opinion and Biological Opinion completed for the *Nationwide Candidate Conservation Agreement with Assurances (CCAA)/Candidate Conservation Agreement (CCA) for Monarch Butterfly on Energy and Transportation Lands* (Agreement) and (2) that Section 7 reviews are completed specific to the proposed activities of each CCAA Partner when they apply to enroll in the Agreement. If the monarch (*Danaus plexippus plexippus*) is listed as endangered or threatened under the Endangered Species Act (ESA) or is proposed for such listing, Federal land management agencies may choose to use these completed section 7 reviews to streamline section 7 conferences or consultations for actions carried out by CCAA Partners that may affect the species on lands under their jurisdiction. Choosing to rely on already-completed Section 7 reviews could save federal agencies time and is also an opportunity to recognize and support the Partners' willingness to engage in voluntary monarch conservation on federal lands, which may also benefit other species.

Summary of Agreement

The Agreement consists of a CCAA for activities conducted on non-Federal lands and an integrated CCA for activities implemented on Federal lands. The Agreement is intended to provide a net conservation benefit to the monarch on lands that Partners maintain for energy and transportation purposes. Partners may enroll lands that they own, lease, or on which they maintain certain entitlements conveyed by easement. On a portion of the enrolled lands referred to as the *adopted acres*, Partners commit to implementing certain monarch conservation measures as specified in their Certificate of Inclusion. We expect the conservation measures will yield a net conservation benefit for the monarch when weighed against the adverse effects likely to be caused by the Partners' implementation of routine property-management actions.

Enhancement of Survival Permit (EOS Permit)

With the Agreement, the Service issued an [EOS Permit¹](#) to UIC pursuant to Section 10(a)(1)(A) of the Endangered Species Act (ESA). If the monarch is listed, the Permit will provide incidental take authority for covered activities of Partners enrolled under the Agreement through a Certificate of Inclusion. The permit would become effective upon the effective date of any final rule listing the monarch as endangered or threatened under the ESA.

Partner Verification

If the monarch is listed as endangered or threatened, incidental take of the species that occurs as a result of the implementation of activities covered by the Agreement by CCAA Partners is authorized by the associated ESA section 10 Permit. Verification of Partner compliance can be obtained by contacting the University of Illinois Chicago (UIC) CCAA Programmatic Administrator. Additional questions or information regarding the CCAA/CCA, the EOS Permit, Opinions, or other aspects of the Agreement can be directed to either Iris Caldwell (iriscald@uic.edu) or Phil Delphey (phil_delphey@fws.gov).

¹ <https://www.fws.gov/savethemonarch/pdfs/TE74464D-0 Monarch CCAA final.Signed by RD.pdf>

Implementation and Administration

UIC is the Programmatic Administrator and Permit Holder, with regulatory oversight provided by the Service. The Programmatic Administrator is responsible for working with Agreement Partners to enroll lands into the Agreement using Certificates of Inclusion after verifying eligibility. These certificates extend regulatory assurances provided by the EOS permit and facilitate cooperation from the Partners to provide conservation benefits to the monarch. Through implementation, the Agreement promotes conservation of the monarch and its habitat by providing a mechanism to reduce and/or potentially remove key threats related to maintenance and modernization of the nation's energy and transportation infrastructure. The Partners will implement conservation measures described in this Agreement on their enrolled lands and as specified within their individual Certificates of Inclusion.

Covered Activities

The Agreement applies to energy and transportation lands associated with maintenance and modernization of associated infrastructure. New construction of energy and transportation infrastructure outside of enrolled lands are outside the scope of the Agreement. New construction activities are often of greater impact, and therefore pose more regulatory complexity than the covered activities associated with maintenance and modernization. In some cases, modernization may require expansion of an existing ROW. The CCAA could apply to activities associated with ROW expansion and to the subsequent maintenance activities in the new ROW. This would first require an amendment to the Partner's Certificate of Inclusion to document the change to the enrolled acres.

Maintenance, modernization, and new construction are defined as:

Maintenance – Work on enrolled lands that is planned and performed on a routine basis to maintain and preserve the condition of the energy or transportation system or to respond to specific conditions and events that restore these systems to an adequate level of service. Examples include but are not limited to vehicle operation and access along enrolled lands, periodic grading and vegetation clearing, routine line inspection (aerial and ground patrols), fence and guardrail repair or replacement, mowing during the growing season to remove woody vegetation or create temporary access routes, and vegetation removal activities such as side trimming, pruning, hand clearing with chainsaws and brush cutters, disposal of cut material through burning, chipping, dragging, and hauling.

Modernization – Construction and other land disturbing activities involving the repair, replacement, and upgrading of existing infrastructure on existing enrolled lands. Examples include, but are not limited to, road surface repair, bridge construction and replacement, lane widening, interchange modification or construction, transmission line rebuilds, right-of-way grant/special use permit renewals, pipeline replacements, renewable energy infrastructure construction and modifications, and similar activities.

New Construction (not covered by Agreement) – Construction and other land disturbing activities that do not a) occur substantially within the footprint of existing infrastructure, or b) occur on lands that are associated with existing infrastructure and are maintained to support its operation. Examples include, but are not limited to, construction projects pending complete project easement or land acquisitions, new pipelines, transmission lines, new rail routes, or similar. New construction is excluded from covered activities. This term does *not* include activities that solely involve the repair, upgrade, or replacement of existing facilities substantially within existing energy and transportation lands.

No Surprises Assurances for Partners on Non-Federal Lands

For their activities on enrolled *non-Federal lands*, signatories to the Agreement receive assurances that managing in accordance with the CCAA will be accepted by the Service as fully ESA compliant with no additional obligations, even if the monarch is listed as threatened or endangered. Partners may enroll and implement covered activities and

conservation measures on Federal lands on which they maintain an interest, but the ‘no surprises’ assurances do not extend to Partners’ activities on Federal lands.

Section 7 Conference and Consultation on the Agreement

In the Conference Opinion and Biological Opinion, the Service assessed the effects that implementation of the Agreement would have on the monarch; on other species listed or proposed for listing as endangered or threatened; and, on proposed and designated critical habitat. The Opinions are available online at: <https://www.fws.gov/savethemonarch/CCAA.html>.

Partner-Specific Reviews for Section 7 Compliance

A key basis for the Service’s findings in the programmatic Conference Opinion and Biological Opinion are the *Partner-specific reviews* that occur during the application review process. When applying for enrollment, potential partners must provide, for Service concurrence:

- A list of any endangered, threatened, and proposed species that may be present on lands proposed for enrollment;
- A list of any proposed or designated critical habitat that overlaps with the lands proposed for enrollment; and,
- Specific measures that the Partner will take to avoid or minimize adverse effects to each listed or proposed plant species that may be present on enrolled lands and to any proposed or designated critical habitats that overlaps with those lands.

If the Service finds that the list of species and critical habitats is complete and accurate for the lands proposed for enrollment and that the avoidance and minimization measures (AMM) are sufficient, it notifies UIC that the section 7 review is complete. The AMMs are sufficient if they will ensure that the Partner’s CCAA activities will not jeopardize the continued existence of any proposed or listed plant species and will not destroy or adversely modify and proposed or designated critical habitat. This review and its accompanying determination may be provided by the Partner, Service, or UIC upon request.

CCAA Covered Activities and Effects to Listed and Proposed Animal Species

Activities carried out by the Partners pursuant to the Agreement may not cause incidental take of listed or proposed animal species other than the monarch unless the activity is carried under a separate incidental take statement or incidental take permit.

CCA Activities on Federal Lands – Potential for Streamlining Consultations

Federal land management agencies may choose to use the section 7 reviews that USFWS has completed to streamline reviews of CCAA-related activities that Partners propose to carry out on lands under their jurisdiction. As summarized above, USFWS section 7 work relevant to the Agreement and the associated ESA permit includes:

- A [programmatic Conference Opinion and Biological Opinion](https://www.fws.gov/savethemonarch/pdfs/Monarch_CCAA_Biological_Opinion_Final_-_4-3-20.pdf)²
- Partner-specific reviews that include FWS-reviewed species lists and avoidance and minimization measures for plants and critical habitat.

² https://www.fws.gov/savethemonarch/pdfs/Monarch_CCAA_Biological_Opinion_Final_-_4-3-20.pdf

New Species Listings and Critical Habitat Designations

USFWS plans to reinitiate intra-Service conference and consultation on the programmatic Conference Opinion and Biological Opinion as new species are listed or proposed for listing and when new critical habitat is designated or proposed for designation. If any Partner's CCAA activities may affect those species or critical habitats, the Service will work with the Partner and the Program Administrator (UIC) to update the Partner-specific section 7 reviews that were completed during the initial application review.

National Historic Preservation Act (NHPA) Compliance

The Agreement includes a protocol in its Appendix C for ensuring compliance with Section 106 of the NHPA, but on federal lands it defers to the federal land management agency's established program and procedures for complying with Section 106.