

December 2020

USFWS Decides Listing is Warranted but Precluded

On December 15, 2020, the U.S. Fish and Wildlife Service (USFWS) announced their decision that listing the monarch butterfly under the Endangered Species Act is “warranted but precluded”. We know that many energy companies and transportation agencies are interested in what this decision means and its effect on the *Nationwide Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportation Lands* (Monarch CCAA), and so we have prepared this overview.

Does this mean that the monarch butterfly meets the definition of an endangered or threatened species?

Yes. A warranted finding means that USFWS has determined that the butterfly meets the definition of a threatened or endangered species, but the agency lacks the resources to take further action to list the species (i.e., insufficient funding and/or personnel to devote to a listing proposal). Although the agency states that it does not currently have the funding or personnel to complete the listing decision, monarchs still face many threats, particularly in the West where recent reports suggest the population continues to decline from already historic lows. We expect many interested in monarch conservation will be reviewing the USFWS’s Species Status Assessment in light of this decision. As with many other listing proposals and decisions, there is an extremely strong likelihood that the decision will be challenged.

Does this mean that there is no longer a risk of monarch-related regulatory requirements for my company?

No. The USFWS determination of “warranted but precluded” means that the species warrants listing under the Endangered Species Act, but that the USFWS is required to address other, higher priority listing decisions first and will not issue a proposed rule to list the monarch until 2024. Until then, USFWS will continue evaluating the need for listing the species on an annual basis. “Warranted but precluded” determinations require USFWS to review those determinations in each successive year until either a proposed listing rule is published or a “not warranted” finding is made. Although USFWS has stated a 2024 timeframe for the monarch, the agency under the Biden Administration could choose to make significant progress on its listing backlog and, hence, expedite the listing of the monarch.

In addition, we believe there is a high probability that this decision will be legally challenged. If litigated, USFWS could be ordered to prioritize publication of proposed listing rule before 2024. If such a scenario occurs, any Partners already enrolled in the CCAA are protected against any uncertainty or swift regulatory actions that may occur following such a decision. The CCAA provides insurance against added costs and delays that would occur under this scenario.

Since USFWS decided a monarch listing is “warranted but precluded,” should my company or agency delay enrolling in the CCAA?

The CCAA is more important now than ever. By enrolling now, CCAA Partners implement actions that could help save monarchs, potentially contribute to a “not warranted” determination, and provide certainty to their business operations. Further, the fact that USFWS determined that the monarch warrants listing means that the species is in trouble. Unless the species’ status improves considerably in the next few years, a future listing is assured. While the USFWS finalizes their determination, benefits of enrolling include:

- Contributing conservation to inform the final listing determination. By participating in the CCAA, your conservation efforts can be weighed into the USFWS’s annual review of their determination in FY22 and FY23, unless a court intervenes and shortens that timeline.

- Demonstrating your commitment. CCAAs are voluntary conservation agreements focused on implementing measures to benefit a species at risk. Your enrollment demonstrates a commitment to helping a species in need, which can be shared with people that find your conservation commitments important.
- Avoiding risk. If the USFWS's decision is challenged, there will be added uncertainty and potentially a reversal of this decision. Enrolling will help companies and agencies avoid costly delays and last-minute disruptions, which avoids added risk and costs.
- Having predictability. The CCAA and its accompanying permit give assurances that no additional regulatory requirements will be imposed by the USFWS beyond the terms in the agreement. Having such predictability means that your organization has no 'surprises' from the USFWS.
- Supporting similar efforts. UIC is currently evaluating how to leverage the existing CCAA to create similar agreements for other candidate, or currently-listed, species. Your support of the CCAA ensures that these complementary efforts can be realized.
- Minimal cost. Enrolling and participating in the CCAA is a low-cost way of addressing this conservation need, while providing the other benefits described here.

For More Information:

U.S. Fish & Wildlife Service's webpage for more information about the monarch butterfly listing determination:
<https://www.fws.gov/savethemonarch/SSA.html>

Rights-of-Way as Habitat Working Group's webpage for more information about the Monarch CCAA:
<http://rightofway.erc.uic.edu/national-monarch-ccaa/>

U.S. Fish & Wildlife Service's webpage for more information about the Monarch CCAA:
<https://www.fws.gov/savethemonarch/ccaa.html>