

## Guidance for Determining Enrolled Lands and Covered Activities

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### Intent

Applicants need to determine the extent of enrolled lands and the type of covered activities to include within their application for a Certificate of Inclusion. Careful consideration by the Applicants is recommended as the selected activities and lands enrolled will establish a Federal nexus and compliance with all other Federal and State laws will be required when covered activities are undertaken on enrolled lands. Therefore, the types of enrolled land and covered activities that will be selected is likely to vary among each Applicant as they weigh the requirements of the Agreement with the benefits of the regulatory certainty that this Agreement provides. This guidance can help Applicants consider which lands to propose for enrollment and the types of covered activities to include within their application for a Certificate of Inclusion.

### Key Takeaways

1. Applicants must define the extent of enrolled lands and covered activities in their Certificate of Inclusion applications.
2. Extent of enrolled lands and activities should be determined by a balance of feasibility, assurances gained, and regulatory compliance required.
3. "Covered activities" are activities that are reasonably certain to cause take monarch butterflies.

### Guidance for Determining Enrolled Lands to Include in Certificate of Inclusion

When determining which lands to enroll, Applicants will want to evaluate how to best capitalize on the regulatory certainty and operational flexibility that this Agreement provides while providing the most benefits to monarchs through conservation. We encourage Applicants to consider the following:

#### Determine the Extent of Regulatory Coverage Desired

- Applicants will first want to consider the extent of lands that they may desire regulatory assurances on, in the event that monarch butterfly is listed under the Endangered Species Act.
- If the full extent of enrolled lands are not known, the Applicant may conduct a review of the lands they manage to better understand where current monarch habitat exists, the potential for habitat to occur, and where monarch take is most likely to occur should the species be listed.
- Many organizations anticipate including all of their lands managed, or specific regions under the same management structure. Some Applicants may limit their enrollment based on mapping, tracking or implementation feasibility. No matter the extent of lands enrolled, Applicants will need to clearly define the boundary of lands chosen in enrollment and also clearly delineate which lands are being excluded.

#### Consider Lands Managed and Potential for Take

- "Covered activities" are activities that are reasonably certain to cause take monarch butterflies by removing or disturbing milkweed or flowering nectar resource (during the time of year when monarchs are present), or by taking monarchs directly.

- Applicants can use this information in conjunction with planned future operations and maintenance to gain an understanding of which projects will result in take of monarch should it be listed. After this review, Applicants will then be able to prioritize which lands to enroll based where coverage of incidental take of monarchs will be most beneficial should the species be listed in the future.
- If applicable, consider enrolling an added amount of land to account for areas of temporary access or easements that may be needed for construction purposes. These short-term temporary easements can also be forecasted and then included as enrolled lands.
- Lands unlikely to contain monarch habitat, such as open water, paved areas, or industrial/developed lands do not need to be enrolled since the probability of future monarch take on these lands is very low (i.e. take is not "reasonably certain"). For example, the paved roadway portion of a transportation right-of-way may be excluded from the portion of the transportation corridor that contains monarch habitat. The boundaries of the enrolled land and excluded lands will need to be clearly defined within the Certificate of Inclusion. Partners unable to delineate or estimate non-habitat areas from potential habitat can simply include all lands regardless of habitat potential for ease and consistency.

### Determine Covered Activities to be Enrolled

- Applicants need to determine which types of covered activities that they wish to include within their Certificate of Inclusion. Unless specified otherwise, the Program Administrator and UIC assume that Applicants are enrolling for all covered activities listed within the Agreement.
- Covered activities include general operations, routine maintenance and modernization of infrastructure on enrolled lands, and occur in areas suitable for monarch butterfly habitat (low-growing, early successional vegetation with milkweed or flowering plants used by monarchs for nectar). These activities may result in take of monarchs by removing or disturbing milkweed and blooming flowering nectar resources, or by killing immature or adult butterflies.
- Enrolling activities covered by the Agreement and included within the Applicant's Certificate of Inclusion creates a Federal nexus in locations *where* and *when* take of monarch's is reasonably expected. This nexus, and participation in the Agreement, requires that all covered activities are conducted in compliance with all other Federal and state laws. In particular, the covered activities (when occurring in locations where take of monarch's is "reasonably certain") must comply with Section 106 of the National Historic Preservation Act (NHPA) and the Service's Section 7 Guidance for the Endangered Species Act. See Appendix C and the guidance document "Guidelines for Section 7 Consultation Application Requirements" for additional information regarding these requirements.