



Guidance

Addressing the Monarch Butterfly in a TxDOT Species Analysis

The monarch butterfly (*Danaus plexippus*) is a candidate species for listing under the Endangered Species Act (ESA), with a listing decision currently anticipated for FY 2024. Monarchs may be found statewide. Adults are found in a variety of habitats including native prairies, pastures, open woodlands and savannas, desert scrub, roadsides, and other habitats with abundant nectar plants, including urbanized areas. Although adults may be present year-round, they are primarily encountered between March and November, and are most commonly observed in the spring, summer, and fall during breeding and migration. Caterpillars are found on various species of the family Asclepiadaceae (occasionally treated as a subfamily of Apocynaceae). Common host plants in Texas include milkweeds (*Asclepias* spp.), milkweed vines (*Matelea* spp.), climbing milkweeds (*Funastrum* spp.), swallowworts (*Cynanchum* spp.), and Anglepod (*Gonolobus suberosus*). Caterpillars are most frequently observed between April and September.

TxDOT is a Partner participant in the Nationwide Candidate Conservation Agreement with Assurances (CCAA)/Candidate Conservation Agreement (CCA) for Monarch Butterfly on Energy and Transportation Lands (Agreement). The Agreement applies to activities that occur within existing TxDOT right-of-way (ROW) (enrolled lands) and includes maintenance and modernization of associated infrastructure. The following types of activities **are covered** by the agreement:

- Maintenance – Work on TxDOT ROW (enrolled lands) that is planned and performed on a routine basis to maintain and preserve the existing transportation system, or to respond to specific conditions and events that restore the systems to an adequate level of service. Examples are culvert repairs and replacements, repair and replacement of metal beam guard fence, bridge maintenance and repairs, ditch maintenance, mowing, tree trimming, brush removal, etc.
- Modernization – Construction and other land disturbing activities involving the repair, replacement, and upgrading of existing infrastructure on existing enrolled lands. Examples include roadway rebuilds, minor widenings, the addition of passing lanes, bridge replacements, signal and intersection improvements, installation of safety end treatments, etc.

The Agreement may also apply if minor ROW acquisition is associated with the activities listed above. These situations should be evaluated on a case by case basis with input from an Environmental Affairs Division, Natural Resources Management (ENV NRM) Biologist.

If the monarch is listed as endangered or threatened, incidental take resulting from the implementation of activities covered by the Agreement would be authorized by an ESA section 10 Permit associated with the Agreement. The permit would become effective upon the effective date of any final rule listing the monarch as endangered or threatened under the ESA.

General guidance and recommended language for addressing the Monarch in a TxDOT species analysis spreadsheet are provided below:

If the project would not involve ground disturbing or vegetation clearing activities, and/or all activities and staging areas would be entirely confined to existing infrastructure, “no effect” (for a project with a federal nexus) or “no take” (for a project with no federal nexus) can be selected in the “Effect/Take Determination for Federally Listed Species” column. In the “Explanation for Effect/Take and/or Impact Determination” incorporate the following text: *The project would not involve any ground disturbing or vegetation clearing activities, and would not pose a threat to any life cycle stage.*

If the project does not qualify for a “no effect” or “no take” determination as instructed above, but would consist entirely of maintenance or modernization activities as defined earlier, then proceed as instructed below, depending on whether or the project has a federal nexus:



- If the project consists of maintenance or modernization activities and is 100% state-funded and does not include a federal nexus (e.g., U.S. Army Corps of Engineers Permit), then select “Take” in the “Effect/Take Determination for Federally Listed Species” column. In the “Explanation for Effect/Take and/or Impact Determination” column incorporate, the following text: *The monarch butterfly is a candidate species, and no consultation with USFWS is required at this time. TxDOT is a partner in the Nationwide Candidate Conservation Agreement with Assurances/Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportation Lands (Agreement). The Agreement authorizes incidental take for all activities included in the proposed project should the monarch butterfly be listed as endangered or threatened.*
- If the project consists of maintenance or modernization activities and is wholly or partially funded with federal moneys and/or includes a separate federal nexus, then select “may affect” in the “Effect/Take Determination for Federally Listed Species” column. In the “Explanation for Effect/Take and/or Impact Determination” column, incorporate following text: *The monarch butterfly is a candidate species, and no consultation with USFWS is required at this time. TxDOT is a partner in the Nationwide Candidate Conservation Agreement with Assurances/Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportation Lands (Agreement). The Agreement authorizes incidental take for all activities included in the proposed project should the monarch butterfly be listed as endangered or threatened.*
- If the project requires minor ROW acquisition, the Agreement may still apply. Contact your ENV NRM Biologist to discuss prior to completing the species analysis spreadsheet.

If the project does not qualify for a “no effect” or “no take” determination as instructed above, and does not consist entirely of maintenance or modernization activities as defined earlier, then proceed as instructed below, depending on whether project activities will be completed prior to FY 2024:

- If project activities will be completed prior to FY 2024, “May effect” or “take” should be selected from the “Effect/Take Determination for Federally Listed Species” column. In the “Explanation for Effect/Take and/or Impact Determination” column, incorporate the following text: *This project may affect the monarch butterfly; however, this project is anticipated to be completed prior to the species being listed and consultation is not required for candidate species. The USFWS intends to propose listing the monarch in Fiscal Year 2024. If the monarch butterfly is proposed for listing during the life of this project, the impacts to monarch butterflies will be reevaluated to determine the appropriate course of action, which may include conference or consultation with USFWS.*
- If project activities will not be completed prior to FY 2024, “May effect” or “take” should be selected from the “Effect/Take Determination for Federally Listed Species” column. In the “Explanation for Effect/Take and/or Impact Determination” column, incorporate the following text: *The project may affect the monarch butterfly; however, the monarch is currently a candidate species and no consultation with USFWS is required at this time. As construction activities for this project are not anticipated to be completed prior to Fiscal Year 2024, when a listing decision for the species is anticipated, additional coordination may be required. The project should be reevaluated at that time to determine if further action is required if the species becomes proposed for federal listing.*

The check box for “This project does not require consultation with or authorization from the USFWS under the Endangered Species Act” should be selected on the species analysis form for all projects where the monarch butterfly is the only species where a “may effect” determination has been made.



Appendix A: Revision History

The following table shows the revision history for this instruction document.

Revision History	
Effective Date Month, Year	Reason for and Description of Change
April 2022	Version 2 was released. Updates guidance for projects that will not be completed prior to FY 2024.
July 2021	Version 1 was released.