
Final Environmental Assessment

FINDING OF NO SIGNIFICANT IMPACT

NiSource Inc.
Revised Multi-Species
Habitat Conservation Plan

Application for an Amendment to
NiSource's Incidental Take Permit

April, 2015

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1 Introduction

This Finding of No Significant Impact (FONSI) addresses the requested amendment to NiSource Inc.'s Incidental Take Permit (ITP), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA), as amended. In accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. § 4321 et seq.) and its implementing regulations (40 Code of Federal Regulations (CFR) Parts 1500-1508), and the U.S. Department of the Interior's NEPA Procedures (43 CFR Part 46), we, the U.S. Fish and Wildlife Service (Service) prepared an Environmental Assessment (EA) that analyzed the potential impacts associated with amending NiSource Inc.'s ITP to include the northern long-eared bat (*Myotis septentrionalis*)(NLEB). The EA is incorporated by reference into this FONSI.

NiSource Inc. is engaged in natural gas transmission, storage, and distribution across the eastern United States. On September 13, 2013, NiSource Inc. was issued an ITP from the Service for 10 federally listed species that occur in portions of their operating territory. The ITP allows NiSource to incidentally take these species while operating and maintaining its interstate natural gas pipeline infrastructure. After issuance of the ITP, the Service proposed listing the NLEB under the ESA. The NLEB was not included in the original NiSource MSHCP. The ITP amendment would add the NLEB to the NiSource Inc. ITP. No other changes to the original ITP are requested. NLEB take will be incidental to otherwise lawful operational activities described in the MSHCP. NiSource's existing permit has a 50 year term, expiring on December 31, 2064.

The EA and revised MSHCP evaluate potential impacts of the incidental take on the NLEB and how these impacts will be avoided, minimized, and mitigated by NiSource Inc. ITPs may be issued only in compliance with Section 10 of the ESA. This means that to consider ITP issuance, we must determine if the take is compatible with the issuance criteria included in the ESA (Section 10(a)(1)(B)) and its implementing regulations (50 CFR parts 17 and 222).

The EA evaluated three alternatives, based on their ability to meet our purpose and need, and the associated impacts to the human environment. Upon review of the EA, the Service concludes that a FONSI is appropriate. Following review and analysis, the Service has chosen to amend NiSource's existing ITP to include the NLEB, as described under our Preferred Alternative, which is Alternative 3 in the EA.

2 Background

Activities addressed in the NiSource MSHCP are those necessary for the safe and efficient operation of its inter-state natural gas pipeline system. The Covered Activities include: (1) operation and maintenance; and (2) construction and expansion. The Covered Lands include a one-mile wide corridor centered upon a majority of NiSource's existing interstate natural gas transmission system in 14 states (Louisiana, Mississippi, Tennessee, Kentucky, Virginia, West Virginia, North Carolina, Indiana, Ohio, Pennsylvania, New York, New Jersey, Delaware and Maryland) for approximately 15,562 miles. In addition to the designated one-mile corridor, the ITP and associated MSHCP cover 12 counties in Ohio, Pennsylvania, Maryland, and West

Virginia collectively, where NiSource operates some of its underground natural gas storage fields. NLEBs are found in each of the 14 states associated with the NiSource Covered Land.

Based on the analysis in the revised MSHCP, certain NiSource activities (e.g., right-of-way maintenance, facility inspection, upgrade and replacement of pipelines, relocations, routine expansions, and waste pit operation) have the potential to impact the NLEB. The primary form of take of each of the NLEB anticipated under the revised MSHCP is harm and harassment resulting from the disturbance or change in habitat type from operation and maintenance activities along NiSource Inc. pipeline rights-of way. Some limited NLEB mortality is also expected when occupied trees are cleared and waste pits are operated during the NLEB active season. The revised NiSource HCP includes over 40 conservation measures that NiSource will implement to avoid and minimize potential impacts to NLEBs. For take that cannot be avoided, NiSource Inc. will fully compensate for all impacts of the take. Mitigation will include protection and long-term management (fee title or easement) of maternity colony habitat, and hibernacula and associated habitat.

The NLEB was listed as threatened on April 2, 2015. The Service also established an interim rule under the authority of section 4(d) of the ESA. For areas of the country affected by white-nose syndrome (WNS), the measures provided in the interim 4(d) rule exempt take resulting from forest management practices, maintenance and limited expansion of transportation and utility rights-of-way (ROW), removal of trees and brush to maintain prairie habitat, and limited tree-removal projects, provided these activities protect known maternity roosts and hibernation caves. The interim 4(d) rule also exempts take resulting from removal of hazardous trees, removal of northern long-eared bats from human dwellings, and research-related activities. In areas not yet affected by WNS, all incidental take resulting from any otherwise lawful activity is excepted from prohibition. The NLEB listing and interim 4(d) rule go into effect on May 4, 2015.

Several NiSource activities (e.g., rights-of-way maintenance; upgrade and replacement of pipelines; relocations; and routine expansions) addressed in the revised MSHCP, and for which incidental take of the NLEB is requested, could be excepted by the interim 4(d) rule provided certain conservation measures are met. NiSource Inc. elected to revise the MSHCP and apply for the ITP amendment due to uncertainty in the listing decision and the 4(d) rule. In addition, the interim 4(d) rule does not alter in any way the ESA's section 7 procedural requirements, and additional section 7 consultation would be required for all NiSource Inc. activities with a federal nexus that may affect the NLEB. Therefore, the revised MSHCP, amended ITP, and BO cover all NiSource activities that may affect the NLEB, and does not distinguish take that is already excepted by the interim 4(d) rule.

3 Alternatives Considered

As referenced in the CEQ NEPA regulations regarding the contents of an EA (40 CFR § 1508.9[b]), NEPA section 102(2)(E) requires federal agencies to develop, study, and briefly describe alternatives to any proposed action with the potential to result in unresolved resource conflicts. The EA considers the Applicant's Proposed Federal Action, a no-action alternative,

and two action alternatives. The following is a brief description of the alternatives considered. For a complete description of alternatives, see EA Chapter 2.

3.1 Alternative 1 – No Action (Status Quo)

Under the No Action Alternative, issuance of an amended ITP to include the NLEB and approval of the revised NiSource Inc. MSHCP would not occur. However, all of the Covered Activities within the MSHCP would continue to be implemented by NiSource Inc. within the Covered Land. NiSource compliance with the ESA for the NLEB would occur through informal and formal consultation with the Service under Section 7(a)(2) of the ESA. NiSource would still be subject to full liability under Section 9 of the ESA, unless any future take of NLEB were authorized through formal ESA consultation with the federal action agency (primarily FERC) and the Service or any take was excepted through the special 4(d) rule for the NLEB. The conservation measures that NiSource would follow as part of the ESA Section 7(a)(2) process should be similar to Alternatives 2 and 3, but the compensatory mitigation for the NLEB would not occur.

3.2 Alternative 2 – Amend the NiSource ITP to include the NLEB and Approve the Revised NiSource MSHCP

Under Alternative 2, the Service would add the NLEB to the NiSource Inc. ITP and approve the revised NiSource Inc. MSHCP. NLEB take under this alternative would be nearly identical to Alternatives 1 and 3. NiSource would also apply similar conservation measures as under Alternatives 1 and 3. All NLEB take would be mitigated in Alternatives 2 and 3, but not in Alternative 1. Under Alternative 2, NiSource would forgo No Surprises Assurances after Year 25 of the permit until NiSource Inc. and the Service conduct a review of the MSHCPs conservation program to determine if any changes/updates are needed. Following the 25-year review and any necessary amendments or changes (if applicable), NiSource Inc. will be afforded “No Surprises” assurances for the remainder of its ITP term. Under both Alternatives 2 and 3, should NiSource decide to align its MSHCP and ITP with the interim or future final 4(d) rule for the NLEB, NiSource Inc. would need to request a new amendment from the Service in the future.

3.3 Alternative 3 – Amend the NiSource ITP to include the NLEB and Approve the Revised NiSource MSHCP (with special conditions) (Service preferred alternative)

Under Alternative 3, the Service would add the NLEB to the NiSource Inc. ITP. This Alternative involves the same issuance, approval, and acceptance criteria as in Alternative 2, except it initially provides No Surprises Assurances only for the first 5 years after the ITP is amended. At the end of the 5 year period, NiSource Inc. and the Service will conduct a review of the NLEB amendment to determine if any changes are needed to the NLEB portions of the MSHCP including but not limited to the avoidance and minimization measures (AMMs), take analysis, impact of the take, mitigation, monitoring, or adaptive management. Following the NLEB 5-year review and any necessary amendments or changes (if applicable), NiSource Inc. will be afforded “No Surprises” assurances for the NLEB until “No Surprises” is removed for the entire permit at the 25th year of the permit term. Under both Alternatives 2 and 3, should NiSource decide to

align its MSHCP and ITP with the interim or future final 4(d) rule for the NLEB, NiSource Inc. would need to request a new amendment from the Service in the future.

4 Effects of Implementation

The EA evaluated potential impacts that could result from amending the ITP based on the revised MSHCP or alternatives. The EA assisted us in evaluating effects on the human environment and in assessing the significance of the impacts that could result from the alternatives. “Significantly” under NEPA requires consideration of both the context and intensity of short- and long-term effects of the proposal (40 CFR § 1508.27).

A basic tenet of the Service’s Proposed Action is the Service does not authorize the NiSource Inc. activities that may cause take of NLEBs. Rather, an ITP issued by the Service authorizes the take that may occur incidental to NiSource Inc. activities. NiSource Inc. activities are authorized by a number of federal agencies, and as a result, have undone extensive NEPA analysis. The scope of the analysis in this EA therefore covered the direct, indirect, and cumulative effects (i.e., impacts) of the proposed incidental take, and the mitigation and minimization measures proposed from implementation of the MSHCP.

Implementing the Preferred Alternative would have not significant impacts on any of the environmental resources identified in the EA, including the NLEB. Approval of the revised NiSource MSHCP will not significantly contribute to loss or adverse impacts to physical resources, fish and wildlife resources, or social and/or economic resources, nor are they considered to create separate, additive cumulative effects to any of these resources beyond that which already exists with the Covered Land. The Preferred Alternative is consistent with our purpose and need as stated in the EA.

The revised MSHCP and amended ITP are anticipated to have short-term adverse effects to the NLEB. NiSource Inc. has requested that the Service add the NLEB to their existing ITP and provide incidental take coverage for no more than 93,500 acres of summer and/or spring staging/fall swarming habitat that could support up to 4,618 NLEB individuals. NiSource Inc. has included over 40 conservation measures that will be implemented to avoid, minimize, and mitigate potential impacts to NLEBs. Any take that will occur as a result of the ITP will be fully mitigated through habitat protection and/or habitat restoration. The death, harm, and harassment of NLEBs from tree clearing activities and waste pit operation is likely to affect individual NLEBs, but the Service does not anticipate that these effects will result in population-level effects given the relatively small amount of NLEBs that may be killed in a felled tree and the small scale, low frequency, and dispersed nature in which these effects are expected to occur.

5 Public Involvement

5.1 Release of the Draft EA and Revised MSHCP

On March 20, 2015, we published a Notice of Availability in the Federal Register announcing the receipt of NiSource’s application to amend their ITP, and indicating that the EA and revised MSHCP would be available for public review and comment for 30 days. The Service offered

links to both documents on our website. We provided these links to elected officials, federal agencies, tribes, and state, county, and local offices. We also sent “Dear Interested Party” letters to assure that those who had expressed interest in the original MSHCP were informed of NiSource’s application to amend the ITP to include the NLEB.

5.2 Public Comments

In response to the 30-day public comment period, the Service received one comment letter from an individual who expressed general concern with issuing ITPs to industry (see Appendix A). No changes to the revised MSHCP and EA were necessary to address this comment.

6 Changes Made to the EA

Since the release of the draft EA, the Service listed the NLEB as threatened. The EA now reflects this revised status in several places. We also corrected a discrepancy in the headings of the alternatives.

7 Service Finding

Following the public review, and consideration of the comments received, the Service has selected its Preferred Alternative (Alternative 3). We believe this alternative fulfills our statutory mission and responsibilities, and meets the needs of the applicant with respect to needing incidental take to carry-out their otherwise lawful activities. The selection of Alternative 3 is driven by our wildlife conservation mission, priorities, and statutory responsibilities to conserve the NLEB, while giving consideration to economic, environmental, technical, and other factors. We believe NiSource has included all practicable means to avoid or minimize environmental harm from the selected alternative. We base this decision on information taken from:

1. agency and public comments on the draft EA and draft revised MSHCP;
2. the alternatives and their potential environmental consequences discussed in the EA;
3. the revised MSHCP;
4. the Service’s Biological Opinion; and
5. the Service’s Statement of Findings.

8 Conclusion

Therefore, it is my decision to issue an ITP conditioned upon implementation of the revised MSHCP, as submitted by the Applicant, together with other measures specified by the Service.

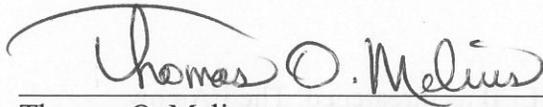
The proposed revised MSHCP meets the statutory and regulatory criteria for issuance of a Section 10(a)(1)(B) permit, and meets the Applicant’s need to operate and maintain its interstate natural gas pipeline infrastructure while complying with the ESA.

The revised MSHCP provides an extensive set of conservation measures that minimize take and mitigate for the impact of unavoidable incidental take of NLEBs to the maximum extent

practicable during the 50-year term of the ITP. The revised MSHCP also includes monitoring, reporting, and an adaptive management strategy to facilitate limiting the take of the NLEB.

The ITP will include enforceable permit terms and conditions requiring implementation of the avoidance, minimization, and mitigation measures, funding assurances, reporting requirements, and other measures specified by the Service.

Signature:



Thomas O. Melius
Regional Director
U.S. Fish and Wildlife Service, Region 3

May 1, 2015
Date

Appendix A – Public Comments

Comment:

From: Jean Public jeanpublic1@yahoo.com

Date: Sat, Mar 21, 2015 at 6:46 PM

Subject: Fw: public comment on federal register

To: "permitsR3ES@fws.gov" <permitsR3ES@fws.gov>, "vicepresident@whitehouse.gov" <vicepresident@whitehouse.gov>, "info@earthjustice.org" <info@earthjustice.org>, "info@pewtrusts.org" <info@pewtrusts.org>, "humanelines@hsus.org" <humanelines@hsus.org>, "info@peta.org" <info@peta.org>, "info@idausa.org" <info@idausa.org>

no permit for increased killing of any species should be given to this profiteer. its time for the profiteers to be stopped from all the contamination and killing they bring with them. i am opposed to any further exceptions to kill to be given to this profiteers. nobody in america needs this assault on nature. the assault on nature will kill us all and it is getting to that point in hazardous living in america. the profiteers need to be stopped. this comment is for the public record. please make sure i am on the list for any future actions in this killing plan. please receipt.
jeanpublic1@yahoo.com