



NiSource HCP and Incidental Take Permit Record of Decision *Questions and Answers*

1. **What action is the U.S. Fish and Wildlife Service taking?**

The Service published a Notice of Availability in the Federal Register on November 14, 2013 that announces availability of documents related to an Endangered Species Act incidental take permit issued to NiSource, Inc. NiSource, Inc. is a natural gas distribution and storage company.

The permit allows take of 10 endangered and threatened animals during the course of NiSource's regular operation and maintenance activities in 14 states over a 50-year period. Although the permit allows take of 10 listed species, NiSource will avoid, minimize and mitigate all take that may occur through measures identified in their habitat conservation plan, which is a legally binding document.

NiSource prepared the habitat conservation plan (HCP) in association with their incidental take permit application, as required under the Endangered Species Act. In response, the U.S. Fish and Wildlife Service prepared an environmental impact statement that documents the potential impact associated with issuing the incidental take permit. Draft versions of the HCP and environmental impact statement were made available for public review and comment for 90 days in 2011. The NiSource final HCP and the Service's final environmental impact statement were made available to the public in June 2013. Since then, the Service issued the permit to NiSource and the Record of Decision is now also available.

2. **What is the purpose of an incidental take permit and habitat conservation plan?**

An incidental take permit is required for actions that may "take"¹ a federally listed endangered or threatened wildlife species. The permit authorizes the harassment, harm or death of a listed species that is incidental to a project action.

A habitat conservation plan is required by the Endangered Species Act for incidental take permit applications. A habitat conservation plan must ensure that the permit applicant takes steps to avoid and minimize harm to listed species and then mitigates the amount of harm that is unavoidable.

The multi-species habitat conservation plan developed by NiSource provides a framework for integrating NiSource's natural gas pipeline activities with the conservation and recovery goals of federally listed endangered and threatened species. The habitat conservation plan reduces conflicts between listed species protection and NiSource's operations while streamlining the Endangered Species Act consultation process.

3. **What activities will the NiSource incidental take permit cover?**

The permit covers a suite of activities that NiSource uses to maintain and expand their pipelines and pipeline rights-of-way in 14 eastern U.S. states. Typical activities include right-of-way maintenance; facility inspection, upgrade and replacement of pipelines; forced relocations; and expansion projects.

¹ Under the Endangered Species Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered and threatened species, or to attempt to engage in any such conduct.

4. What lands are covered by the habitat conservation plan?

NiSource owns facilities and rights-of-way in 14 eastern states: Delaware, Indiana, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia.

The NiSource pipeline system includes about 15,562 miles of buried steel pipe, 117 compressor stations, and 6,236 measuring and regulating stations. In addition, NiSource operates and maintains underground natural gas storage fields in 36 storage fields comprised of approximately 3,600 individual storage wells in Maryland, West Virginia, Ohio, Pennsylvania and New York.

Approximately 95 percent of NiSource's annual projects will occur within its existing right-of-way (typically 50 feet wide) and result in little ground disturbance. A portion of NiSource's annual activities will likely deviate from the existing right-of-way. Therefore, NiSource proposed a 1-mile-wide corridor centered on existing facilities as the best approach for defining this portion of the "covered lands." This 1-mile-wide corridor encompasses all of NiSource's onshore pipeline facilities and the majority of its existing storage fields.

In summary, the covered lands include a 1-mile wide corridor surrounding NiSource's existing pipeline facilities plus 12 counties encompassing existing storage fields. The permit and habitat conservation plan cover about 9 million acres of land in 14 states and capture roughly 95 percent of future NiSource operation, maintenance, and new construction projects.

5. What is included in the NiSource Habitat Conservation Plan?

The Endangered Species Act (Section 10) and implementing regulations define components that must be included in an HCP:

- An assessment of impacts likely to result from the proposed taking of any listed species.
- Measures the permit applicant will conduct to monitor, minimize, and mitigate for such impacts; the funding that will be made available to implement the measures; and the procedures to deal with unforeseen or extraordinary circumstances.
- Alternative actions to the take of species that the applicant analyzed, and the reasons why the applicant did not adopt such alternatives.
- Additional measures the U.S. Fish and Wildlife Service may require as necessary or appropriate.

Specifically, NiSource's habitat conservation plan includes a comprehensive list of actions along with an analysis of the impact of those actions on listed species. Based on this threats analysis, a conservation strategy was devised which includes best management practices that will ensure that impacts are avoided and minimized. Even with use of the best management practices, some level of take is expected and the level and impact of that take was calculated and described. The conservation strategy includes compensatory mitigation that addresses the conservation needs of the listed species impacted by project activities. A model was used to calculate the expected level of take and the mitigation needed. Various aspects of the habitat conservation plan (e.g., actual take, performance of the best management practices, mitigation) will be monitored; therefore, the habitat conservation plan includes an adaptive management component that will use data from that monitoring to adjust best management practices, compensatory mitigation, and other aspects of the habitat conservation plan as needed.

6. How much take is expected to occur?

The NiSource habitat conservation plan includes an analysis of impacts to 42 species, including 41 federally listed species and one candidate species (see Table 4-1 in the plan). After the initial analysis, three discrete groups of species emerged: 1) species for which NiSource would request incidental take authorization (10 species); 2) species for which NiSource would avoid take by implementing avoidance measures (9 species); and 3) species for which the Service determined that NiSource activities would have “no effect” (23 species).

Because NiSource actions can occur throughout the covered lands and because those actions can occur over the life of the permit, to calculate take, the habitat conservation plan used a “reasonable worst case scenario” analytical approach, which is discussed in Chapter 6 of the plan.

Take is predominately in the form of habitat loss and degradation, measured in acres of habitat impacted. The direct loss of some individuals is expected but is quantified as acres of habitat impacted except for the expected loss of four individual American burying beetles. The “Summary of Take” is provided in Table 6.1.5-1 in the habitat conservation plan, which provides the exact quantified take expected.

7. What actions will NiSource take to avoid and minimize harming listed species?

The first level of protection for all natural resources in the project area, including listed species, is implementation of NiSource’s Environmental Construction Standards (see Appendix B of the plan). The Environmental Construction Standards provide minimum requirements that will be applied to all construction, operation, and maintenance activities. Examples include: prohibition of herbicides within 100 feet of water bodies; reducing right-of-way maintenance to 10 feet in wetlands; monitoring revegetation for 3 years, and restoring vegetation if it has not grown back in that time; and limiting right-of-way maintenance adjacent to water bodies to allow a riparian strip at least 25 feet wide.

A second level of protection is provided for threatened and endangered species. Anticipated impacts of project activities were analyzed by breaking each action down into its component steps, then determining exactly if and how each step could harm listed species. Based on the resulting anticipated impacts, avoidance and minimization measures were developed. Examples of avoidance and minimization measures include: horizontal directional drilling under river bottoms where feasible, abandoning pipelines in place rather than disturbing habitat for pipe removal, and avoiding work outside the existing 50-foot right-of-way in certain species’ habitat.

The species-specific analysis and avoidance/minimization measures are described in detail in the individual species’ analysis presented in Chapter 6 and in Appendix F.

8. How is take of listed species mitigated?

After all practicable steps have been taken to avoid and minimize take, Section 10 of the Endangered Species Act requires that all remaining take be mitigated. Mitigation measures include preserving existing habitat, enhancement or restoration of degraded habitat, establishment of new habitat, reestablishment or augmentation of populations, changes in current land use practices, and in some very specific instances, funds dedicated to research needs.

NiSource’s habitat conservation plan includes a landscape-level approach to mitigation. Developed for NiSource by The Conservation Fund, the landscape-level approach provides a method for identifying and evaluating mitigation opportunities within a planned network of natural areas,

developed lands and other open spaces that are managed to conserve ecosystem values and functions and also to benefit human populations. The result of The Conservation Fund's assessment will be a framework to identify mitigation opportunities that provide the greatest benefit for the species.

9. How will NiSource's mitigation strategy operate?

NiSource mitigation is divided into two components: Operation and Maintenance and project specific. Operation and maintenance mitigation is designed to compensate for impacts from ongoing operations of existing facilities (right-of-way maintenance, minor erosion in rights-of-way, vehicle travel in the rights-of-way, etc.). These impacts, while too small to be determined or calculated on their own, may result in overall habitat degradation for listed species. Since right-of-way maintenance activities typically occur on a seven-year cycle, the compensatory mitigation is scheduled to occur within the first seven years of habitat conservation plan implementation. A summary of the mitigation type, amount, cost and funding schedule is provided in **Table 8.2.2-1**. NiSource anticipated that the total operation and maintenance mitigation funding will be \$799,595. Funding for this mitigation will be made in seven separate payments to a National Fish and Wildlife Foundation Fund by January 15 for each of the first seven years. (The National Fish and Wildlife Foundation is a private, non-profit, tax-exempt organization).

Project-specific mitigation is designed to compensate for impacts resulting from certain construction or operation and maintenance non-recurring activities. Examples include impacts to listed mussels during installation of a stream crossing or the clearing of potentially suitable habitat for Indiana bats while the bats are present. The specific effects and corresponding compensation required will be measured on a project-by-project basis and any required mitigation ratio will be applied to determine the overall amount of mitigation required for that project. These impacts, mitigation ratios, and mitigation project type are described in detail, by species, in Chapter 6 of the habitat conservation plan. Funding for this compensatory mitigation will be provided prior to the impact occurring. NiSource expects that the total project specific mitigation funding over the life of the permit would be \$27,848,800 should all of the requested take be used. Before work may be undertaken on any project, NiSource would be required to deposit projected costs into the National Fish and Wildlife Foundation Fund.

Mitigation projects may typically be implemented in the same year as the take; however, mitigation funds for impacts to individual species may be aggregated over multiple years so that larger, more significant projects can be funded. In addition, mitigation measures may be undertaken that provide greater mitigation than is required to compensate for the previous year's take. Such mitigation may provide a "credit" toward future impacts.

Chapter 6 of the habitat conservation plan summarizes the background, process, and results of the species assessments, including the calculation of incidental take, the impacts of that take, and the mitigation identified to compensate.

10. How will compliance with the incidental take permit and habitat conservation plan be monitored?

By regulation, NiSource must monitor, report, and assess the impacts of take that will result from activities covered by the incidental take permit. Chapter 7 of the habitat conservation plan explains the monitoring, reporting and adaptive management components. Two types of monitoring will be ongoing over the life of the plan. Compliance monitoring will verify that NiSource is carrying out the terms of the incidental take permit and habitat conservation plan. Effects and effectiveness monitoring will help the Service and NiSource analyze the effect of project activities on listed species and help determine whether the conservation program is achieving its goals and objectives.

For compliance monitoring, a habitat conservation plan implementation team, comprised of NiSource personnel from their Natural Resource Permitting group and Corporate Environmental Services, will be responsible for establishing management processes within the parameters of the plan, incidental take permit, and implementing agreement. A member of this implementation team will be designated as the habitat conservation plan coordinator and will be responsible for monitoring, permit and plan compliance.

NiSource project managers and contract environmental specialists will be responsible for ensuring their work complies with requirements of NiSource's Construction Standards and those requirements of the habitat conservation plan relevant to a particular project. NiSource managers will also document compliance in the plan database reporting system, a system developed by NiSource for this purpose. NiSource will conduct training to ensure appropriate personnel know their responsibilities and how to carry out those responsibilities.

Additionally, an internet-based information tool that the Service is developing will be used to help NiSource personnel and contractors. This tool, IPaC, allows the user to go on-line, specify a project location and activity, and receive resource information about the project site. IPaC will provide data on the biological resources within the project location and avoidance and minimization measures to use in the specific project area. IPaC will also be programmed to provide a monitoring, reporting and tracking module. Environmental inspectors and the habitat conservation plan implementation team will develop and implement quality assurance and quality control processes to assess the accuracy of the monitoring data.

NiSource will maintain a running total of take of each take species and the mitigation measures taken to compensate for such take over the term of the permit. To help assess the utility and reliability of take calculations in Chapter 6, NiSource will also provide a comparison of its requested versus actual take. All of this information will be included in the annual report NiSource will submit to the Service. As part of compliance monitoring, data on effects and effectiveness will be collected and documented to allow an analysis of the effect of project actions and the effectiveness of avoidance and minimization measures.

Data acquired from NiSource's monitoring program will provide the data to support adaptive management. The broad adaptive management component of the habitat conservation plan will be the mechanism used to evaluate and as necessary change the key elements of the plan's conservation program (e.g., avoidance measures and mitigation).

11. Why was an environmental impact statement prepared?

The Service's issuance of an incidental take permit is a federal action that necessitates review under the National Environmental Policy Act. The act requires that an environmental impact statement or environmental assessment be prepared to evaluate actions that may affect the human environment.

Preparation of an environmental impact statement is a useful mechanism for the Service to document, compare and evaluate impacts from the project proposal and potential alternative actions.

12. What species does the incidental take permit cover?

The permit authorizes take of eight endangered species: Indiana bat, clubshell, fanshell, James spinymussel, northern riffleshell (mussel), sheepsnose (mussel), American burying beetle, and Nashville crayfish; and two threatened species: bog turtle and Madison cave isopod.

Additionally, the habitat conservation plan analyzes the impact of operations on 32 other threatened, endangered and candidate species and provides measures to avoid take of those species.

13. Why did NiSource decide to apply for a permit and prepare a habitat conservation plan?

NiSource conducts over 400 projects every year to maintain and expand their pipeline facilities. These projects are often in or near endangered or threatened species habitats and require the company to contact the U.S. Fish and Wildlife Service for project reviews. In contrast, an incidental take permit granted by the Service would give NiSource endangered species coverage to perform its day-to-day routine activities without the necessity of coming to the Service for each individual project.

An incidental take permit and accompanying habitat conservation plan provide a means of efficiently conducting project reviews by combining assessments of similar activities into a single assessment and then developing avoidance and minimization measures for the entire group of similar actions. Similarly, greater conservation benefits can be achieved by combining and focusing mitigation requirements rather than spreading mitigation across 14 states as small, isolated actions. Additionally, with the habitat conservation plan in place, NiSource knows beforehand the actions that will be necessary when work is near or in listed species' habitat.

14. How does this habitat conservation plan help listed species?

Without the permit and habitat conservation plan, NiSource consults on over 400 individual projects annually. Any conservation benefits derived from these consultations only encompass the discrete area of the project actions, which are usually quite small or limited. In contrast, by considering all of the impacts over the entire 14-state project area, mitigation of take can affect larger, cohesive areas and be strategically placed to provide the most benefit.

15. What if new species are listed as threatened or endangered after the incidental take permit has been issued?

If a species is listed after the permit has been issued, and it has not been addressed in the habitat conservation plan, then it will not be included in the permit. The Service will notify NiSource of potential listings that are not covered by the plan but that could be affected by NiSource activities. After receiving such a notice, NiSource may enter into negotiations with the Service to amend the multi-species habitat conservation plan, incidental take permit and associated documents. As an alternative, NiSource may choose to consult on the action(s) with the Service under Section 7 of the Endangered Species Act.

16. How do I get more information?

You may find additional information as well as copies of documents pertaining to the NiSource incidental take permit and habitat conservation plan at www.fws.gov/midwest/endangered/permits/hcp/nisource/. You may also call, write or email:

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