

11.0 Alternatives to Take

11.1 Introduction

The ESA and the Service’s implementing regulations require that Section 10 permit applicants specify in an HCP what alternatives to the take of take species were considered and the reasons why those alternatives were not selected. The Service has recognized that the common alternatives considered are the no-action alternative and alternatives “that would reduce such take below levels anticipated for the project proposal”. HCP Handbook at p. 3-35. This chapter identifies alternatives considered in the development of the NiSource MSHCP. In addition to the proposed action, NiSource considered the no-action alternative, various configurations for the covered lands corridor, and “all-mandatory-AMMs” alternative. Each of these alternatives and the reasons they were not selected are discussed below.

11.2 No-Action Alternative

Under the No-Action Alternative, the MSHCP would not be implemented and the Service would not issue the requested ITP. As a result, NiSource would continue to address threatened and endangered species issues on a project-by-project basis thus maintaining the current status of ESA consultation and compliance.¹

While NiSource would likely achieve the requisite regulatory compliance, the various Section 7 consultations and Section 10 applications for incidental take permits under the No-Action Alternative would require additional agency and NiSource staff time and more resources than would be required for implementation of this MSHCP and the requested ITP. Moreover, continuation of the project-by-project approach could result in inefficiencies, redundancies, and uncertainty for the Service and NiSource. It could also result in variable application of avoidance, minimization, and compensation measures and adversely affect NiSource’s ability to schedule operation, maintenance, and minor construction activities.

More importantly, the No-Action Alternative’s project-by-project method of ESA compliance would not provide the tools necessary to take the holistic, landscape approach to species conservation that is embodied by this MSHCP. As discussed in Chapter 1, the MSHCP addresses the needs of species and their habitats on a more regional, ecosystem-wide basis, where possible, thus providing significant conservation benefits to such species. Further, the MSHCP envisions that conservation activities will be coordinated and aggregated on a broader geographic scale more consistent with species population levels and focused on achieving species recovery goals. This

¹ It is important to note that NiSource operates its pipeline facilities in accordance with its FERC-issued Certificate of Public Convenience and Necessity and is subject to regulations promulgated by FERC and the Office of Pipeline Safety. NiSource’s certificate and the agencies’ regulations require that NiSource undertake certain operation and maintenance activities on its pipeline facilities. NiSource cannot cease performing these certificated activities without first obtaining an order from the FERC to abandon an operation. Thus, an alternative, whereby NiSource would cease all activities on its existing facilities, is neither feasible nor likely.

landscape-level approach is expected to provide greater benefits to species than the traditional Section 7 approach to ESA regulatory compliance currently used for NiSource's activities. The landscape approach may also benefit other species that utilize the same habitat as species included in this MSHCP.

11.3 Covered Lands Alternatives

Various alternatives for the MSHCP boundaries were examined in order to assess the most environmentally friendly approach that would allow for implementation of optimum landscape conservation practices as well as achieve the necessary flexibility for the NiSource business plan. In the process of deciding to utilize a one-mile-wide corridor, NiSource considered and evaluated the alternatives described below. While two of these covered lands alternatives would result in a smaller footprint of covered lands with less take and fewer species impacts than the MSHCP, they would address fewer of NiSource's annual operation, maintenance, and construction projects. Moreover, even though the alternatives would result in less take and fewer impacts to take species, NiSource still would need to perform the projects and activities necessary to protect the integrity of its pipeline system that historically occur outside these smaller footprints. Consequently, NiSource would be required to seek take authorization from the Service through Section 7 and Section 10 processes prior to engaging in its projects.

11.3.1 Existing Rights-of-Way and Fee-Title Properties Alternative

In this alternative, the MSHCP's covered lands would include only existing rights-of-way (typically 50 feet wide centered on the existing facility), and NiSource's current fee-title properties. Defining the covered lands in this manner would encompass approximately 75% or 300 of NiSource's 400 or so annual operation, maintenance, and construction projects, compared to the 95% or 380 of NiSource's annual projects that would be covered by the MSHCP. Under this alternative, NiSource would request take authorization for approximately 80 fewer annual projects than NiSource engages in on an annual basis, and the covered lands would be approximately 88,765 acres. Thus, the take and impacts to the species associated with this alternative would likely be less than the one-mile-wide corridor proposed in the MSHCP.

While such an alternative might result in less take of and impact to the take species, there are a number of reasons this alternative was not selected. First, as noted above, approximately 25% of NiSource's annual projects (about 100 projects) would not be covered by this alternative. Because these projects, which include additional workspace, additional ROW disturbance, and spoil placement outside the covered lands area, are vital to the operation of NiSource's pipelines, NiSource still would be required to engage in the necessary regulatory processes to receive additional ESA permitting and authorization to perform these projects. Thus, this alternative would not significantly alleviate the substantial administrative burden, time, and costs to NiSource and the Service as almost 100 projects per year would likely require additional ESA-related consultation and/or permitting prior to any construction or maintenance activity. Moreover, when taken together, this alternative and the additional regulatory processes that would occur over time, on a project-by-project basis, would not significantly reduce the take of species or impacts when compared to the MSHCP.

Limiting the covered lands to the existing ROWs also would not always afford necessary areas for spoil stockpile or additional work spaces required for safe and efficient repairs or installation. This alternative would not permit NiSource to utilize any areas adjacent to the ROWs even when the use of such areas would avoid, and thus protect, undisturbed or sensitive environmental and/or archaeological areas within the existing ROWs. In addition, restricting construction activities to the existing ROWs would not provide the space required to safely install new facilities. Under the MSHCP's holistic, landscape approach with comprehensive mitigation, NiSource would be able to achieve and provide more benefits to take species while reducing the significant administrative burden, time, and costs that would result from this alternative. For these reasons, NiSource rejected this alternative.

11.3.2 300-Foot-Wide Corridor Alternative

Under this alternative, the covered lands would extend approximately 150 feet on each side of the centerline of a NiSource pipeline ROW, for a total covered-lands corridor width of approximately 300 feet equivalent to approximately 443,041 acres. This footprint would cover approximately 88% of NiSource's annual projects, i.e., 352 out of 400. The remaining 48 projects per year would require additional workspace or rerouting that would occur outside the 300-foot-wide corridor. The take associated with this alternative would likely be less than the one-mile-wide corridor approach proposed in the MSHCP given that NiSource would request take authorization for approximately 48 fewer projects annually.

A 300-foot-wide total coverage area would afford benefits similar to those of the one-mile-wide corridor because it would encompass more of NiSource's annual projects than the previous alternative. It also would allow NiSource to use some areas outside its existing ROWs to avoid sensitive environmental and/or archaeological areas that are located within the existing ROWs. The remaining 48 or so annual projects that would fall outside the corridor would include, among other projects, miscellaneous facility rearrangements (e.g., relocation of facilities to respond to encroachment by highway, dam, or residential construction, changes in the course of waterbodies, or natural forces that have created a safety concern). These rearrangements would require a separate ROW outside the 300-foot-wide corridor that would disturb an area from 75 to 125 feet wide, depending on circumstances (e.g., severity of slope; soil types; karsts issues; agricultural areas with soil segregation requirements; presence of wetlands; or other terrain difficulties, geographic location, and sensitive areas).

Because the rearrangements are more substantial in terms of environmental and species effects than some of NiSource's other annual projects, the associated administrative burden of individual ESA Section 7 and/or Section 10 compliance for them would be greater and more time-consuming than other projects. This alternative and its non-inclusion of the 48 annual projects, many of which are rearrangements, would not reduce NiSource and the Service's annual administrative burden to the same extent as would the MSHCP's one-mile-wide corridor, which would cover rearrangements. In addition, the 300-foot-wide corridor would not provide NiSource as much opportunity to avoid sensitive resources when siting projects as would occur under the MSHCP. Finally, like the No-Action Alternative and the previous alternative, the 300-foot-wide corridor alternative would not provide the holistic,

landscape-level approach to species conservation proposed in the MSHCP because more of NiSource's annual projects would be handled on a project-by-project, piecemeal basis. Due to these considerations, NiSource rejected this alternative.

11.3.3 Corridor Greater Than One Mile Alternative

NiSource considered a covered area greater than the proposed one-mile corridor to cover all of its annual operation, maintenance, and construction projects. This alternative, which would have encompassed all of NiSource's 400 or so annual projects, would have resulted in a greater level of take and impacts than the proposed MSHCP. Because NiSource could not reasonably foresee how much additional space would be required to accommodate all of its future activities (e.g., large capital projects to new service areas), it found this alternative unreasonable and speculative. In addition, the sheer magnitude of expanding the covered area further would greatly diminish NiSource and the Service's ability to reasonably analyze and evaluate take of and impacts to listed species as well as the impacts such alternative would have on the human and physical environment. Moreover, in light of the uncertainties and inherent difficulties of such an alternative, it would have been unlikely that the Service would have issued an ITP on such an application. Thus, NiSource rejected this alternative as well as any alternative that would have involved a covered-lands corridor wider than the proposed one mile.

11.4 All AMMs Alternative

Because NiSource has designed the MSHCP to avoid and minimize impacts to, and thus proposed take of, the take species to the maximum extent practicable, the opportunities for reducing take further, aside from reconfiguring the covered lands, are limited. However, one alternative that would reduce the amount of take anticipated in the MSHCP is implementation of each of the AMMs.

Under the MSHCP, and as further described in Chapter 6, NiSource has committed to implementing numerous AMMs whenever they are applicable (mandatory AMMs) and an additional limited number of AMMs (non-mandatory AMMs) based on the requirements of the covered activity, which include consideration of customer and business needs, practicality, and effectiveness. Under this alternative, NiSource would be required to implement all AMMs identified in Chapter 6, whenever applicable, regardless of these considerations.

This all-mandatory-AMMs alternative was rejected because mandatory implementation of every AMM, where applicable, would not be practicable. As described in detail in Section 5.2.1, there are a variety of reasons that would prohibit or make it impractical for NiSource to implement the non-mandatory AMMs. For example, in some circumstances, required implementation of certain non-mandatory AMMs for all applicable covered activities would be impractical, such as those AMMs that require intensive surveys. For other non-mandatory AMMs, required implementation would not be feasible due to technology constraints, such as the practical limits of horizontal directional drilling under waterbodies. Other non-mandatory AMMs, such as construction-timing windows or in-place abandonment of pipe to avoid stream disturbance, cannot be implemented whenever applicable because

they are, at times, inconsistent with NiSource's business constraints and other regulatory requirements, such as those imposed by FERC or PHMSA. Furthermore, certain AMMs may be physically impossible to implement in certain circumstances, such as use of a lay barge or temporary work bridge for in-stream repair work. For these reasons, NiSource rejected this alternative.