RECORD OF DECISION

Proposed Issuance of a Section 10(a)(1)(B)

Incidental Take Permit to

NiSource Inc.

U.S. Fish and Wildlife Service

September 13, 2013

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I. Introduction

In late 2005, NiSource Gas Transmission and Storage (Applicant) contacted the U.S. Fish and Wildlife Service (Service) to discuss options for obtaining Endangered Species Act (ESA) compliance under Section 10(a)(1)(B) of the ESA for their natural gas transmission and storage activities (hereafter "Covered Activities"). On July 16, 2009, NiSource formally filed an application with the Service for a Section 10(a)(1)(B) Incidental Take Permit (ITP) for 10 ESA listed species that occur in portions of their 14-state operating territory (hereafter "Covered Land"). Those species include: Indiana bat (*Myotis sodalis*), bog turtle (*Glyptemys muhlenbergii*), Madison Cave isopod (*Antrolana lira*), clubshell mussel (*Pleurobema clava*), northern riffleshell mussel (*Epioblasma torulosa rangiana*), fanshell mussel (*Cyprogenia stegaria*), James spinymussel (*Pleurobema collina*), sheepnose mussel (*Plethobasus cyphyus*), Nashville crayfish (*Orconectes shoupi*), and the American burying beetle (*Nicrophorus americanus*).

The purpose of ITP issuance to NiSource is to comply with the ESA by providing protection and conservation of listed species while enabling NiSource to conduct legally authorized activities associated with (1) construction and expansion; (2) general operation and maintenance activities that do not require significant earth disturbance; and (3) safety-related repairs, replacements, and maintenance. Issuance of the ITP would require implementation of their Multi-Species Habitat Conservation Plan (MSHCP).

The NiSource MSHCP includes 42 species; however, only 10 of those species (listed above) will be incidentally taken as a result of NiSource's activities. The remaining species in the MSHCP fit into one of two categories. Either the species has been determined to be outside of the Covered Land (i.e., "no effect") or they are subject to implementation of certain conservation measures that, when implemented, will avoid adverse effects ("not likely to adversely affect"). NiSource requested as part of its application that the Service concur with those determinations in its Biological Opinion (BO) and associated Statement of Findings (SOF) document.

The decision whether to issue an ITP to NiSource is based upon the statutory and regulatory criteria of the ESA, which is summarized below and detailed in Section 1.6.1 of the EIS. In applying these criteria, the Service has analyzed the effect of proposed Covered Activities on species within the NiSource Covered Land; the proposed conservation measures designed to avoid, minimize, and

mitigate impacts; the proposed permit duration; the adaptive management strategy; and other issuance criteria. These determinations are documented in our SOF and in the Intra/Inter-Service ESA Section 7 consultation and resulting BO.

Issuance of an ITP by the Service to NiSource is a federal action that may affect the quality of the human environment, and therefore subject to review under the National Environmental Policy Act (NEPA). To comply with NEPA, the Service prepared an Environmental Impact Statement (EIS). The primary purpose of the EIS was to analyze and disclose potential impacts that could result from issuance of an ITP to NiSource, and through subsequent implementation of their MSHCP (Proposed Action). The Federal Energy Regulatory Commission (FERC), the U.S. Army Corps of Engineers (USACE), the U.S. Department of Agriculture (USDA) Forest Service (USFS) Eastern Region and Southern Region, and the National Park Service (NPS) Southeast Region served as cooperating agencies on the preparation of the EIS.

This Record of Decision (ROD) was prepared to:

- document the Service's decision with regard to three alternatives associated with the Proposed Action, including a “No Action” alternative;
- identify the alternatives considered in reaching the decision, including an environmentally preferred alternative; and
- state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not.

II. The Decision

The Service has selected Alternative 2, as described in the final EIS and summarized below. Under this alternative, the Service would approve the NiSource MSHCP, associated IA, and issue NiSource an ITP pursuant to Section 10(a)(1)(B) of the Act. The Service reached this decision based on the following:

- The final MSHCP meets statutory and regulatory criteria for issuance an ITP under the ESA. These are contained in Section 10(a)(2)(B) of the ESA, and at 50 CFR 17.22(b)(2)/17.32(b)(2).

They include:

1) All taking of federally-listed fish and wildlife species must be incidental to otherwise lawful activities;

2) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

3) The applicant will ensure that adequate funding for the HCP and procedures to deal with changed circumstances, including adequate funding to address such changes, will be provided;

4) The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild;

5) The applicant will ensure that other measures that the Service may require as being necessary or appropriate will be provided; and

6) The Service has received such other assurances as may be required that the HCP will be implemented.

- The Service determined that the take requested by NiSource would be incidental to, and not the purpose of, NiSource Covered Activities.

- The final MSHCP provides conservation measures that will avoid, minimize and mitigate impacts associated with take of species and habitat. Where take cannot be avoided, NiSource will minimize and mitigate the impacts of take to the maximum extent practicable. In the case of mitigation, NiSource has will fully compensate for impacts associated with take. Further, under Alternative 2, conservation measures aimed at avoiding, minimizing, and mitigating take of listed species will also avoid and minimize impacts to a variety of physical and biological resources in the Affected Environment (e.g., water quality, resident fish and wildlife, migratory birds), and in some cases, may produce a net conservation benefit (e.g., long-term protection and management of forest habitat; riparian restorations for improving water quality). The Service believes that NiSource has adopted all practicable means to avoid, minimize, and mitigate take, and adverse effects (harm) to the Affected Environment.

- Annual funding for MSHCP implementation will be primarily through NiSource's operating budget. Funding for mitigation, changed circumstances, and adaptive management will be assured through two Trust Funds developed and administered by the National Fish and Wildlife Foundation. Additional funding assurances will be through NiSource's Credit Facility (see MSHCP Section 8.4.2). As of September 30, 2012, NiSource had $1.439 billion of credit available through their credit facility.

- Working with the Service, NiSource identified, planned for, and assured funding for a number of potential circumstances that could arise over the 50-year duration of the ITP, and potentially impact the MSHCP's operating conservation program. They include: (1) Climate Change; (2) Droughts; (3) Floods; (4) Fires; (5) Tornados; (6) Disease; (7) Invasive Species; (8) Species Range Expansion/Contraction; and (9) Species Listing/Delisting. A description of each circumstance, including triggers and responses, are found in Chapter 10 of the MSHCP.

- The final MSHCP provides a comprehensive monitoring, reporting, and adaptive management strategy that will minimize uncertainty and risk to species. This includes prior notification of activities potentially impacting species, annual meetings, and a feedback process for continuously improving implementation of the MSHCP during the permit term.

  Prior notification will include notifying the Service about projects that will be carried out in the vicinity of listed species or their habitat.

  NiSource has committed to meet with the Service and other stakeholders as-needed during the first year of MSHCP implementation; at least annually until the fifth year of implementation; and at least every five years thereafter (unless the Service determines that more frequent meetings are needed), to ensure the MSHCP's conservation program is meeting its stated goals and objectives. NiSource's responsibilities for integrating monitoring and adaptive management programs into the MSHCP include: (1) gathering comprehensive monitoring data on the effectiveness of AMMs and mitigation; (2) assessing results; (3) implementing changes to the MSHCP, permit, and IA pursuant to Chapter 9, if needed, and (4) monitoring and evaluating the implementation and effectiveness of adaptive management strategies.

Further, to help ensure the success of the MSHCP's conservation program, for the first five years after ITP issuance, both the Service and NiSource will dedicate a project manager to oversee implementation of the MSHCP.

- The final MSHCP provides commitments and procedures for on-going amendments to the MSHCP and ITP, including a waiver of No Surprises Assurances at year 25 of the permit term, to ensure that implementation of the MSHCP is consistent with conservation needs of listed species. If needed, the MSHCP will be amended at that time to incorporate any additional commitments and/or needed restrictions.

- Since implementation of Alternative 2 would result in incidental take under the ESA, the Service prepared a BO prior to approving the MSHCP. The BO concludes that the Proposed Action of issuing NiSource an ITP for 50-years does not pose a significant risk to the viability of potentially affected species, and will not appreciably reduce the likelihood of both the survival and recovery of the species. Those findings are summarized below.

Indiana Bat

We expect that the overall level of take of Indiana bats will be relatively low, and not result in significant population-level impacts. The Service reached this conclusion based on: 1) take of Indiana bats in winter hibernacula is not anticipated; 2) take of winter habitat is not anticipated; 3) take of immobile Indiana bats (i.e., pups) (i.e., within known and suitable summer habitat) is not anticipated; and 4) no direct take is anticipated to occur in known summer maternity habitat and known spring staging/fall swarming habitat of Priority 1 and 2 hibernacula.

NiSource has also proposed mitigation for their impacts to Indiana bats in the MSHCP. The mitigation package includes: the purchase (i.e., fee title or easement) and protection (i.e., gating) of either 126 or 252 acres surrounding one or two P1 or P2 hibernacula and the protection (i.e., fee title or easement) of between 8,907 and 10,960 acres of known maternity colony habitat. The protection of hibernaculum also includes the development and implementation of a Hibernaculum Protection Plan to address threats (e.g., gating). We believe this type and amount of mitigation will fully compensate for the impact of the take from NiSource's Covered Activities on populations within the covered lands. We conclude that the Proposed Action of issuing NiSource an ITP for 50-years does not pose a significant

risk to the viability of the Indiana bat, and will not result in measurable population declines or losses in the Covered Land. Because we do not expect the impacts to have population-level effects, we do not expect that the Proposed Action will appreciably reduce the likelihood of both the survival and recovery of the species as a whole. Therefore, we conclude that the Proposed Action is not likely to jeopardize the continued existence of the species.

Bog Turtle

We expect that the overall level of take of bog turtles will be relatively low. In addition, NiSource vegetation management activities are expected to result in beneficial effects to bog turtles. However, there is the potential for population-level impacts at small bog turtle sites from ground-disturbing activities. NiSource has proposed mitigation for their impacts to bog turtle in the form of permanent protection and management of 25 bog turtle sites; which include off-ROW restoration and management of 5 sites; and permanent protection and management of 20 bog turtle sites. The mitigation will contribute to the conservation needs of the species, and offset any losses that could occur. Potential impacts to bog turtles are spread across three recovery units, and we do not anticipate any effects at the RU-level. Because we do not expect impacts to have long-term effects at the recovery unit level, we do not expect that the Proposed Action will appreciably reduce the likelihood of both the survival and recovery of the species as a whole. Therefore, we conclude that the Proposed Action is not likely to jeopardize the continued existence of the species.

Madison Cave Isopod

We expect the overall level of take of MCI will be low. There are no known MCI sites within the Covered Land, and only one MCI site (Limekiln Cave) located within ½-mile of the Covered Lands. For our analysis, we assumed that one additional new MCI site will likely be found within the Covered Land, and along with Limekiln Cave, may be impacted during the 50-year life of the permit. We do not anticipate that impacts will significantly impact the Limekiln Cave population, given its distance from the Covered Lands. We did anticipate that take of individuals from the unknown population may occur, and there is a potential for extirpation of one unknown population within the Covered Land. We do not expect the Proposed Action to reduce the likelihood of survival and recovery of the MCI rangewide, or expect the Proposed Action to appreciably reduce the likelihood of both the survival and

recovery of the species as a whole. Therefore, we conclude that the Proposed Action will not jeopardize the continued existence of the species.

Clubshell Mussel

Of the 17 known populations of clubshell mussels in the wild, including eight stable/reproducing populations, NiSource has the potential to impact five; three of which are considered stable/reproducing populations (Allegheny River, Little Darby Creek, and Elk River) and two (Meathouse Fork and Big Darby Creek) are unknown. Because the status of the Meathouse Fork population is unknown, and because NiSource crosses the Meathouse Fork multiple times upstream of where the remaining clubshell population is located, the Service will require NiSource to implement dry-ditch techniques to avoid downstream impacts (i.e., sedimentation). The Allegheny and Elk River populations are widely distributed throughout those river systems. As such, it is unlikely that NiSource Covered Activities will significantly impact any of these populations. Therefore, after reviewing the current status of the species, the environmental baseline for the Covered Land, and the potential cumulative effects, it is our opinion that the Proposed Action is not likely to jeopardize the continued existence of the clubshell mussel. No critical habitat has been designated for this species; therefore, none will be affected.

Northern Riffleshell

There are 13 known northern riffleshell populations; four known reproducing populations. NiSource would potentially impact one of the four reproducing populations (the large Allegheny River population). Site-level impacts to that population are possible, but not to the overall population consisting of millions of animals. NiSource Covered Activities may also impact three non-reproducing northern riffleshell populations in Big Darby Creek, Ohio. Of the three, the Pickaway County population appears the most vulnerable. There are two augmented populations in Franklin County, Ohio, that are distributed over several miles of stream. Population-level impacts to these populations are unlikely. Therefore, after reviewing the current status of the species, the environmental baseline for the Covered Land, and the potential cumulative effects, it is our opinion that the Proposed Action, as proposed, is not likely to jeopardize the continued existence of the northern riffleshell mussel. No critical habitat has been designated for this species; therefore, none will be affected.

Fanshell Mussel

NiSource has the potential to affect two stable, reproducing populations of fanshell mussels (Muskingum River and Licking River in Kentucky); two small, possibly non-reproducing populations (Tygart's Creek and Barren River); and a population in the Ohio River where the status is largely unknown. NiSource Covered Activities would potentially affect five of the approximately 13 known populations. It is possible that NiSource Covered Activities could impact one of the strongholds of the fanshell mussel in the Licking River in Kentucky. However, given the extent of fanshell mussels in the lower Licking River, population level impacts would be unlikely. NiSource also has the potential to impact fanshell population in the lower Muskingum River. NiSource makes seven crossings of the Ohio River between Ohio and Kentucky and Ohio and West Virginia. Fanshell populations are known to occur in the Ohio River, but population levels and densities are largely unknown. Although there will be multiple crossings, it seems unlikely that NiSource would impact persistence or reproduction of fanshell mussel populations in the Ohio River. Moreover the Service expects all of these crossings to be HDD, which would essentially eliminate impacts. The fanshell recovery plan indicates the need for three populations in Kentucky tributaries to the Ohio. In 1991, the Tygart's Creek and Barren River populations were considered small and non-reproducing and may now be extirpated. Since the impacts to these populations and their status are both uncertain, and since NiSource activities are not expected to cause serious degradation of habitat, it seems unlikely that NiSource activities will impede recovery of this species. After reviewing the current status of this species, the environmental baseline for the Covered Land, and the potential cumulative effects, it is our opinion that the Proposed Action, as proposed, is not likely to jeopardize the continued existence of fanshell mussels. No critical habitat has been designated for this species; therefore, none will be affected.

James Spiny Mussel

The James spiny mussel has a very limited range, primarily confined to the James and Roanoke River watersheds (Dan and Mayo Rivers) in Virginia and North Carolina. NiSource would potentially affect three known James spiny mussel populations (considered small, isolated, or non-reproducing) and one population of unknown status, therefore potentially affecting four of the 21 known populations. NiSource would not directly impact any of the robust remaining populations found in Johns Creek, South Fork Potts Creek, Mill Creek, and the Roanoke River drainage, nor the large, recently discovered population at Dicks Creek/Oregon Creek. With 79 stream crossings within the Covered Land in the

James River watershed, it is possible that at least some of the un-surveyed streams contain populations of James spiny mussel evidenced by the discovery in 2010 of the Dicks Creek/Oregon Creek population. There is the potential for NiSource activities to affect some currently unknown James spiny mussel populations, however, NiSource's agreement to implement all stream crossings using dry-ditch methodology and a mandatory time of year restriction (15 May to 31 July) designed to avoid the peak reproductive period would avoid and minimize population level impacts. Therefore, after reviewing the current status of this species, the environmental baseline for the Covered Land, and the potential cumulative effects, it is our opinion that the Proposed Action, as proposed, is not likely to jeopardize the continued existence of the James spiny mussel. No critical habitat has been designated for this species; therefore, none will be affected.

Sheepnose Mussel

The sheepnose mussel is widely distributed with multiple reproducing populations in Wisconsin, Indiana, and Missouri, all outside of the NiSource Covered Land. There are additional populations in Minnesota, Illinois, Tennessee, Kentucky, Alabama, and Virginia. In all, there are approximately 26 known populations that are completely outside the NiSource Covered Land and where no NiSource impacts are possible. Of these 26, eight are thought to be stable and reproducing. Most sheepnose populations, however, are small. Of the six known reproducing populations within NiSource Covered Lands, NiSource would potentially affect four known populations: three Ohio River populations and one Muskingum River population. NiSource has the potential to affect two additional smaller populations in the Licking River and Kentucky River where reproduction is uncertain. While NiSource Covered Activities could potentially affect low numbers of sheepnose mussels in the Ohio River (where HDD is likely); it is unlikely that there would be population level impacts. However, NiSource Covered Activities have the potential to impact the Muskingum River population, where the sheepnose mussel is confined to a small part of its historic range. Most of this population, however, is likely far enough downstream where impacts would be minor. Populations in both the Licking River and Kentucky River are also small, the former considered non-reproducing, and the status of the latter population unknown. There is some potential for NiSource Covered Activities to impact these populations, depending on their location and number of individuals. The likelihood of population level impacts however is small. Therefore, after reviewing the current status of this species, the environmental baseline for the Covered Land, and the potential cumulative effects, it is our opinion that

the Proposed Action, as proposed, is not likely to jeopardize the continued existence of the sheepnose mussel. No critical habitat has been designated for this species; therefore, none will be affected.

Nashville Crayfish

The existing NiSource pipeline, plus the one-mile corridor, bisects the Mill Creek Watershed. As such, NiSource Covered Activities have the potential to impact Nashville crayfish in the mainstem of Mill Creek and six tributary streams. However, we do not anticipate population level impacts because NiSource has agreed to utilize dry-ditch techniques for all stream crossings. Impacts to individuals and habitat therefore should be limited to small reaches of stream at the crossing area. Therefore, based on our estimation of the current population sizes, our assumptions concerning the reproductive potential of Nashville crayfish, and the expected minimal long-term impacts to habitat, it seems unlikely that either mainstem or tributary populations would be significantly impacted by NiSource Covered Activities. As such, after reviewing the current status of this species, the environmental baseline for the Covered Land, and potential cumulative effects, it is our opinion that the Proposed Action, as proposed, is not likely to jeopardize the continued existence of the Nashville crayfish. No critical habitat has been designated for this species; therefore, none will be affected.

American burying beetle

We expect the overall take of American burying beetles (ABBs) will be relatively low and not result in significant population-level impacts. Most of NiSource's existing facilities (e.g., ROW, compressor stations, appurtenant facilities) within the affected populations range is currently not suitable habitat. Where there is suitable habitat, the density of beetles are low, and these densities are anticipated to remain low, even with ongoing population augmentation efforts. The low density of beetles in suitable habitat reduces the potential for NiSource to directly (and unknowingly) encounter and harm individuals during their Covered Activities. Further, NiSource has proposed mitigation for their impacts to ABB in the form of a reintroduction program. This program will help bolster the reintroduction efforts directed at this population, and reduce the impact of any take from NiSource Covered Activities. We conclude that the proposed impacts from NiSource Covered Activities do not pose a significant risk to the viability of the ABB, and will not result in measurable population declines or losses in the Covered Land. Therefore, we do not expect the Proposed Action to appreciably reduce

the likelihood of survival and recovery of the ABB, and therefore conclude it is not likely to jeopardize the continued existence of the species.

III. Alternatives

Three alternatives were identified in the final EIS for detailed analysis. Six additional alternatives were discussed, but eliminated from detailed analysis. A summary and comparison of the alternatives follows in Table 1. A complete description of the alternatives can be found in Chapter 2 of the final EIS.

Alternative 1 – No Action Alternative

Under the No Action Alternative, issuance of an ITP to NiSource and approval of the NiSource MSHCP would not occur. However, all of the Covered Activities within the MSHCP would continue to be implemented by NiSource. That is because regardless of the alternative selected, NiSource will continue to implement its Columbia Gas ECS (2008), Columbia Gulf ECS (2008), and Virginia ECS (2008) businesses per requirements from regulatory agencies both federal and state. NiSource compliance with the ESA would continue "status quo" through informal and formal Section 7(a)(2) ESA consultations through the Cooperating Agencies with the Service on a project-by-project or periodic basis. Project goals relative to providing increased certainty for ESA compliance, enhancing conservation and recovery of species through a coordinated and comprehensive conservation program, and increasing efficient use of time and money, would not be met.

NiSource would continue to be subject to full liability under Section 9 of the ESA, as any future species take would only be authorized through formal ESA consultation with the federal action agency (primarily FERC) and the Service. The RPMs that NiSource would follow as part of the ESA Section 7 process would be similar to the avoidance and minimization measures in the NiSource MSHCP. Adverse impacts to threatened and endangered species should be similar under both Section 7 and Section 10 (MSHCP) processes. However, under Section 7 of the ESA, mitigation is not a requirement when impacts associated with species take occur. As such, no long-term commitments for mitigation would occur under this alternative.

Further, Section 6 of the ESA provides grants to States for land acquisition that is associated with approved HCPs. The program has three primary purposes: 1) to fund land acquisitions that complement, but do not replace, private mitigation responsibilities contained in HCPs, 2) to fund land

acquisitions that have important benefits for listed, proposed, and candidate species, and 3) to fund land acquisitions that have important benefits for ecosystems that support listed, proposed and candidate species. Under this alternative, the 14 states associated with the NiSource MSHCP would not be eligible for Section 6 land acquisition funding, since no ITP would be issued or HCP approved.

Alternative 2 – Issuance of a 50-year ITP to NiSource and Approval of their MSHCP (Preferred Alternative)

Alternative 2 involves issuance of an ITP for a 50-year term, approval of the NiSource MSHCP, associated IA, and acceptance by the Cooperating Agencies and the Service that ITP issuance and MSHCP compliance fulfill their obligations under Section 7 of the ESA.

NiSource is requesting incidental take for 10 of the 42 species analyzed in their MSHCP. No take of the remaining 32 species is anticipated. Impacts to those 42 species, along with 46 other listed, proposed or candidate species found within the Covered Land, were analyzed in the EIS and the Service's Biological Opinion (BO). For the 42 species analyzed in the MSHCP, the Service had sufficient information to complete an incidental take analysis and determine the amount or extent of take that was reasonably certain to occur. For these species, no further Section 7 consultation will be required, provided NiSource Covered Activities are in compliance with the MSHCP, ITP, IA, and ITS.

For the 47 species not analyzed in the MSHCP, the Service will address potential take programmatically, through future tiered Section 7 consultations. Under the programmatic Section 7 approach, the Cooperating Agencies will continue to review all future projects to determine if they may affect listed species or designated critical habitat. Future projects that are likely to adversely affect listed species or designated critical habitat will be individually reviewed to determine: (1) whether they were contemplated in the Level 1 programmatic BO and consistent with the guidelines, and whether any reasonable and prudent measures and terms and conditions provided in the incidental take statement are applicable.

Alternative 3 – Issuance of a 10-year ITP to NiSource and Approval of their MSHCP

Alternative 3 involves issuance of a 10-year ITP and approval of the NiSource MSHCP and associated IA. This Alternative involves the same issuance, approval, and acceptance actions detailed above in Alternative 2, except it involves an ITP duration of 10-years, subject to renewal and amendments by

NiSource. However, under Alternative 3, NiSource would not committed to mitigate for all impacts resulting from operation and maintenance activities over a 50-year period within the first seven years, thus the conservation benefits to species would be reduced.

Table 1 - Summary and Comparison of Alternatives

Topic	Alternative 1	Alternative 2	Alternative 3
Permit Duration	No permit issued.	50 year duration with possible renewal	10 year duration with possible renewal
Covered Land	No constraints. Determined on a project by project or periodic basis for purposes of Section 7 analysis.	Constrained to a one-mile wide corridor centered on existing NiSource ROW and 12 counties in four states.	Constrained to a one-mile wide corridor centered on existing NiSource ROW and 12 counties in four states.
Species Covered	None. No ITP issued or MSHCP approved. Take would be obtained through Section 7 of the ESA on a periodic basis.	NiSource would obtain incidental take authorization for 10 of the 42 species analyzed in their MSHCP	NiSource would obtain incidental take authorization for 10 of the 42 species analyzed in their MSHCP
Covered Activities	NiSource would continue to operate their business status quo.	NiSource would operate their business within the framework of a comprehensive plan (long-duration) for threatened and endangered species.	NiSource would continue to operate their businesses within the framework of a comprehensive plan (short-duration) for threatened and endangered species.
Conservation Strategy	Determined on a project-by-project or periodic basis by Service field offices serving the future NiSource project area. No up-front commitments to avoid and minimize impacts. No mitigation. No future ESA Section 6 funding to the States.	Commitments to avoid, minimize, and mitigate for impacts. Up-front mitigation during the first 7 years of ITP implementation.	Commitments to avoid, minimize, and mitigate for impacts. No up-front mitigation. MSHCP would facilitate future ESA Section 6 funding to the States.
Monitoring and Reporting	None. No ITP issued or MSHCP approved.	Compliance monitoring, effects and effectiveness monitoring, and annual reporting.	Compliance monitoring, effects and effectiveness monitoring, and annual reporting.
Adaptive Management	None. No ITP issued or MSHCP approved.	Includes a comprehensive adaptive management strategy for species-related conservation actions with risk and uncertainty. Includes provisions for MSHCP updates and ITP amendments	Same as Alternative 2. However, the 10-year timeframe to gain and apply knowledge through monitoring may be insufficient.

Topic	Alternative 1	Alternative 2	Alternative 3
No Surprises Assurances	None. No ITP issued or MSHCP approved	No Surprises Assurances for the 10 species for which take is anticipated, and for the following potential changed circumstances: (1) Climate Change; (2) Droughts; (3) Floods; (4) Fires; (5) Tornados; (6) Disease; (7) Invasive Species; (8) Species Range Expansion/ Contraction; and (9) Species Listing/ Delisting.	No Surprises Assurances for the 10 species for which take is anticipated, and for the following potential changed circumstances: (1) Climate Change; (2) Droughts; (3) Floods; (4) Fires; (5) Tornados; (6) Disease; (7) Invasive Species; (8) Species Range Expansion/ Contraction; and (9) Species Listing/ Delisting.
Amendment Process	None. No ITP issued or MSHCP approved	MSHCP, ITP, and IA will be amended as-needed, consistent with their adaptive management strategy and changed circumstances. NiSource will waive No Surprises Assurances at year 25 to allow for revisions to the MSHCP, ITP, and IA.	Same as Alternative 2, with the exception of the No Surprises Assurances waiver at year 25, which would not occur.
Permittee	None. No ITP issued or MSHCP approved	NiSource and its designated agents	NiSource and its designated agents

Environmentally Preferred Alternative

Based on a review of the environmental consequences of each of the alternatives, both negative and positive, Alternative 2 is judged to be the environmentally preferable alternative. All alternatives have the potential for negative environmental consequences, particularly for listed species. Alternative 1 would have the greatest potential compared to Alternative 2 and 3, since ESA compliance would occur on a "piecemeal basis" absent a long-term plan and associated conservation program. Alternatives 2 and 3 would result in similar adverse impacts; although Alternative 2 includes additional commitments for mitigation, and long-term monitoring associated with habitat restoration and enhancement projects. Alternative 2 would have the least effect on the Affected Environment compared to Alternative 1 or 3, and is considered the Environmentally Preferred Alternative for implementation.

IV. Public Involvement

On October 11, 2007, the Service published a Notice of Intent (NOI) to prepare an EIS in the Federal Register (FR, Vol. 72, No. 196, pp 57953 - 57956), to solicit participation of federal, state, and local

agencies, Tribes, and the public to determine the scope of this EIS and provide input relative to issues associated with the proposed MSHCP project. In addition to the publication of the NOI, the scoping process included informal stakeholder and agency consultations, 13 public scoping meetings and a mailing to approximately 1,300 known interested parties. The letter provided project information, information on scoping meetings, and contact numbers. Public scoping lasted until December 8, 2007.

A draft EIS was circulated for public review and comment beginning with the publication of a Notice of Availability (NOA) in the FR on July 13, 2011, (FR 76, No. 134, pp 41288 - 41293). The public comment period closed on December 13, 2011, culminating a 150-day public review period. A variety of comments were received on the DEIS which are available at http://www.fws.gov/midwest/endangered/permits/hcp/nisource/index.html. Written responses to public comments were appended to the EIS.

On June 7, 2013, the Service published an NOA in the Federal Register advising the public of the availability of the Final Environmental Impact Statement (FEIS). In response to that notice, three public comments were received. One commenter restated a common concern that the {project} was "too big to be done responsibly and in keeping with the spirit of the Endangered Species Act", and that "fifty years is far too long for permits to "take" endangered species…with climate change, white nose syndrome, and other threats…". Two other parties stated that they were pleased with the changes that were made to the EIS between the draft and final documents, namely the inclusion of a waiver of No Surprises Assurances at year 25 of the permit.

V. Position of Interested Parties

Public input was received during scoping and the public review process on a variety of issues and concerns. However, one concern was more wide-spread than others. That was the proposed duration of the ITP that NiSource was requesting. Specifically, several commenters suggested that a 50-year ITP was too long. One commenter recommended a 10-year permit duration, and inter-agency discussions raised the 10-year ITP duration a potentially workable option based on prior MSHCP experience. To avoid evaluation of an unreasonable number of alternatives associated with different permit durations, the decision was made to evaluate two alternative durations for the MSHCP and requested incidental take permit: a 50-year permit duration term and a10-year permit duration.

Issuing a 10-year ITP to NiSource could allow for a formalized application review process to occur in 10-years. The Service's permit regulations require that a renewal or amendment application be made available for public review and comment. Amending the NiSource MSHCP and associated ITP at year 10 could result in another 10-year term, or a longer ITP term, since the nature of the request is the ITP holder's prerogative. However, within the first 10 years of ITP implementation, species take (type and amount) would be the same, regardless of which alternative is selected. After 10 years, NiSource may decide to request less take, more take, or the same amount of take going forward, depending on the circumstances surrounding the request.

Further, the Service's Five-Point Policy for Habitat Conservation Plans (HCPs) directs the Service to consider the following factors when evaluating the proposed duration of an incidental take permit: the duration of the applicant's proposed activities; the possible positive and negative effects on Covered Species associated with the proposed duration, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species; the extent of information underlying the HCP; the length of time necessary to implement and achieve the benefits of the operating conservation program; and the extent to which the program incorporates adaptive management strategies. NiSource Covered Activities are on-going and expected to occur indefinitely into the future. Likewise, NiSource mitigation is based off a 50-year ITP duration.

Another public concern focused on the scope of the NEPA analysis, and on the inability of NiSource to precisely estimate in their MSHCP where and when future O&M and new construction projects would be implemented. A similar concern was voiced for the proposed mitigation. The Service acknowledged the spatial and temporal uncertainty associated with the NiSource proposal, and recognized the NEPA analyses would be necessarily limited in scope. Further complicating the analysis, NiSource conservation measures designed to avoid and minimize impacts to species and species habitat are only required in areas where a species range overlaps with the NiSource Covered Land. Notwithstanding, a comprehensive analysis of Covered Activities and their potential effect on species and species habitat was done for the MSHCP, the Biological Assessment, and the BO. For the MSHCP, species and species habitat were evaluated using reasonable worst-case assumptions to predict the manner and extent of anticipated take, which we believe captures the range of possible effects into the future. In chapter 6 of their MSHCP, NiSource provides species-specific mitigation measures (type of mitigation/required amount), and in chapter 5, they outline their approach to

implementation, which we believe is reasonable, transparent, and affirming of their conservation strategy. Table 8.2.2-1 and Table 8.2.2-2 in the MSHCP breakdown costs for various mitigation projects.

Finally, some commenters misconstrued the scope of the Service's Proposed Action. Many believed the Proposed Action was designed to authorize NiSource Covered Activities, including designating a new 1-mile wide corridor around 15,000+ miles of existing NiSource right-of-way. The Proposed Action is the request from NiSource to the Service for an ITP authorizing take of 10 federally listed species within the NiSource Covered Land, including NiSource's implementation of its MSHCP. The scope of the analysis for the EIS covers the direct, indirect, and cumulative effect (i.e., impacts) of the proposed incidental take, and the avoidance, minimization and mitigation measures proposed from implementation of the MSHCP, which is consistent with Service policy guidance per Service's HCP Handbook. As discussed in Chapter 1 of the EIS, neither the MSHCP nor ITP authorize the NiSource Covered Activities that may cause take. NiSource Covered Activities entail considerable involvement of other federal agencies in the authorization, approval, or permitting of Covered Activities. As such, the Cooperating Agencies will necessarily make separate and independent decisions regarding these future actions, consistent with their regulations and policies.

VI. For More Information

The final EIS is available at the Service's Regional Office in Bloomington, MN, or on our website at http://www.fws.gov/midwest/endangered/permits/hcp/nisource. A copy of this Record of Decision will be made available at the office and website listed above. For additional information, please contact Mr. Thomas J. Magnuson by phone at (612) 713-5467, or by email at tom_magnuson@fws.gov.

VII. Signature

Thomas O. Melius

Regional Director
U.S. Fish and Wildlife Service

9/13/13

Date