



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R5-ES-2024-0021; FXES11140500000-245-FF05E00000]

Proposed Safe Harbor Agreement and Candidate Conservation Agreement with Assurances for the Greene County Pennsylvania, Wharton Run Bat Hibernaculum; Draft Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from CNX Gas Company LLC for an enhancement of survival permit under the Endangered Species Act. The applicant also submitted a proposed safe harbor agreement and candidate conservation agreement with assurances (SHA/CCAA) in support of the application. We request public comment on the application, which includes the applicant's proposed SHA/CCAA, and the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We will accept comments received or postmarked on or before **[INSERT**

DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL

REGISTER]. Comments submitted online at <https://www.regulations.gov> (see

ADDRESSES) must be received by 11:59 p.m. Eastern Time on **[INSERT DATE 30**

DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Obtaining documents:* The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS-R5-ES-2024-0021 at <https://www.regulations.gov>.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R5-ES-2024-0021.
- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS-R5-ES-2024-0021; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Pamela R. Shellenberger, by telephone at 814-234-4090, extension 7459, or by email at

Pamela_Shellenberger@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from CNX Gas Company LLC (applicant, CNX) for an enhancement of survival permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant also submitted a proposed safe harbor agreement and candidate conservation agreement with assurances (SHA/CCAA) in support of the application. The applicant intends to implement the agreement within the boundaries of the State of Pennsylvania, to actively manage the covered species to benefit the recovery of federally listed species and to prevent the need to list candidate or

otherwise sensitive species. The Service has made a preliminary determination that the proposed agreement qualifies as low effect, categorically excluded, under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review. We provide this notice to seek comments from the public and local, State, Tribal, and Federal agencies.

Background

Section 9 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and its implementing regulations prohibit the “take” of animal species listed as endangered or threatened. Take is defined under the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect “listed animal species”, or to attempt to engage in such conduct” (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Safe Harbor Agreements and Candidate Conservation Agreements with Assurances

A SHA is an agreement between the Service, partners, and landowners, for voluntary management of non-Federal lands to contribute towards recovery of an ESA-listed species in a manner that is consistent with the Service’s policy on SHAs (64 FR 32717, June 17, 1999) and applicable regulations. A CCAA is an agreement between the Service, partners, and landowners for voluntary management of non-Federal lands to remove or reduce key threats to species that may become listed under the ESA, in a manner that is consistent with the Service’s policy on CCAAs (81 FR 95164, December 27, 2016) and applicable regulations. In return for implementing conservation measures

in a SHA/CCAA, the Service gives participants assurances that the Service will not impose land, water, or resource use restrictions or conservation requirements on ESA-listed species, or those that may become listed, beyond those agreed to in the SHA/CCAA.

Applicant’s Proposed Safe Harbor Agreement/Candidate Conservation Agreement with Assurances

The purpose of this SHA/CCAA is to support collaborative efforts between the Service and CNX Gas Company LLC, in cooperation with regional agencies and universities, to implement conservation measures that result in net conservation benefits for six covered bat species. These measures include the installation of a human-made bat hibernaculum and other artificial roosting structures to provide a refuge to bat species that exist within the enrolled property.

Covered Species

The proposed SHA/CCAA covers the following bat species.

Common name	Scientific name	Federal listing status	State listing status
Indiana bat	<i>Myotis sodalis</i>	Endangered	Pennsylvania – endangered
Northern long-eared bat	<i>Myotis septentrionalis</i>	Endangered	Pennsylvania – endangered
Tricolored bat	<i>Perimyotis subflavus</i>	Proposed endangered	Pennsylvania – endangered
Little brown bat	<i>Myotis lucifugus</i>	No	Pennsylvania – endangered
Big brown bat	<i>Eptesicus fuscus</i>	No	No
Eastern small-footed bat	<i>Myotis leibii</i>	No	Pennsylvania – threatened

National Environmental Policy Act Compliance

Issuance of the permit would be a Federal action that would trigger the need for compliance with NEPA. The Service has made a preliminary determination that the proposed permit issuance is eligible for categorical exclusion under NEPA, based on the

following criteria: (1) Implementation of the SHA and CCAA would result in minor or negligible adverse effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA and CCAA would result in minor or negligible adverse effects on other environmental values or resources; and (3) impacts of the SHA and CCAA, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative adverse effects to environmental values or resources which would be considered significant. To make this determination, we used our EAS and low-effect screening form, which are also available for public review.

Public Availability of Comments

All comments received, including names and addresses, will become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We also will conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(A) of the ESA have been met. If met, the Service will issue a permit to the applicant for the incidental take of the covered species.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500-1508 and 43 CFR 46).

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