



Automatic Categorical Exclusion (ACE)

Date	6/17/2024	Project No.	N/A
County	STATEWIDE	State Job Piece No.	N/A
NEPA Project Manager	LESLIE NOVOTNY	Phone Number	(405) 439-8979
ODOT Field District	Statewide	Bridge NBI No. <i>(County & State Projects)</i> & Location No. <i>(County Projects Only)</i>	N/A
Project Description from JPINFO	Developing Roadside Pollinator Habitat Through Selective Herbicide Wiping and Native Seeding		
Purpose & Need	To maintain, enhance and increase habitat for the Monarch Butterfly.		
Description of the Proposed Action	<p>The proposed improvement consists of vegetation management within Oklahoma Department of Transportation (ODOT) roadside habitats. The use of weed wiper technology will reduce non-native invasive plant species, such as Johnsongrass (<i>Sorghum halepense</i>), while maintaining and developing suitable monarch and pollinator habitat. The areas where non-native invasive plant species have been controlled or eradicated by the selected herbicide application will then be seeded with native seed mixtures by methods approved by ODOT. No ground disturbance is proposed, and all proposed actions will occur within existing rights-of-way. These proposed maintenance activities are conservation measures and covered activities under the Nationwide Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportation Lands: An Integrated Candidate Conservation Agreement with Assurances and Candidate Conservation Agreement (CCAA).</p>		
This action falls within the following item identified in 23 CFR 771.117(c) as qualifying for ACE (LIST THE 23 CFR 771.117(C) ITEM NUMBER):			22
This project is included in: <i>(Check all applicable ones)</i>	<input type="checkbox"/>	State 8 Year Construction Program	
	<input type="checkbox"/>	County 5 Year Construction Program	
	<input type="checkbox"/>	State Transportation Improvement Program	
This project has federal funds: <i>(Check applicable one.)</i>	<input checked="" type="checkbox"/>	Currently has Federal Funds	
	<input type="checkbox"/>	Potential for Future Federal Funds	
This project is in the Metropolitan Transportation Improvement Program (If applicable) <i>(Check applicable one)</i>	<input type="checkbox"/>	Yes	
	<input checked="" type="checkbox"/>	Not Applicable	

This project involves one or more items in Section IV.A.1.b. of the 2019 ODOT/FHWA Programmatic Agreement for CE Processing that would render this project ineligible for automatic certification apply to this action.		YES. If the answer is YES, an Individual CE will have to be prepared for this project.
	X	NO

This action is among those categorical exclusions listed in 23 CFR 771.117(c) that normally do not require any further NEPA approvals by FHWA. ODOT has determined that this project does not individually or cumulatively have a significant impact on the environment as defined by NEPA (23 CFR 771.117(a)), or involve unusual circumstances as defined in 23 CFR 771.117(b), and is therefore excluded from the requirements to prepare an environmental assessment (EA) or environmental impact statement (EIS).

Pre Construction Commitments: All permits required by the CCAA will be obtained and right-of-way designated as roadside pollinator habitat will be reviewed by the ODOT Cultural Resources Program to comply with Section 106 of the National Historic Preservation Act.
Right-of-Way and Utility Commitments The following Construction Commitments requiring avoidance, restrictions or minimization of natural and human resources during Right-of-Way clearance and Utility relocation activities will be discussed with the Right-of-Way and Utility Owners at the start of Right-of-Way and Utility Process.
Construction Commitments ODOT Commitment: All operators, employees, and contractors will be made aware of all environmental commitments, including the following Plan Notes. The following plan notes requiring avoidance, restrictions or minimization of natural and human resources in the project and off-site project areas will be added to the final project plans under “Environmental Mitigation Notes” per policy Directive C-201-2. None

The mitigation measures should be discussed at all Pre-work conferences per Policy Directive C-201-2. The Environmental Programs Division shall provide **the final plan sheet with the mitigation notes** to the Designer for inclusion in Final Plans and keep a copy for the project records.

All documentation, analyses, and agency coordination regarding this Categorical Exclusion are contained in a Supporting Appendix maintained in the project file at the Oklahoma Department of Transportation, Environmental Programs Division.

Development of the project including coordination and assessment of potential social, economic and environmental impacts has been considered in accordance with DOT ORDER 5610.1C, and CEQ REGULATIONS 40 CFR 1500 -1508 as amended, 23 CFR 771.117 and the 2019 FHWA/ODOT Programmatic Agreement for processing of categorical exclusions. Implementation of this action as a “Categorical Exclusion” will satisfy the requirements of the National Environmental Policy Act.

Preparer/Reviewer Signatures

County Commissioner or City Manager (For Local Government Projects)	Date
ODOT NEPA Project Manager	Date
<i>Leslie Novotny</i>	6/17/2024
ODOT NEPA Program Manager	Date

Attachments:

1. U.S. Fish and Wildlife Service NEPA Environmental Action Statement for Categorical Exclusion.

Distribution List (Check Applicable Ones)

	Project Management Division (All State Projects)
	Roadway Design Division (All State projects with the exception of projects from Traffic Division and Special Projects)
	Bridge Division (All State Bridge Projects)
	Traffic Division (For projects from Traffic Division)
	Local Government Division (County or City Projects)
	Rail Programs Division (Rail Safety Projects Only)
	Special Projects (Special Projects Only)
	Safe Routes to School Coordinator (SRTS Projects Only)
X	District Engineer (All Projects)
X	Right-of-Way Division (All Projects)

**U.S. FISH AND WILDLIFE SERVICE
NEPA ENVIRONMENTAL ACTION STATEMENT
for
CATEGORICAL EXCLUSION**

1. Project Information

- 1.1. *Project Name:*** *Nationwide Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportation Lands: an Integrated Candidate Conservation Agreement with Assurances and Candidate Conservation Agreement*
- 1.2. *Affected Species:*** Monarch Butterfly (*Danaus plexippus*)
- 1.3. *Project Size:*** The geographical area covered by this Agreement includes the potential estimated range of the monarch butterfly across the lower 48 states, on lands managed by energy and transportation entities. We are unable to provide an exact number of acres enrolled because this is a programmatic agreement, and participation is voluntary and interest may vary. Our highest estimates of potential enrollment indicate approximately 26 million acres of land, and this estimate is based on current and potential interest from energy and transportation partners.
- 1.4. *Brief Project Description Including Conservation Elements of the Plan:*** The estimated decline of the eastern migratory monarch population has been 84% between 1996 and 2015 (Semmens et al. 2016). The Western population estimated decline since the late 1990s is 74% (Pelton et al. 2016) though other studies have hypothesized higher declines since the 1980s (Schultz et al. 2017). Due to declining population estimates, the Service was petitioned to list the monarch butterfly under the Endangered Species Act of 1973 (ESA) and a Species Status Assessment for the monarch (*Danaus plexippus plexippus*) was initiated. The Service is scheduled to make a decision in December 2020 on whether the listing of the monarch is warranted.

This project is the issuance of an Enhancement of Survival Permit (Permit) associated with a programmatic Candidate Conservation Agreement with Assurance, with an integrated Candidate Conservation Agreement (Agreement), between the U.S. Fish and Wildlife Service (Service) and the University of Illinois at Chicago (Program Administrator). The Permit and Agreement will further conservation of monarch butterflies and establish a mechanism to authorize incidental take of monarchs and provide regulatory assurances on non-Federal lands to energy and transportation landowners who enroll.

The Permit and Agreement will be in effect for a period of 25 years, and if monarchs are listed as threatened or endangered under the ESA, then the Permit authorizes incidental take with assurances¹ on non-Federal lands in accordance with the Agreement.

¹ On non-Federal Lands, the Permit provides assurances from the Service that additional conservation measures for the monarch above and beyond those explained in the Agreement will not be required and that additional land,

Monarch Candidate Conservation Agreements Environmental Action Statement

In addition, if monarchs were to be listed, the Service would review the Section 7 conference opinion on the Agreement and may adopt the conference opinion as a biological opinion, which would authorize incidental take on Federal lands in accordance with the Agreement. In accordance with 50 C.F.R. § 402.10(d), the incidental take statement provided in the Service's conference opinion on the Agreement does not become effective unless and until the monarch is listed and the conference opinion is adopted as the biological opinion issued through formal consultation. At that time, the opinion and Agreement will be reviewed to determine whether any take of monarchs or their habitat has occurred. Modifications of the opinion and incidental take statement may be appropriate to reflect that take. No take of monarch or their habitat may occur between the listing of monarchs and the adoption of the conference opinion through formal consultation, or the completion of a subsequent formal consultation. The conference opinion cannot be adopted as the biological opinion if significant new information is developed and/or if significant changes to the Federal action have been made that would alter the content of the conference opinion. Because the conference opinion is based on the best available science at the time of this decision, for the sake of this analysis regarding permit issuance, we will assume that the conference opinion will be adopted as a biological opinion if the monarch is listed. For the purpose of succinctness in this document and the Agreement, we refer to take on Federal lands as authorized through the incidental take statement of the biological opinion.

When the Service and Program Administrator sign the Agreement and the Service issues the Permit, the Program Administrator will be able to enroll eligible applicants² into the Agreement through Certificates of Inclusions (CI). Once an eligible applicant receives a signed CI, they formally become a Partner to the Agreement and commit to using conservation measures to maintain, enhance, and create monarch habitat on a portion of enrolled lands (adopted acres³). The CIs convey incidental take authorization and assurances on non-Federal lands to the Partner in accordance to the Agreement and Permit conditions. Incidental take of monarch butterflies is authorized for covered activities and conservation measures on enrolled lands.

water, or resource use limitations will not be imposed for the monarch in relation to the covered activities should monarch butterflies become listed as endangered or threatened under the ESA in the future.

² Eligible applicants are non-Federal entities or organizations that manage lands associated with energy and transportation uses that are interested in participating in the Agreement and undertake the application steps detailed within Section 4.4 of the Agreement. Eligible Applicants include non-Federal organizations and private or publicly owned companies managing lands associated with energy and transportation infrastructure within the Covered Area. Eligible Applicants have the authority and control to implement conservation measures throughout their system of enrolled lands through their property rights (for example, fee-title ownership, land management and access permits, easements, etc.) or statutory authority. Applicants may be enrolled in this Agreement through a Certificate of Inclusion.

³ Within this Agreement, adopted acres are those lands within the enrolled lands where conservation measures are used to create, enhance, restore, sustain, or maintain habitat that supports monarch butterfly breeding and/or foraging requirements (depending on location) as documented by effectiveness monitoring. Adopted acres provide suitable monarch habitat and are the primary measure of Net Conservation Benefit within this Agreement.

Monarch Candidate Conservation Agreements Environmental Action Statement

The goal of the Agreement is to encourage participation in voluntary conservation on energy and transportation lands that result in net conservation benefits to monarch butterflies. This is achieved through conservation measures on energy and transportation lands that counter habitat loss and degradation, which is a key threat to monarch populations on these lands (Thogmartin et al. 2017). The Agreement requires Partners to manage lands using conservation measures on adopted acres.

Types of Conservation Measures

Specific conservation measures to increase availability of milkweed and blooming nectar plants while monarchs are present are described in brief below, and full descriptions are provided in Agreement Table 6-3 “Conservation Measures and Descriptions”:

- Planting local and native seed mixes that include milkweed and other blooming nectar plants
- Using early successional habitat development and management practices such as prescribed burning and controlled grazing
- Removing brush to promote monarch habitat
- Idling or setting aside suitable monarch habitat
- Modifying mowing practices to avoid periods of monarch breeding and migration
- Incorporating pollinator habitat objectives into Integrated Vegetation Management Plans
- Using targeted herbicide treatment to remove undesired plant species (limiting and avoiding broad spraying)
- Implementing best management practices to control invasive species

Some specific conservation measures are required for Partners who enroll lands within the range of the Western monarch population or within a half-mile of known overwintering aggregation sites. These measures are required because of the current tenuous status of the Western monarch population and the importance of nectar for some populations that are active in the Covered Area during the winter. These conservation measures are described in brief below, and full descriptions are provided in Agreement Table 6-4 “Conservation Measures Specific to Known Winter Aggregation Sites and the Western Population of Monarch Butterflies”:

- Maintain and enhance blooming nectar plants during winter months within a half-mile of known winter aggregation sites
- In the West, avoid removing trees and shrubs within a half-mile of known winter aggregation sites at any time
- Along the coast of California, do not plant milkweed. Milkweed does not naturally grow close to the coast north of Santa Barbara and can interrupt healthy monarch migratory and overwintering behavior.
- Report all Western monarch observations to the Western Monarch Milkweed Mapper

In addition to the specific conservation measures summarized above, some partners may commit to additional, supplemental measures (for either Eastern or Western monarch populations) that provide indirect benefits for monarchs and other pollinating insects. These measures don't contribute to the measured net conservation benefit of the Agreement, however the Program Administrator offers incentives to Partners who go above and beyond to include these measures in their CIs. Some of these supplemental measures are described in brief below, and full descriptions are in Agreement Table 6-5 "Supplemental Measures and Descriptions":

- Development and implementation of spatial modeling to prioritize areas for monarch conservation
- Additional habitat monitoring such as making use of the Monarch Joint Venture Integrated Monarch Monitoring Program
- Promoting community driven conservation by providing small grants and technical assistance to support native pollinator plantings

Types of Covered activities

Covered activities are otherwise lawful activities that support vegetation management, general operations, maintenance, or modernization of energy and transportation lands. These activities are carried out on enrolled energy and transportation lands and are reasonably certain to cause take of monarch butterflies by removing or disturbing milkweed or flowering nectar resources (during the time of year when monarchs are present), or by taking monarchs directly (for example, by crushing individuals, etc.).

The Agreement addresses the incidental take of monarch butterflies caused by a suite of activities across a number of transportation and energy sectors, however CI applicants select the activities relevant to their lands and projects to enroll in their CIs. Covered activities cannot result in incidental take of other ESA listed animals, or must be conducted in compliance with the terms and conditions of existing incidental take statements (Section 7) or Section 10 permits. Partners will develop and implement avoidance and minimization measures when they apply for a CI to ensure that covered activities do not jeopardize listed or proposed plants or destroy or adversely modify designated or proposed plant or animal critical habitat. All covered activities are conducted in accordance with existing permits, easements, and agreements that allow the Partners to access and manage their enrolled lands. Covered activities do not include actions that pose significant environmental, socioeconomic, historic, or cultural impacts.

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Examples of Covered Activities:

- General operations of energy and transportation lands including activities such as vehicle and equipment access, maintenance of enrolled roads and access routes, surveys and inspections, and emergency response.
- Maintenance and modernization activities such as structural repairs, replacement and maintenance of enrolled infrastructure and facilities, temporary staging and storage, and facility repairs, upgrades, and replacement of enrolled infrastructure.
- Construction associated with maintenance and modernization of enrolled infrastructure (for example, road, power line, energy substation, bridges, building, etc. on enrolled lands) that occurs substantially within the footprint of existing infrastructure and/or the accompanying lands that are maintained to support operations of such infrastructure. For example, modernization could include construction of a rest stop within the rights-of-way of an existing road or the widening or addition of energy substations in existing transmission corridors that exist on enrolled lands. By contrast, modernization does not include the construction of new infrastructure (or activities associated with the construction of that new infrastructure) on newly acquired, or previously undeveloped or unmaintained rights-of-way or parcels. Undeveloped land implies that the land has an absence of infrastructure. Once infrastructure is constructed independent of this Agreement, the ongoing operation, maintenance, modernization, and vegetation management activities may be covered activities.
- Vegetation management is a covered activity on existing rights-of-way and owned lands to ensure safe and reliable operation of infrastructure and allow access needed for inspections, maintenance, and emergency response. Vegetation management for the purpose of creating, maintaining, and enhancing monarch butterflies (that is, conservation measures) is also a covered activity.

Although many of these conservation measures and covered activities are currently in use to manage and maintain rights-of-way and associated lands, they are generally not being conducted with establishing and maintaining habitat for the monarch butterfly or improving its status in mind. While the outcomes of the currently implemented practices and modified practices may be somewhat different, the environmental effects are expected to be similar, with a net benefit to monarchs. This Agreement formalizes and promotes improvements in these operations by promoting conservation measures that adapt the timing, frequency, or method by which they are applied in order to improve habitat for and numbers of monarchs.

2. Does the Agreement fit the following Department of Interior and U.S. Fish and Wildlife Service categorical-exclusion criteria?

2.1. Are the effects of the Agreement minor or negligible on federally listed, proposed, or candidate species and their habitats covered under the Agreement? [516 DM 8.5(C)(1)]

Yes. Covered activities under the Agreement consist of maintenance and modernization of infrastructure within energy and transportation lands. Conservation measures (largely vegetation management) and covered activities included within the Agreement are actions that are already occurring in some manner on energy and transportation lands. With this in mind, the conservation measures and covered activities included within the Agreement primarily alter *how* these activities are conducted and *to what extent* beneficial conservation measures are employed. The agreement requires those activities to be conducted in a manner that is more beneficial to monarch butterflies and their habitat than would be required in the absence of the Agreement.

2.2. *Are the effects of the Agreement minor or negligible on all other components of the human environment, including environmental values and environmental resources (for example air quality, geology and soils, water quality and quantity, socio-economic, cultural resources, recreation, visual resources, environmental justice, etc.)? [40 CFR 1508.14; 43CFR 46.205]*

Yes. Conservation measures and covered activities included within the Agreement are actions that are already occurring in some manner on energy and transportation lands. Changes proposed in the Agreement promote adapting current practices in a manner that provides a net conservation benefit to monarch butterflies. The Agreement has been developed with input from industry and regulatory partners to be compatible with existing land use practices on the rights-of-way. Conservation measures and covered activities in the Agreement are already completed with varying degrees of coordination with existing landowners on, or adjacent to, the lands managed by the Partners. The Agreement may improve existing coordination and communication with landowners, for example, when Partners obtain consent or authorization from a landowner prior to conducting certain activities.

The effects on land use related to the Agreement are expected to be negligible and are not expected to affect air quality, geology and soils, water quality and quantity, socio-economic, cultural resources, recreation, or visual resources in any significant way. Moreover, some effects on environmental resources in the rights-of-way are expected to be positive (for example, opportunities for local community participation in restoration efforts and increased populations of pollinators that may improve agricultural production locally).

In addition, the covered activities within the Agreement are routinely undertaken with consideration for applicable environmental laws and regulations, including but not limited to, the Clean Water Act, Clean Air Act, National Environmental Policy Act, and the National Historic Preservation Act. According to CCAA Policy, all activities under the Agreement must comply with applicable Federal and State laws. Therefore, activities under the

Agreement are expected to result in no or negligible disturbance to the human environment as compared to current conditions.

- 2.3. *Would the incremental impacts of this Agreement, considered together with the impacts of other past, present, and reasonably foreseeable future actions (regardless of what agency or person undertakes such other actions) not result, over time, in cumulative effects to the human environment (the natural and physical environment) which would be considered significant? [40 CFR 1508.7; 43CFR 46.205]***

The proposed actions under the Agreement would not cumulatively result in significant effects to the human environment. The proposed actions support ongoing operations, maintenance, and modernization of existing infrastructure and are already occurring in some manner on energy and transportation lands. The Agreement does not cause adverse impacts that, even considering other similar projects, would result in significant cumulative effects to environmental values or resources.

- 3. Do any of the exceptions to categorical exclusions (extraordinary circumstances) listed in 43 CFR 46.215 apply to this Agreement? Would implementation of the Agreement:**

- 3.1. *Have significant impacts on public health or safety?***

No. Significant adverse impacts to public health are not expected to result from implementation of the Agreement.

Authorization of the Agreement and implementation of conservation measures or covered activities does not alter the safety measures already in place for workers and the general public. As described in Sections 5 and 6 of the Agreement, the activities allow for adaptation as needed to address any unforeseen safety concerns and will promote the ability of Partners to continue actions supporting infrastructure safety and enhanced monarch habitat.

- 3.2. *Have significant impacts on such natural resources and unique geographic characteristics as: historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990) or floodplains (Executive Order 11988); national monuments; migratory birds, eagles, or other ecologically significant or critical resources?***

No. All enrolled lands under the Agreement consist of existing or established rights-of-way or other lands associated with energy or transportation uses. Any activities that may occur in unique geographic areas, such as an area with cultural resources, are subject to additional project review and consultation (for example, activities under the Agreement must comply with Section 106 of the NHPA as described in Appendix C of the Agreement).

3.3. *Have highly controversial environmental effects (defined at 43 CFR 46.30), or involve unresolved conflicts concerning alternative uses of available resources [see NEPA section 102(2)(E)]?*

No. The conservation measures and covered activities proposed in the Agreement do not have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources. The covered activities are routine in nature (vegetation management and modernization construction) and will be occurring in existing rights-of-way.

3.4. *Have highly uncertain and potentially significant environmental effects, or involve unique or unknown environmental risks?*

No. While the scale and extent of Partner enrollment is uncertain, the tools and techniques proposed are well established and commonly used across energy and transportation lands already. All plantings proposed as part of habitat improvements would be native species and restoration efforts would focus on returning habitat to more natural conditions.

The activities proposed in the Agreement already occur across the lower 48 states under a variety of landscape conditions. Therefore, the risk of uncertain or unforeseen effects is considered extremely low.

3.5. *Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?*

No. The proposed conservation measures and covered activities within the Agreement have occurred on small and large scales for many years and are already commonly used across the country. With or without the Agreement, these activities will continue to be used across energy and transportation lands. CCAAs and CCAs have been used by the Service for nearly 20 years to promote voluntary conservation for species that are candidates for listing under the ESA. Past agreements have covered extensive acreages (for example, millions of acres) across large geographic areas (for example, multiple states or regions of the U.S.). Therefore, the proposed activity is not expected to set a precedent that could result in potentially significant environmental effects.

3.6. *Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects?*

No. Adverse impacts under the Agreement, even considered with other similar projects, are not expected to result in significant cumulative effects to environmental values or resources.

The activities in the Agreement already occur to some extent on energy and transportation lands. While the Agreement encourages and promotes activities that benefit monarchs, it does not change the range of activities occurring within these lands with or without the Agreement.

3.7. *Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places?*

No. Consultation between the State Historic Preservation Office and enrolled partners will occur as needed to ensure that individual projects will not result in significant impacts to historic resources. The Service's protocol for complying with Section 106 of the National Historic Preservation Act is included as part of Appendix C of the Agreement (Supplemental Information).

3.8. *Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species? Consider the degree or amount of take and the impact of the take on the species. Although take may occur under project implementation, it must be so minor as to result in negligible species effects after minimization and mitigation measures have been completed. The same concept applies when considering effects to critical habitat.*

No. Implementation of the Agreement is not expected to have a significant negative impact on any listed or proposed species covered under the ESA.

Potential impacts to listed or proposed animal species

The Agreement addresses incidental take of monarch butterflies from certain activities (for example, covered activities and conservation measures), which may have the potential to affect animals that are listed as endangered or threatened under the ESA or that are proposed for such listing. Partners will be required to ensure implementation of these activities do not cause take of any listed or proposed animal species other than monarch butterflies. They will be excepted from this requirement only if the take is authorized under (1) a separate ESA section 10 permit or (2) an incidental take statement prepared pursuant to a separate section 7 consultation (one other than the consultation done on the Agreement and Permit). Under each scenario, the Service would have had to evaluate the effects of the take and concluded that it was not likely to jeopardize the continued existence of the relevant species.

We think that the preclusion from the proposed action of any activity that would result in unauthorized take of a species of listed or proposed wildlife is sufficient to ensure that it will not jeopardize or have significant impacts on any of these species. Precluding any activity likely to cause take would effectively prevent under the Agreement any significant

environmental modification or degradation that would kill or injure even a single individual of a listed or proposed animal species. As stated above, if a Partner would engage in such an activity, they could not do so in pursuit of the Agreement or under the authority of the EOS permit.

Potential impacts to Critical Habitat and Listed and Proposed Plants

Covered activities and conservation measures addressed in the agreement may have the potential to directly affect listed and proposed plant species that occur in the contiguous U.S. or produce stressors to which these species may be exposed. Likewise, these activities may have the potential to affect critical habitat that has been designated for plant or animal species and critical habitat that has been proposed for such designation. We have included a process in the CI application and enrollment process to ensure these effects do not jeopardize any listed or proposed plant species or adversely modify any designated or proposed critical habitat of any plant or animal. During the CI application and enrollment process, applicants must provide a list of avoidance and minimization measures (AMMs) for listed and proposed plant species that are likely to be present on their enrolled lands and for any overlapping critical habitats, designated or proposed.

Upon receipt of the AMMs and before a certificate of inclusion is issued, the Service will review the AMMs to confirm that they are sufficient to ensure that activities implemented under the Agreement or the EOS permit would neither (1) jeopardize the continued existence of any listed or proposed plants or any experimental populations of plants nor (2) destroy or adversely modify any proposed or designated critical habitat of any plant or animal. The Service will document its finding before the Programmatic Administrator issues a certificate of inclusion.

This tiered review process will facilitate the avoidance and minimization of effects to listed and proposed plant species to ensure that activities implemented pursuant to the Agreement or as authorized by the EOS permit do not appreciably reduce their likelihood of survival and recovery.

3.9. *Violate a Federal law, or a State, local, or tribal law, or a requirement imposed for the protection of the environment.*

No. According to CCAA Policy, all activities under the Agreement must comply with applicable Federal and State laws. The Permit and CIs will include a specific condition that requires the Partner to be in compliance with any applicable State, Federal, local, or tribal law or regulation. Failure to comply with this term and condition can result in suspension or revocation of the Permit and/or CI.

3.10. *Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).*

No. Conservation measures and covered activities would occur across a range of rights-of-way and parcels on existing lands managed by Partners. Energy and transportation lands already span the country across diverse landscapes--rural, suburban, and urban--and across diverse population centers. While the full extent of participation is uncertain and determined by the extent of enrollment, the enrolled lands are limited to existing and acquired fee-owned lands, leases, and easements. Because the activities proposed under the Agreement are already occurring on these lands and are necessary to provide safe and reliable energy delivery and transportation on lands already in use for these purposes, authorization of the Agreement does not pose any disproportionately high and adverse effect on low income or minority populations.

3.11. *Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).*

No. At times when Partner-managed easements or leases intersect Federal lands, Partners will coordinate with the appropriate Federal land management agencies to verify the conservation measures and covered activities encompassed by the Agreement will avoid impacts or use of Indian sacred sites. This coordination occurs through the Section 106 consultation with the associated Federal Agency (See Appendix B. of the Agreement).

3.12. *Contribute to the introduction, continued existence, or spread of noxious weeds or non-native Invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).*

No. Proposed conservation measures are designed to maintain a vegetated landscape and promote the enhancement and increase of native species into existing lands or rights-of-way. No noxious weeds or non-native invasive species would be used for any of the habitat improvements. Conservation measures and supplemental measures contained within the Agreement also encourage use of prevention measures to limit the spread of invasive species. Conservation measures in some areas would be expected to reduce levels of noxious weeds or non-native invasive species as part of the planting and maintenance process to improve habitat for monarch butterflies.

Each state maintains its own list of regulated noxious weed species requiring control. In keeping with CCAA Policy, the Agreement would not conflict, nor supersede, this or any

other State law. Partners would therefore still be required (to the extent they currently are) to control noxious weeds consistent with any current requirements they might have within their operational footprint of enrolled lands. The current list of conservation measures specifies that treatment of noxious weeds applies towards the “adopted acres” requirement. Examples include targeted herbicide treatments and brush removal, as noted in the Agreement in Table 6-3 “Conservation Measures and Descriptions”.

4. Environmental Action Statement

Within the spirit and intent of the Council on Environmental Quality’s regulations for implementing the National Environmental Policy Act and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record. The evaluation undertaken within this document complies with requirements of NEPA Categorical Exclusions as described in the U.S. Department of Interior’s Departmental Manual 6, Section 516, Chapter 8, Appendix 1.4, C.1. Section 8.5(C)(1) (permits and regulatory functions):

(1) The issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter 1, Subsection B, when such permits cause no or negligible environmental disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

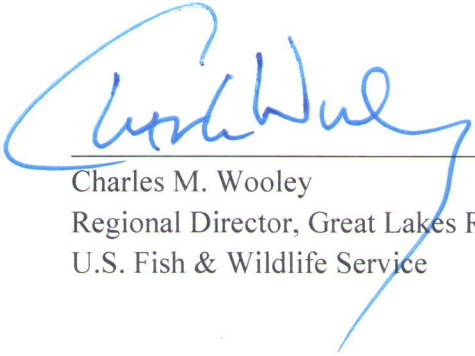
The regulation referenced in this Categorical Exclusion above (50 CFR Chapter 1, Subsection B) is broad and refers to many types of permits. Subsection B is titled “Taking, possession, transportation, sale, purchase, barter, exportation, and importation of wildlife and plants”. The Enhancement of Survival Permit issued for the Agreement is authorized under 50 CFR Chapter 1, Subsection B, Sections 17.22 and 17.32 (for endangered and threatened species, respectfully) where such conservation agreements are addressed under (d)(1): “Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances (CCAAs).”

Based on the information and analysis above, I determine that the proposed issuance of an Enhancement of Survival Permit for the Nationwide Candidate Conservation Agreement with Assurances for the Monarch Butterfly on Energy and Transportation Lands with an integrated Candidate Conservation Agreement qualifies for a categorical exclusion, as defined in 40 CFR 1508.4. Furthermore, no extraordinary circumstances identified in 43 CFR 46.215 exist for the Agreement. Therefore, the Service’s permit action for this Agreement is categorically excluded from further NEPA review and documentation, as provided by 40 CFR 1507.3; 43 CFR 46.205;

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43 CFR 46.215; 516 DM 3; 516 DM 8.5; and 550 FW 3.3C. A more extensive NEPA process is unwarranted, and no further NEPA documentation will be made.

Signature Approval:



Charles M. Wooley
Regional Director, Great Lakes Region
U.S. Fish & Wildlife Service

4.3.20
Date

5. Literature Cited

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