

9.0 Amendment Process

The MSHCP and/or ITP may be modified in accordance with the ESA, the Service's implementing regulations, the IA, and this chapter. MSHCP and permit modifications are not anticipated on a regular basis; however, modifications to the MSHCP and/or ITP may be requested by either NiSource or the Service. The Service also may amend the ITP at any time for just cause, and upon a written finding of necessity, during the permit term in accordance with 50 C.F.R. § 13.23(b). The categories of modifications are administrative changes, minor amendments, and major amendments.

9.1 Administrative Changes

Administrative changes are internal changes or corrections to the MSHCP that may be made by NiSource, at its own initiative, or approved by NiSource in response to a written request submitted by the Service. Requests from the Service shall include an explanation of the reason for the change as well as any supporting documentation. Administrative changes on NiSource's initiative do not require preauthorization or concurrence from the Service.

Administrative changes are those that will not (a) result in effects on a MSHCP species that are new or different than those analyzed in the MSHCP, EIS, or the Service's BO, (b) result in take beyond that authorized by the ITP, (c) negatively alter the effectiveness of the MSHCP, or (d) have consequences to aspects of the human environment that have not been evaluated. NiSource will document each administrative change in writing and provide the Service with a summary of all changes, as part of its annual report, along with any replacement pages, maps, and other relevant documents for insertion in the revised document.

Administrative changes include, but are not limited to, the following:

- Corrections of typographical, grammatical, and similar editing errors that do not change intended meanings;
- Corrections of any maps or exhibits to correct minor errors in mapping; and
- Corrections of any maps, tables, or appendices in the MSHCP to reflect approved amendments, as provided below, to the MSHCP, IA, or ITP.

9.2 Minor Amendments

Minor amendments are changes to the MSHCP whose effects on MSHCP species, the conservation strategy, and NiSource's ability to achieve the biological goals and objectives of the MSHCP are either beneficial or not significantly different than those described in this MSHCP. Such amendments also will not increase impacts to species, their habitats, and the environment beyond those analyzed in the MSHCP, EIS, and the BO or increase the levels of take beyond that authorized by the ITP. Minor amendments may require an amendment to the ITP or the IA. A proposed minor amendment must be approved in writing by the Service and NiSource before it may be implemented. A proposed minor amendment will become effective on the date of the joint written approval.

NiSource or the Service may propose minor amendments by providing written notice to the other party. Such notice shall satisfy the provisions of 50 C.F.R. § 13.23 as well as include a description of the proposed minor amendment; the reasons for the proposed amendment; an

analysis of the environmental effects, if any, from the proposed amendment, including the effects on MSHCP species and an assessment of the amount of take of the species; an explanation of the reason(s) the effects of the proposed amendment conform to and are not different from those described in this MSHCP ; and any other information required by law. When NiSource proposes a minor amendment to the MSHCP, the Service may approve or disapprove such amendment, or recommend that the amendment be processed as a major amendment as provided below. The Service will provide NiSource with a written explanation for its decision. When the Service proposes a minor amendment to the MSHCP, NiSource may agree to adopt such amendment or choose not to adopt the amendment. NiSource will provide the Service with a written explanation for its decision. The Service retains its authority to amend the ITP, however, consistent with 50 C.F.R. § 13.23.

Provided a proposed amendment is consistent in all respects with the criteria in the first paragraph of this section, minor amendments include, but are not limited to, the following:

- Updates to the land cover map or to take species occurrence data;
- Decreasing the scope of the covered lands in the MSHCP;
- Minor changes to the biological goals or objectives;
- Modification of monitoring protocols for MSHCP effectiveness not in response to changes in standardized monitoring protocols from the Service;
- Modification of existing, or adoption of new, incidental take avoidance measures;
- Modification of existing, or adoption of additional, minimization and mitigation measures that improve the likelihood of achieving MSHCP species objectives;
- Discontinuance of implementation of conservation measures if they prove ineffective;
- Modification of existing or adoption of new performance indicators or standards if results of monitoring and research, or new information developed by others, indicate that the initial performance indicators or standards are inappropriate measures of success of the applicable conservation measures;
- Modification of existing or the adoption of additional habitat objectives for MSHCP species, where such changes are consistent with achieving MSHCP species and habitat goals as well as the overall goals of the MSHCP;
- Minor changes to survey or monitoring protocols that are not proposed in response to adaptive management and that do not adversely affect the data gathered from those surveys;
- Day-to-day implementation decisions, such as maintenance of erosion and sediment control devices;
- Modifying the design of existing research or implementing new research;
- Conducting monitoring surveys in addition to those required by the MSHCP and ITP;

- Modifying MSHCP monitoring protocols to align with any future modifications to the protocols by the Service;
- Adopting new monitoring protocols that may be promulgated by the Service in the future;
- Updating construction windows for MSHCP species in the event that standard construction windows established for such species are revised by the Service and agreed to by NiSource; and
- Minor changes to the reporting protocol.

9.3 Major Amendments

A major amendment is any proposed change or modification that does not satisfy the criteria for an administrative change or minor amendment. Major amendments to the MSHCP and ITP are required if NiSource desires, among other things, to modify the projects and activities described in the MSHCP such that they may affect the impact analysis or conservation strategy of the MSHCP, affect other environmental resources or other aspects of the human environment in a manner not already analyzed, or result in a change for which public review is required. Major amendments must undergo the same formal review process as the original MSHCP and ITP, including appropriate NEPA analysis, a Federal Register notice, and an intra-Service Section 7 consultation.

In addition to the provisions of 50 C.F.R. § 13.23(b), which authorize the Service to amend an ITP at any time for just cause and upon a finding of necessity during the permit term, the MSHCP and ITP may be modified by a major amendment upon NiSource's submission of a formal permit amendment application and the required application fee to the Service, which shall be processed in the same manner as the original permit application. Such application generally will require submittal of a revised Habitat Conservation Plan, a revised IA, and preparation of an environmental review document in accordance with NEPA. The specific document requirements for the application may vary, however, based on the substance of the amendment. For instance, if the amendment involves an action that was not addressed in the original MSHCP, IA, or NEPA analysis, the documents may need to be revised or new versions prepared addressing the proposed amendment. If circumstances necessitating the amendment were adequately addressed in the original documents, an amendment of the ITP might be all that would be required.

Upon submission of a complete application package, the Service will publish a notice of the receipt of the application in the Federal Register, initiating the NEPA and HCP public comment process. After the close of the public comment period, the Service may approve or deny the proposed amendment application. NiSource may, in its sole discretion, reject any major amendment proposed by the Service.

Changes that would require a major amendment to the MSHCP and/or ITP include, but are not limited to:

- Revisions to the covered lands that do not qualify as a minor amendment;
- Addition of a species to the ITP where such species was not adequately analyzed in the MSHCP, EIS and the BO;

- Addition of a new species to the ITP that was not addressed in the MSHCP;
- Increases in the amount of take allowed for covered activities or adding new covered activities to the MSHCP;
- Modifications of any action or component of the conservation strategy under the MSHCP, including AMMs, mitigation, funding or schedule, that may increase the levels of take authorized by the ITP or substantially change the effects of the covered activities on MSHCP species, the nature or scope of the conservation program, or consequences to the human environment;
- A major change in performance standards if monitoring or research indicates that existing performance standards are not attainable because technologies to attain them are either unavailable or infeasible, and the new performance standards were not contemplated in this original MSHCP and the associated NEPA document; and
- A renewal or extension of the permit term beyond 50 years, where the criteria for a major amendment are otherwise met, and where such request for renewal is in accordance with 50 C.F.R. § 13.22.

9.4 Treatment of Changes Resulting from Adaptive Management or Changed Circumstances

Unless explicitly provided in Chapters 7 or 10 of this MSHCP, the need for and type of amendment to deal with Adaptive Management or Changed Circumstances will be determined by the Service, in coordination with NiSource, at the time such responses are triggered.