

## Monarch Listing Proposed Rule - A Summary from the Rights-of-Way as Habitat Working Group

The U.S. Fish and Wildlife Service (the Service) is proposing to list the monarch butterfly as threatened with species-specific protections and flexibilities to encourage conservation under section 4(d) of the Endangered Species Act (ESA). We've reviewed the proposed listing and identified the following key takeaways of interest to Monarch CCAA partners.

### Key Takeaways

#### Proposed Rule Overview

- The proposed rule acknowledges the role of transportation and energy infrastructure in monarch conservation, particularly through initiatives like the Monarch CCAA.
- The proposed rule is a proposal and should not be considered final. It is subject to change before becoming a final rule. Public comments received and future overwintering population counts are likely to influence both the final listing status and rule content.
- The Rights-of-Way as Habitat Working Group will continue to review the proposed rule and gather feedback from industry partners and other organizations. The Working Group expects to provide comments on the proposed rule during the public comment period (December 12, 2024 – March 12, 2025).

#### Proposed 4(d) Provisions

- The proposed rule includes 4(d) provisions that allow exemptions for certain activities related to energy or transportation land management, including:
  - Activities covered by implementation of comprehensive conservation plans and programs (such as the Monarch CCAA),
  - Habitat restoration and management activities, such as mowing and haying native rangeland, that sustain monarch butterfly habitat,
  - Vegetation management activities that control invasive plants or noxious weeds as part of site preparations or habitat enhancement activities.
- The proposed 4(d) provisions also allow exemptions for other activities not directly affecting energy or transportation land management, including: vehicle strikes, non-lethal collection, possession, captive-rearing of monarchs, and possession of dead monarchs.
- The proposed 4(d) provisions do not appear to offer exemptions for many routine energy and transportation operations, vegetation management, maintenance, and construction activities that may negatively impact monarch habitat.

#### CCAA Enrollment Considerations

- Enrollment in the Monarch CCAA is only available up until the effective date of a final listing rule. After this proposal, we anticipate there is approximately one year left to enroll<sup>1</sup>.
- [As we noted in September](#), after a final rule is issued, the monarch listing status may still be subject to future changes due to continued population declines or legal challenges. Future changes may include modifications of 4(d) provisions or changes in listing classification. Enrollment in the Monarch CCAA insures against such future changes and provides energy and transportation organizations consistency and certainty in their operations for as long as they are enrolled.

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<sup>1</sup> After a final listing rule is put into effect, the monarch butterfly will no longer be a candidate species. Thus, the CCAA will no longer be available for enrollment.

- Should a Partner terminate their Certificate of Inclusion after the monarch listing, they will no longer be eligible to re-enroll.

### **Benefits of CCAA Enrollment**

- We need big solutions to help solve the biodiversity crisis. The Monarch CCAA is a first-of-its-kind agreement that began 5 years ago and has proven itself as an innovative conservation solution. With more than 1.1 million acres (about twice the area of Yosemite National Park) of habitat conserved, it is bigger than any other voluntary conservation effort in the nation.
- The Monarch CCAA is an important contribution to conservation that tracks, monitors, and reports on conservation measures implemented on energy and transportation lands. It will continue to help conserve habitat for monarchs regardless of their listing status.
- Enrollment in the Monarch CCAA helps streamline Section 7 activities and permit modifications.
- The regulatory assurances provided by the Monarch CCAA are expected to save individual energy companies and highway agencies hundreds or thousands of hours annually for avoiding take of activities under a monarch butterfly listing<sup>2</sup>. Enrollment can save agencies and companies from hundreds of small, informal compliance meetings a year, as well as larger, time-consuming, and costly processes.
- Combined across the industry and the Service, the same regulatory assurances provided by the Monarch CCAA are expected to save tens or hundreds of thousands of hours annually, which can translate into millions of dollars in cost savings.
- The conservation actions provided by the Monarch CCAA can be considered in future species status reviews, which may help support future recovery documentation and delisting.

## **Frequently Asked Questions**

### **Why should an organization enroll (or stay enrolled) in the Monarch CCAA in light of the proposed rule?**

The proposed rule is a proposal and should not be treated as final. Its scope is likely to change before becoming a final rule, meaning there is still uncertainty as to what a final rule may include. Public comments received and future overwintering population counts are likely to influence both the final listing status and content of a final rule.

The proposed rule is clear in its intent to exempt activities that will sustain or increase milkweed and nectar plants. However, it is vague in what actions the provision includes or excludes – especially as it relates to common operations, vegetation management, maintenance, modernization, and construction activities on energy and transportation lands. This kind of uncertainty is exactly what the CCAA helps alleviate. Once enrolled in the Monarch CCAA, an organization has clarity on what is or is not covered by its Certificate of Inclusion and the Enhancement of Survival Permit or if final 4(d) exemptions support conservation agreements.

Even after the final rule is issued, the monarch listing status may be subject to future changes due to continued population declines or legal challenges. Future changes may include modifications of 4(d) provisions or changes in ESA listing classification. Enrollment in the Monarch CCAA insures against such future changes by providing enrolled partners consistency and certainty in their operations.

Typical enrollment costs of the Monarch CCAA are equivalent to costs for species avoidance surveys, agency coordination, and permitting for a single maintenance or construction project. Even if a single project benefits from streamlined compliance based on CCAA enrollment, participation pays for itself.

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<sup>2</sup> See table included in the FAQ for reference.

For enrolled organizations, the Monarch CCAA provides predictability and reduced financial risk regardless of the final monarch listing decision or future changes. Energy and transportation organizations have up until the effective date of a final rule to enroll. Once enrollment is terminated, a partner may not re-enroll in the agreement while monarch is listed.

**How much time can be saved in regulatory compliance by participating in the Monarch CCAA?**

The regulatory assurances provided by the Monarch CCAA are expected to save an individual energy company or highway agency hundreds of hours annually for avoiding take of activities under a monarch butterfly listing. The following table was created using input provided by Monarch CCAA partners. Actual projects and time required may vary by organization. We encourage partners to consider and adjust these estimates when quantifying time and cost savings for their own organizations.

<b>Assumptions</b>	<b>Estimated Number of Projects</b>	<b>Estimated Hours Avoided by CCAA Enrollment</b>
Estimated annual number of projects that require monarch butterfly ESA compliance considerations. Assume 1 to 2 hours of consideration per project.	100-200	200-400
Estimated annual number of projects not exempted under a 4(d) provision. Each project requires avoidance and minimization planning and measures. Assumes 4 to 8 hours per project.	18-36	72 - 288
Estimated annual number of projects that cannot avoid take and require permitting or formal consultation. Assumes 50 to 100 hours (about 8 days) per project.	2-8	100 - 800
<b>Hours Saved to an Individual CCAA Partner (annually)</b>		<b>372 - 1,488</b>
<b>Number of Projects Streamlined (annually)</b>	<b>100 - 200</b>	

Project timelines may be maintained or streamlined by Monarch CCAA coverage and regulatory assurances. By keeping projects on time, the Monarch CCAA’s cost savings are compounded across teams and organizations.

In addition to energy and transportation organizations saving time and costs, similar time savings may be experienced by the Service and other lead federal agencies conducting Section 7 determinations for covered activities.

**What are the regulatory assurances offered by participating in the Monarch CCAA?**

The Monarch CCAA provides regulatory assurances to enrolled partners who implement conservation measures on their enrolled lands. These assurances protect enrolled partners from additional conservation requirements or land use restrictions if the monarch butterfly becomes listed under the ESA in the future.

- **No Additional Land Use Restrictions or Conservation Measures:** Partners are assured that they will not be required to implement any conservation measures beyond those outlined in their Certificate of Inclusion and the CCAA.
- **Incidental Take Coverage:** The CCAA is associated with an Enhancement of Survival Permit issued to the Program Administrator (University of Illinois Chicago). This permit authorizes the incidental take of monarch butterflies that may occur from covered activities conducted on

enrolled lands. Enrolled partners receive a Certificate of Inclusion that documents their commitments and the extension of permit coverage to their covered activities.

- **Predictability on Federal Lands:** While the assurances apply specifically to non-Federal lands, the CCAA also provides regulatory predictability for enrolled partners with enrolled lands under Federal ownership. Streamlining ESA compliance on other Federal lands can be completed for covered activities that align with the CCAA’s Biological Opinion.

The assurances provided by the CCAA are contingent upon the enrolled partner’s compliance with the terms and conditions outlined in their Certificate of Inclusion, the CCAA, and the Enhancement of Survival Permit. Partners must implement the agreed-upon conservation measures, track their progress, and submit annual reports.

**For more information:**

Check out the Monarch CCAA toolkit.	<a href="https://rightofway.erc.uic.edu/working-group-access/monarchccaatoolkit">https://rightofway.erc.uic.edu/working-group-access/monarchccaatoolkit</a>
Subscribe to Rights-of-Way as Habitat Working Group email updates.	<a href="https://rightofway.erc.uic.edu/subscribe/">https://rightofway.erc.uic.edu/subscribe/</a>
Follow the Rights-of-Way as Habitat Working Group on LinkedIn.	<a href="https://www.linkedin.com/company/rights-of-way-as-habitat-working-group-uic-sustainable-landscapes">https://www.linkedin.com/company/rights-of-way-as-habitat-working-group-uic-sustainable-landscapes</a>
For Monarch CCAA enrollment and participation questions.	Megan Petraitis, <a href="mailto:mpetrat@uic.edu">mpetrat@uic.edu</a>
For questions on the listing proposal, regulatory compliance, and conservation questions.	Dan Salas, <a href="mailto:dsalas4@uic.edu">dsalas4@uic.edu</a>
For more information on the Rights-of-Way as Habitat Working Group, and other conservation initiatives for infrastructure.	Caroline Hernandez, <a href="mailto:cah272@uic.edu">cah272@uic.edu</a>