

FWS/R6
ES/UT
2009-F-0044

Memorandum

To: Assistant Regional Director, U.S. Fish & Wildlife Service, Region 6, Denver, Colorado

From: Utah Field Supervisor, U.S. Fish & Wildlife Service, Ecological Services, West Valley City, Utah

Subject: Findings and Recommendations on Issuance of an Enhancement of Survival Permit for the Utah Prairie Dog via a Programmatic Safe Harbor Agreement in Beaver, Garfield, Iron, Kane, Piute, Sevier, and Wayne Counties, Utah (Permit Number TE-155376)

I. DESCRIPTION OF PROPOSAL

Panoramaland Resource Conservation and Development Council, Inc. (Program Administrator) has applied to the U.S. Fish and Wildlife Service (Service) for a section 10(a)(1)(A) Enhancement of Survival Permit (Permit) to authorize take of the Utah prairie dog (Utah prairie dog) (*Cynomys parvidens*) in Beaver, Garfield, Iron, Kane, Piute, Sevier, and Wayne Counties, Utah, in support of the Program Administrator's Programmatic Safe Harbor Agreement (Agreement). The Program Administrator has submitted the Agreement as part of the permit application. The proposed Permit will be issued in accordance with section 10(a)(1)(A) of the Endangered Species Act (ESA) of 1973, as amended (16 USC 1531 et seq.), and the Service's Safe Harbor Policy (64 FR 32717). As part of this programmatic Agreement, the Program Administrator will enter into Cooperative Agreements with willing non-Federal landowners that define conservation measures for Utah prairie dogs on their properties. Such properties are referred to herein as the "enrolled properties" and will be permitted by the Program Administrator via Certificates of Inclusion.

The purposes of this Agreement are (1) to promote the conservation of Utah prairie dogs, through the voluntary restoration, enhancement, and management of farm and ranchlands in southwestern Utah, (2) to provide certain regulatory assurances to landowners participating in such restoration, enhancement, and management activities, and (3) to accomplish the foregoing without negatively affecting farming activities. The areas covered by the Agreement and Permit are shown on the attached map. This Agreement between the Program Administrator and the Service and the subsequent Cooperative Agreements between the Program Administrator and willing non-Federal landowners are intended to create an incentive for private landowners to voluntarily conserve prairie dogs and their habitat while securing regulatory certainty. These Cooperative Agreements will provide support of Utah prairie dog colony expansion on the "enrolled properties" and provide the Cooperators with assurances that future activities will not be constrained and result in ESA restrictions.

The programmatic Safe Harbor Agreement proposes to cover Utah prairie dog habitat throughout its range in Southern Utah, on non-Federally owned lands. The programmatic nature of the proposed Agreement makes it impossible to fully characterize each site that may be enrolled in this program, specific conservation measures planned on the sites, and the exact level of effectiveness of the conservation measures at each future site. This is especially true as participation is voluntary for landowners, and particular sites that may be enrolled under the Safe Harbor Agreement and individual management activities can not be predicted. However, the conservation measures in each voluntary agreement will be tailored to the individual enrolled property and approved by the Service to ensure a net conservation benefit to the species. Management activities will follow guidelines written and approved by the Utah Prairie Dog Recovery Team to ensure the incorporation of the best available biological and ecological information.

The following is a summary of the activities that may occur on “enrolled properties”:

Standard Activities

The following management activities shall be included in all cooperative agreements:

- Limit the use of pesticides and herbicides within 100 feet of active prairie dog burrows to those included on a list of Service-approved chemicals.
- Avoid the use of heavy equipment in occupied prairie dog habitat during sensitive life stages such as breeding and nursing.
- All practices will be planned and applied in a manner that will avoid or minimize adverse effects to sensitive, threatened or endangered species.
- Monitor habitat restoration activities to assess the general condition of habitat, use of the habitat by the covered species, progress of the ongoing management activities, and satisfaction of the Service with the project, and adjust practices as deemed necessary.

At least two of the following management activities to improve, maintain, and/or restore Utah prairie dog habitat shall be included in all cooperative agreements except as approved by the Service:

- Prescribed grazing to increase visual surveillance, increase forage quantity and quality, and deferment or rest to create vegetative barriers to limit expansion to undesirable locations, and/or
- Brush management to restore plant community balance, increase visual surveillance, and increase forage quantity and quality, and/or
- Seeding to restore degraded rangelands or pasturelands and bare ground, and increase forage quantity and quality, and/or,
- Prescribed burning to increase forage quantity and quality, and/or,
- Noxious weed control to facilitate restoration of rangelands or pasturelands, increase visual surveillance, and increase forage quantity and quality.

Additional Activities

A Cooperator may elect to include one or more of the following management activities in a Cooperative Agreement:

- Irrigation improvements and control to reduce the chance of burrow flooding, and increase forage quantity and quality, increase access to moist vegetation,
- Plant vegetative barriers, such as, windbreaks, shelterbelts, or rows of tall grasses and shrubs to manage dispersal of prairie dogs into sensitive areas identified in the Cooperative Agreement, thereby minimizing the need for future control of prairie dogs.
- Dust burrows for fleas using pesticides and techniques approved by the Utah Prairie Dog Recovery Team, to prevent the spread of plague, or other diseases.
- Artificial burrow preparation and translocation of live Utah prairie dogs to establish a new colony in suitable habitat.
- Any other conservation measure that provides a net conservation benefit to the species as approved by the Service.

Incidental Take

A Cooperator's activities may result in some incidental take of Utah prairie dogs while engaging in normal agricultural activities such as grazing, ranching, and farming. Incidental take may also occur during the implementation of conservation measures to improve habitat. Restoration activities, including irrigation installation and maintenance, fencing, controlled burns, brush management, vegetation management, and prescribed grazing may result in the incidental take of individual Utah prairie dogs. For example, prairie dogs could be killed by vehicles traveling roads or by off-road ranch vehicles during restoration activities.

In accordance with issuance of the Permit, no more than 97 Utah prairie dogs will be authorized as incidental take on an annual basis, across all Cooperative Agreements. Incidental take will be avoided and minimized through implementation of the following measures, as identified in Exhibit 2 of the Agreement, and as will be included in all Cooperative Agreements:

- In occupied Utah prairie dog habitat, deep tilling (greater than 18 inches) will be avoided. If it cannot be avoided, it will occur when adults and pups are above ground and can avoid impacts of equipment.
- The use of heavy equipment in occupied habitat will be avoided during breeding and nursing seasons.

The Agreement also identifies the following Standard Activities (in addition to the above incidental take avoidance measures) that will be included in all Cooperative Agreements, and should further minimize incidental take:

- Limit the use of pesticides and herbicides within 100 feet of active prairie dog burrows to those included on a list of Service-approved chemicals.
- All practices will be planned and applied in a manner that will avoid or minimize adverse effects to sensitive, threatened, or endangered species.

- Monitor habitat restoration activities to assess the general condition of habitat, use of the habitat by the covered species, progress of the ongoing management activities, and satisfaction of the Cooperator with the project, and adjust practices as deemed necessary.

Under the proposed Agreement and the associated 10(a)(1)(A) Enhancement of Survival Permit, the Cooperator will receive regulatory assurances that successful implementation of the management activities and conservation measures will not result in additional ESA restrictions on future land use activities. The Permit will authorize incidental take resulting from routine farming, grazing, and irrigation activities and implementation of conservation measures, as well as control of Utah prairie dogs on the “enrolled properties.”

Control

Due to management activities, a Cooperator may experience increases in Utah prairie dog populations that could detrimentally impact the participant’s ongoing ranching and farming activities. In accordance with issuance of the Permit, control measures may be authorized in a Cooperative Agreement if total adult prairie dogs on the enrolled property exceed a specified number, which shall be no less than 20 adults (as determined by the previous spring count) or twice the baseline number (whichever is larger). The Cooperator is not authorized under any circumstances to control Utah prairie dogs below the baseline population of the enrolled property. No more than 97 Utah prairie dogs will be authorized for control on an annual basis, across all Cooperative Agreements. In addition to a cap on numbers, areas of allowed control will be specifically identified on the enrolled properties. These areas of allowed control will be areas where animals could detrimentally impact the participants’ ongoing ranching and farming activities, or where they detrimentally impact structures (i.e., within 50 feet of a house or structure). Control will be authorized through the issuance of a Certificate of Registration through the Utah Division of Wildlife Resources.

II. EFFECTS TO UTAH PRAIRIE DOG

Utah prairie dog abundance has declined from an estimated 95,000 individuals in 1920 to 5,000–10,000 today. The species is currently federally listed as threatened. Utah prairie dogs inhabit relatively open, grassy areas within shrubland ecosystems. A full description of the species and its habitat requirements can be found in the Utah Prairie Dog Recovery Plan. According to this plan, actions needed to recover the species include selecting and managing transplant sites; monitoring transplanted colonies; ensuring the protection of prairie dogs and their habitat on both existing and transplant sites on public and private lands; and developing and implementing site-specific management plans for each colony or transplant site.

As identified in the Service’s Safe Harbor Policy, the Agreement must provide a net conservation benefit for the species and the benefit must be sufficient to contribute directly or indirectly to recovery of the species. The net conservation benefit is defined as “the cumulative benefits of the management actions that provide for an increase in species’ population and/or enhancement, restoration, or maintenance of the covered species’ habitat.”

Conservation benefits for Utah prairie dogs from implementation of the Agreement are expected by--(1) minimization of potential incidental take through the incorporation of conservation practices such as avoiding the use of heavy equipment during breeding and nursing, (2) potential

for increased Utah prairie dog numbers and colony size on enrolled properties and overall across all three Recovery Areas, (3) reduced risk of catastrophic decline due to increased Utah prairie dog numbers and high plant diversity on colony sites; (4) improved chance of natural recolonization following catastrophic declines without increasing the risk of plague through an increased number of distinct colonies and reduced inter-colony distance, and (5) increased genetic mixing across all three Recovery Areas following natural dispersal. Furthermore, conservation of Utah prairie dogs will be enhanced by improving and encouraging cooperative management efforts with private landowners, who will establish a model for others to follow.

Cooperative efforts with landowners to implement habitat treatments as recommended by the Agreement, and as approved by the Service, will result in increased the overall health and viability of prairie dog colonies and prairie dog habitat increasing grasses and forbs, increasing plant diversity, increasing forage availability, and improving surveillance ability. New colonies may also be established on previously unoccupied sites which will help expand the species occupied habitat and improve dispersal abilities.

The long-term effect of this Agreement will result in conservation benefits to the Utah prairie dog rangewide and assist in long-term recovery of the species. It is our belief that voluntary measures and long-term conservation agreements for this species would not occur without implementation of this safe harbor Agreement and the assurances it provides to private landowners. The partnership thus fostered by this Agreement is crucial for rangewide conservation and recovery of the species due to the fact that approximately 70% of all Utah prairie dogs occur on private lands rangewide. Private landowners are under no regulatory obligation to improve habitat conditions for the Utah prairie dog. Encouraging voluntary conservation efforts by private landowners should result in improved habitat conditions and potentially increased colony size and distribution rangewide.

Although it is not possible to project the exact acreage or distribution of future enrolled properties, even the initial enrollment of only a few landowners creates an educational foundation and public outreach regarding the conservation and recovery of the Utah prairie dog. The Service believes that the ability to incidentally take or control animals will ease the concerns and negativity associated with prairie dogs by the agriculture community and increase acceptance and cooperation of private landowners in the conservation of Utah prairie dogs on private lands.

The incidental take and allowed control associated with the Agreement and Permit are also closely defined. No more than 97 animals may be incidentally taken annually through implementation of this Agreement. In addition, allowed control of Utah prairie dogs may never occur below baseline conditions of the enrolled property, and is also limited to a total of 97 animals annually for the Agreement. Thus, the effects of the control are comparable to status quo, or no worse than baseline conditions and the net benefits of the program are associated with increased habitat improvements for the species.

In summary, benefits are expected to occur for the Utah prairie dog from conservation measures and management activities under the Agreement and from the Cooperative Agreements serving as a model for other private landowners. The combination of these benefits with the Agreements' regulatory assurances create cooperative relationship with landowners, and are

expected to result in an overall benefit to Utah prairie dog conservation and likely an increase in species abundance and recovery.

III. ANALYSIS AND FINDINGS FOR INCIDENTAL TAKE THROUGH ENHANCEMENT OF SURVIVAL PERMIT UNDER THE SAFE HARBOR AGREEMENT

The Service's analysis and findings with respect to the Agreement satisfying the permit issuance criteria through Safe Harbor Policy in accordance with 50 CFR 17.32(c)(1) are presented below:

1. The taking of Utah prairie dogs under this authority will be incidental and will be in accordance with the terms of the Safe Harbor Agreement.
2. The Agreement complies with the requirements of the Service's Final Safe Harbor Policy. Based, in part, on the analysis provided above in Part II of this document, the Service finds that the Agreement's conservation measures and expected benefits to Utah prairie dogs will provide a net conservation benefit to the species, as discussed in the Safe Harbor Policy. The Agreement also complies with all other requirements of the Safe Harbor Policy.
3. Issuance of the section 10(a)(1)(A) Enhancement of Survival Permit to the Program Administrator was reviewed by the Service under section 7 of the ESA. In a biological opinion, which is incorporated here by reference (January 12, 2009), the Service concluded that the direct and indirect effects of issuing the Permit and authorizing take of Utah prairie dogs will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species including the Utah prairie dog.
4. Implementation of the terms of the Agreement is consistent with applicable Federal, State, and Tribal laws and regulations. In accordance with the National Environmental Policy Act (NEPA), the Service completed an Environmental Assessment. The Service considered three alternatives: a no-action alternative, issuing individual Safe Harbor Agreements and permits, and a Programmatic Safe Harbor Agreement (the preferred alternative). A Finding of No Significant Impact (FONSI) was completed for the preferred alternative. Activities associated with revegetation under the Agreement would not be in violation of the National Historic Preservation Act (NHPA), because ground-disturbing activities in the form of crop agriculture will have already occurred on many of the "enrolled properties".
5. Implementation of the terms of the Agreement will not be in conflict with any ongoing conservation programs for the Utah prairie dog. In fact, implementation of the Agreement will complement ongoing conservation programs.
6. The applicant has shown capability for and commitment to implementing all of the terms of the Agreement. Signing of the legally binding Agreement by the Program Administrator and the Service ensures that it will be implemented and commits all parties to obligations under the Agreement. Implementation of the Agreement will be a condition of the Permit, and a failure to perform obligations under the Agreement may be grounds for suspension or revocation of the Permit

IV. ANALYSIS AND FINDINGS FOR TAKE THROUGH ENHANCEMENT OF SURVIVAL PERMIT UNDER GENERAL PERMIT REGULATIONS

The Service's analysis and finding with respect to the Agreement satisfying general permit issuance criteria in accordance with 50 CFR 17.32(a)(1) are presented below.

1. The control of Utah prairie dogs addressed in this Agreement and authorized under the Permit will only occur in situations where prairie dog numbers have increased to a minimum of 20 animals or twice the baseline, whichever is larger. It will only occur where prairie dogs detrimentally impact farming and ranching practices such as damage to structures or buildings.
2. The probable direct and indirect effects of control authorized by this permit are expected to be small and will only occur on those colonies that have increased beyond their baseline as described above and in the Safe Harbor Agreement. Prior to lethal control, translocation will be considered. Should translocation be feasible, additional benefits to the species could be achieved through the possible increase in colonies elsewhere throughout the species range. Furthermore, issuance of the section 10(a)(1)(A) Enhancement of Survival Permit to the Program Administrator was reviewed by the Service under section 7 of the ESA. In a biological opinion, which is incorporated here by reference (January 12, 2009), the Service concluded that the direct and indirect effects of issuing the Permit and authorizing take of Utah prairie dogs will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species including the Utah prairie dog.
3. The issuance of the permit will not conflict with any known program intended to enhance the survival probabilities of the population covered by the permit. Control authorized under this permit shall comply with authorities granted to the State of Utah under Section 4(d) of the Endangered Species Act which authorizes the State of Utah to control Utah prairie dogs that are causing damage on private agricultural lands. Furthermore, the Agreement is consistent with all applicable Federal and State laws and regulations. The Agreement is approved and the Permit issued in accordance with the ESA. In accordance with the National Environmental Policy Act (NEPA), the Service completed an Environmental Assessment. The Service considered three alternatives, a No Action Alternative, issuing Individual Safe Harbor Agreements and Permits, and the Preferred Alternative, a Programmatic Safe Harbor Agreement. A Finding of No Significant Impact (FONSI) was made for the preferred alternative.
4. The purpose for which the permit is required is likely to reduce the threat of extinction facing the species covered by the permit. The purpose of the permit is to provide a net conservation benefit for the species. Due to the controversial nature of prairie dogs, the Service believes that the ability to have limited control of animals in situations where they are causing damage to private property or become a health concern will increase willingness of private landowners to cooperate in the conservation of the species on private lands. Therefore this permit could increase the likelihood of survival for the Utah prairie dog.
5. The opinion or views of scientists or other persons or organization having expertise concerning the species or other matters germane to the application. Considerable input from

environmental organizations, Federal Agencies and State Agencies has been incorporated into this document in an effort to ensure that the Agreement meets the intended purpose of providing conservation benefits to the Utah prairie dog on private lands.

6. The expertise, facilities or other resources available to the applicant appear adequate to successfully accomplish the objectives. The applicant has shown capability for and commitment to implementing all of the terms of the Agreement. Signing of the legally binding Agreement by the Program Administrator and the Service ensures that it will be implemented and commits all parties to obligations under the Agreement. Implementation of the Agreement will be a condition of the Permit, and a failure to perform obligations under the Agreement may be grounds for suspension or revocation of the Permit.

V. PUBLIC COMMENTS

The Service published a Notice of Availability of the Program Administrator's permit application, including the Agreement and NEPA documentation, in the *Federal Register* on September 6, 2007. Publication of the notice initiated a 30-day comment period, which closed on October 9, 2007. In response to public comments the Service initiated an Environmental Assessment and considered three alternatives: 1. a No Action Alternative; 2. Individual Safe Harbor Agreements and Permits and; 3. the preferred Alternative, a Programmatic Safe Harbor Agreement. The Environmental Assessment was made available for review for 14 days beginning June 20, 2008. The public comment period was extended to 45 days to accept all comments. The Service received two comment letters which are addressed in the FONSI.

VI. RECOMMENDATION ON PERMIT ISSUANCE

The Service has 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). The Program Administrator has met the criteria for the issuance of the Permit and does not have any disqualifying factors that will prevent the Permit from being issued under current regulations. Based on the foregoing finding with respect to the proposed action, I recommend issuance of a section 10(a)(1)(A) Enhancement of Survival Permit to authorize incidental take and control of Utah prairie dogs by the Program Administrator in accordance with the programmatic Safe Harbor Agreement.

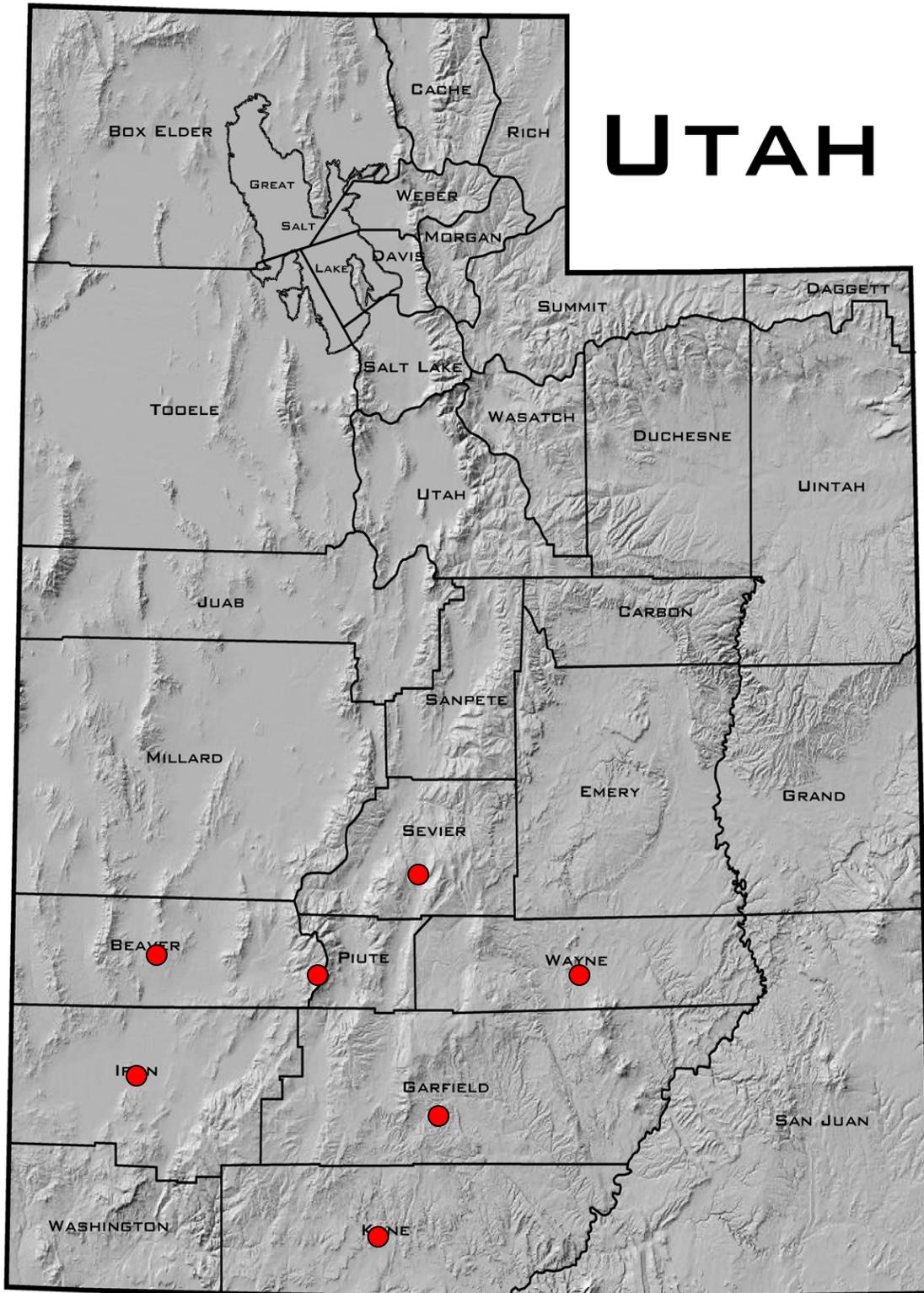


Utah Field Supervisor, Ecological Services

6/30/09

Date

Attachment: Map



State Map of Areas Included in the Programmatic Safe Harbor Agreement