

**Findings and Recommendation on Issuance of Section 10(a)(1)(A)
Enhancement of Survival Permits associated with a Candidate Conservation
Agreement with Assurances to Conserve the Greater Sage-Grouse in
Wyoming**

I. DESCRIPTION OF THE PROPOSED ACTION

Private landowners within the State of Wyoming have an opportunity to participate in a statewide CCAA for the greater sage-grouse (*Centrocercus urophasianus*; hereafter sage-grouse). Landowners participating in the CCAA may apply to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit in accordance with section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), and the Service's CCAA Final Rule (64 Fed. Reg. 32726, June 17, 1999). The purpose of the Permit is to provide these landowners an exemption to section 9(a)(1)(b) of the ESA prohibiting "take" of the sage-grouse—in the event that this species is listed under the ESA in the future—while carrying-out otherwise lawful farm and ranch activities under the CCAA.

An Umbrella CCAA (CCAA) was prepared by the Service and several State, Federal, and local partners to provide Wyoming ranchers with the opportunity to voluntarily conserve sage-grouse and its habitat while carrying out their ranching activities. Private landowners applying for an enhancement of survival permit must agree to implement appropriate conservation measures from the CCAA. With technical assistance, landowners will select conservation measures from the Umbrella CCAA to develop individual CCAAs specific to their enrolled properties. Conservation measures include on-the-ground actions that prevent or reduce potential effects to sage-grouse within the following general categories: habitat fragmentation and infrastructure; vegetation management, including restoration of disturbed habitats, management of non-native monocultures and invasive and non-native plant species, sagebrush treatments and woodland encroachment; livestock water development and disease management; livestock management and agricultural production; and appropriate placement of fences.

The Service will provide each enrolled landowner with a section 10 enhancement of survival permit that becomes effective in the event the species becomes listed under the ESA, as long as the conditions stated in the permit are met. Incidental take exemption would apply to take that could result from the otherwise lawful activities that occur on the enrolled lands including livestock grazing and production, farm equipment operation, and recreational activities (e.g., hiking and use of recreational vehicles on and off established roads). Issuance of the permits would convey ESA regulatory assurances as discussed in the Service's CCAA final policy. These regulatory assurances entail the Service's assurance that it will not require additional conservation measures nor impose additional land, water, or resource-use restrictions, beyond voluntarily agreed to and those identified in the Umbrella CCAA, should the sage-grouse become listed under the ESA.

II. PUBLIC COMMENT

The CCAA was developed with considerable input from, and collaboration with, Federal, State and local government stakeholder representatives, many of whom work closely with private landowners in Wyoming. On February 7, 2013, the Service issued a Notice of Availability in the *Federal Register* (78 FR 9066) for the draft CCAA and draft EA for public review. A 30-day public review and comment period was open until March 11, 2013. The draft EA and draft CCAA were available at the Service's Mountain-Prairie Regional Ecological Services Web site, and were available for review at the Wyoming Ecological Services Field Office in Cheyenne, WY.

We received fifteen comment letters: eight in support of the draft CCAA; six expressed appreciation for the opportunity to comment but remained silent in terms of support or opposition; and one expressing opposition. None of the comments identified any significant new environmental impacts that had not already been addressed in the draft EA.

III. ISSUANCE CRITERIA-ANALYSIS AND FINDINGS

All landowners participating in the CCAA (applicants) by working with the Service to develop an individual CCAA within the Umbrella CCAA must meet all application requirements for the Permit. In addition, applicants must meet all issuance criteria for the permit contained in 50 CFR 17.22(d)(1) and 17.32(d)(1). These criteria are detailed below.

Enhancement of Survival Permit

1. The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Candidate Conservation Agreement with Assurances (50 CFR 17.22(d)(2)(i)).

We find that the potential take of sage-grouse under this CCAA would be incidental to otherwise lawful activities. These activities would occur as a result of the participating landowner's implementation of the conservation measures described in the CCAA. However, primarily short-term and localized adverse effects are expected to occur from farm and ranch activities implemented and covered within this CCAA. For example, activity associated with seasonal use of infrastructure such as roads may affect sage-grouse behavior. Activities associated with various vegetation management treatments (e.g., management of non-natives, monocultures, sagebrush, and woodland encroachment) may disrupt or displace birds during critical breeding, nesting or foraging periods. Vegetation disturbance may adversely affect the availability of nesting habitat, cover from predators, or prey (invertebrate) availability, and adversely affect sage-grouse. Livestock grazing may alter vegetation composition, structure, and nutrient quality; and livestock, humans, and vehicles can disturb birds and cause them to leave leks or abandon nests.

The permit would include incidental take associated with: implementation of conservation commitments and measures described in the CCAA, and existing land uses, primarily livestock

and agricultural production, on the enrolled properties. Incidental take authorized under the Permit would be in the form of harassment, harm, and mortality associated with the conservation activities and documented levels of land use in each participant's Permit. None of the activities covered in the CCAA involve purposeful take of the sage-grouse.

2. The Candidate Conservation Agreement with Assurances complies with the requirements of the Candidate Conservation Agreement with Assurances policy (50 CFR 17.22(d)(2)(ii)).

The Service and partnering agencies have developed the CCAA pursuant to the requirements in the implementing regulations and the issuance criteria for a permit. Conservation benefits for the sage-grouse from implementation of the CCAA are expected in the form of avoidance of negative impacts; reduction of threats; enhancement and restoration of habitat intended to contribute to establishing or augmenting and maintaining viable populations of sage-grouse.

Threats Reduction and Associated Conservation Measures

Habitat fragmentation is the leading cause of sage-grouse population decline rangewide, including Wyoming. In order for this CCAA to address the conservation needs of the sage-grouse, the following conservation measure (CM) must be implemented by all enrolled landowners on the enrolled portion of their property: Maintain contiguous habitat by avoiding fragmentation (e.g., do not subdivide property, consider conservation easements). By implementing this, as well as additional farm/ranch-specific CMs associated with avoiding fragmentation of the landscape, we believe that this fundamental threat sage-grouse on farm/ranch operations will be avoided to the extent possible.

In order to avoid and minimize potential effects of fragmentation associated with farm and ranch activities, CMs will be implemented, as appropriate, to: reduce disruptions to sage-grouse activities; maintain habitat quality and quantity; maintain population connectivity and recruitment; reduce vulnerability to predation; remove or reduce the amount of habitat fragmentation and mortality due to infrastructure across the landscape.

In addition to the over-arching commitment by all enrolled landowners to maintain contiguous habitat, as well as site-specific CMs to address fragmentation, several other threat-specific CMs were developed in order to address the following: *Management of Vegetation and Restoration*; *Water Development*; *Livestock Management and Agricultural Production*; and *Appropriate Placement of Fences*.

Management of Vegetation and Restoration: In order to address potential effects of disturbed habitats on farm and ranch operations, CMs will be implemented to: enhance degraded habitats and reduces potential for spread of noxious weeds and increase success of, and reduce time necessary for, establishment of new plantings. In order to address potential effects of non-native monocultures on farm and ranch operations, CMs will be implemented, as appropriate, that reduce impacts to both sage-grouse habitat quality and quantity. In order to address potential effects of invasive and non-native plant species on farm and ranch operations, CMs will be

implemented to reduce impacts to sage-grouse habitat quality and quantity and reduces impacts from wildfires or minimizes likelihood of wildfires. In order to address potential effects of improper sagebrush management on farm and ranch operations, CMs will be implemented, as appropriate, to maintain or enhance sagebrush communities in terms of habitat quality and quantity. In order to address potential effects of woodland encroachment on farm and ranch operations, CMs will be implemented, as appropriate, to ensure availability of important existing sagebrush communities.

Water Development: In order to address potential effects of surface water developments and associated disease on farm and ranch operations, CMs will be implemented, as appropriate, to reduce potential for direct mortality and/or disease transmission. In order to address potential effects of livestock troughs and associated water developments on farm and ranch operations, CMs will be implemented, as appropriate, to reduce potential for direct mortality and maintain or enhance availability of nesting/early brood-rearing habitats.

Livestock Management and Agricultural Production: In order to avoid and minimize potential effects of improper livestock management on rangeland health, and to avoid potential disturbance to sage-grouse from related livestock management activities on farm and ranch operations associated with livestock, humans, and vehicles, CMs will be implemented, as appropriate, to accomplish the following: maintain or enhance quality of sage-grouse habitat, as well as sage-grouse reproduction and survival; and reduce disruptions to lek and nesting activity, thereby reducing abandonment and predation risk.

Appropriate Placement of Fences: Fences, generally, are not considered to be significant threats to sage-grouse, and we do not anticipate fences resulting in a significant portion of take. Sage-grouse mortality from fences is due to “problem fences” that take a disproportionate number of birds due to problematic placement in localized areas, such as those placed close to active leks within gently rolling terrain. Consequently, these fences can be readily identified and dealt with effectively to remove threats associated with them on a localized scale on particular farm or ranch operations. In order to address potential effects of fences associated with farm and ranch operations, CMs will be implemented, as appropriate, to identify problem fences and reduce mortalities from collisions.

Conclusion

Primarily short-term and localized adverse effects are expected to occur from farm and ranch activities implemented and covered within this CCAA. For example, activity associated with seasonal use of infrastructure such as roads may affect sage-grouse behavior. Long-term negative effects may also occur, such as permanent habitat loss or mortality of individual birds. However, proposed conservation measures are expected to avoid, minimize or offset those effects. These measures are designed to conserve habitat and reduce fragmentation—the primary threat to sage-grouse. Expected conservation benefits would outweigh the short-term negative impacts to individuals or localized areas of habitat. Implementation of the proposed Umbrella CCAA and its conservation measures will result in strategic management of several threats known to affect the species statewide.

Furthermore, beneficial effects are expected to accrue over time. Conservation measures include standard/general avoidance and minimization measures, site-specific measures, and many considered to be best management practices for activities typically associated with farm and ranch operations in Wyoming. Generally, more restrictive conservation measures will be implemented within the best sage-grouse habitats to ensure protection or maintenance of habitat values (e.g., nesting, brood-rearing, or lek habitats). We anticipate that the CCAA will provide a long-term net benefit for the sage-grouse and its habitat on a landscape scale within the state of Wyoming. We conclude, therefore, that if the conservation measures were implemented to address threats associated with ranch management across the entire species range for the sage-grouse, that the benefits associated with the implementation of these measures would preclude the need to list the species due to impacts associated with ranch management.

3. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of the survival and recovery in the wild of any species (50 CFR 17.22(d)(2)(iii)).

The ESA's legislative history establishes the intent of Congress that these issuance criteria are identical to a regulatory finding of no "jeopardy" under section 7 (a)(2) of the ESA. As a result, potential issuance of Permits was reviewed by the FWS according to provisions of section 7 of the ESA. In the Intra-Service Section 7 Conference Opinion, which is attached hereto, and incorporated herein by reference, the Service concludes that issuance of Permits will not jeopardize the continued existence of the sage-grouse. No other species will be affected. The taking associated with the implementation of the CCAA will be incidental to efforts associated with changes in land use practices and conservation actions for the sage-grouse, and gathering important biological information necessary to continue conservation efforts for the species.

4. Implementation of the terms of the Candidate Conservation Agreement with Assurances is consistent with applicable Federal, State, and Tribal laws and regulations (50 CFR 17.22(d)(2)(iv)).

The Service is unaware of any law or regulation that would prevent the implementation of the CCAA and the accompanying Permits. The CCAA does not preclude the need for participants to comply with any Federal, State, or Tribal laws, but solely serves as an instrument to comply with certain provisions of the ESA under which the Permit is being sought. The Permit will include a specific condition that requires the Permit Holder to be in compliance with any applicable State, Federal, or tribal law or regulation. Failure to comply with this term and condition can result in suspension or revocation of the Permit.

5. Implementation of the terms of the Candidate Conservation Agreement with Assurances will not be in conflict with any ongoing conservation programs for species covered by the permit (50 CFR 17.22(d)(2)(v)).

The CCAA for the sage-grouse furthers ongoing conservation activities for the species' conservation and is essential in developing a model agreement that can be used to facilitate additional conservation agreements within the species' historical range.

6. All participating landowners must demonstrate capability for and commitment to implementing all of the terms of the Candidate Conservation Agreement with Assurances.

Partnering agencies including Wyoming Stockgrower's Association, Wyoming Association of Conservation Districts, Wyoming Department of Agriculture, Bureau of Land Management, Forest Service, Wyoming Game and Fish Department, Natural Resources Conservation Service—all of whom work with participating landowners in terms of land management and conservation implementation for the sage-grouse—have worked closely with the Service to develop conservation measures and commitments to terms within the CCAA. These agencies, as well as landowners interested in developing individual CCAAs, have demonstrated that: most conservation actions are currently being implemented on farm and ranch operations; that additional conservation actions identified in the CCAA can readily be implemented on these operations; and that participating landowners are committed to complying with all terms of the CCAA. Participating agencies have committed to work effectively with private landowners to implement conservation commitments in the CCAA, provide technical assistance to effectively implement conservation measures, provide assistance with developing conservation plans, and provide technical assistance for annual monitoring.

Based on conservation measures described in the CCAA and provisions of the permit, the Service does not expect any unforeseen circumstances to occur that would preclude the implementation of the CCAA. All assurances and the permit coverage are based upon the proper implementation of the CCAA.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS -ANALYSIS AND FINDINGS

We have no evidence that the Permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21 (b)-(c).

V. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, we recommend issuance of individual incidental take Permits for the sage-grouse in accordance with the CCAA.



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Date