

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

**I. DESCRIPTION OF THE PROPOSED ACTION**

Private landowners have an opportunity to participate in a Candidate Conservation Agreement with Assurances (CCAA) to provide landscape conservation in the Covered Area, which includes sagebrush and grassland ecosystems in Montana. The Covered Species for the CCAA include the greater sage-grouse (*Centrocercus urophasianus*), Baird's sparrow (*Ammodramus bairdii*), chestnut-collared longspur (*Calcarius ornatus*), McCown's longspur (*Rhynchophanes mccownii*), and Sprague's pipit (*Anthus spragueii*). Landowners participating in the CCAA may apply to The Nature Conservancy (TNC) for a Certificate of Inclusion (CI) under the enhancement of survival permit (Permit) in accordance with section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), and the U.S. Fish and Wildlife Service's (Service) CCAA Final Rule (64 Fed. Reg. 32726, June 17, 1999; Amended 81 Fed. Reg. 95164, December 27, 2016). 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 Covered Species—in the event that any of these species is listed under the ESA in the future—while carrying out otherwise Covered Activities under the CCAA.

A Programmatic CCAA (CCAA) was prepared by TNC and the Service to provide private landowners in the Covered Area with the opportunity to voluntarily conserve the Covered Species and their habitats while conducting general farm operations, general ranching and livestock operations, certain recreational activities, rangeland treatments, and species and habitat monitoring activities described in the CCAA. Private landowners applying for a CI under the Permit must agree to implement appropriate Conservation Measures from the CCAA. With technical assistance from TNC and the Service (including the Service's Partners for Fish and Wildlife Program and Ecological Services Program), landowners will implement Conservation Measures from the Programmatic CCAA through development of individual Certificates of Inclusion (CI) specific to their enrolled properties. Conservation Measures include on-the-ground actions that prevent or reduce potential effects to Covered Species within the following general categories: habitat loss and fragmentation, livestock grazing management, non-native, invasive plant species, haying/mowing and seed harvest, range management structures, conifer encroachment, tree rows and windbreaks, infrastructure, fencing, insecticides, roads, and recreation.

The Service will provide TNC with a section 10 enhancement of survival permit that becomes effective in the event any of the Covered Species become 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 general farm operations, general ranching and livestock operations, certain recreational activities, rangeland treatments, and species and habitat monitoring activities. Issuance of the Permit would convey ESA regulatory assurances as discussed in the Service's CCAA final policy.

These regulatory assurances entail the Service's guarantee that it will not require additional Conservation Measures nor impose additional land, water, or resource-use restrictions, beyond those voluntarily agreed to and identified in the Programmatic CCAA, should the Covered Species become listed under the ESA.

## II. PUBLIC COMMENT

The CCAA was developed by TNC with considerable input from the Service and other stakeholders, many of whom work closely with private landowners in the Covered Area. On September 25, 2017, the Service issued a Notice of Availability in the *Federal Register* (82 FR 44651) for the draft CCAA and draft Environmental Assessment (EA) for public review. A 30-day public review and comment period was open until October 25, 2017. The draft EA and draft CCAA were available at the Service's sage-grouse website, and were available for review at the Montana Ecological Services Office in Helena, MT.

We received five comment letters: three commenters included only supportive comments of the draft CCAA; one commenter supported the draft CCAA and included suggestions for improvement; and one commenter included only suggestions for improvement and 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 who participate in the CCAA by working with TNC to develop a CI within the Programmatic CCAA must meet all requirements of the CCAA and the Permit. In addition, TNC must meet all issuance criteria for the Permit contained in 50 CFR 17.22(d)(2) and 17.32(d)(2). 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 the Covered Species under this CCAA would be incidental to otherwise lawful activities. These activities would occur as a result of the participating landowner's ongoing Covered Activities and implementation of Conservation Measures described in the CCAA. Most take of Covered Species will be avoided; however, it is likely that all impacts to habitats and individuals cannot be avoided and some adverse effects, including incidental take of the five Covered Species will occur within the Covered Area.

Estimated take is based primarily on the risk to the species from harassment, and the likelihood of their injury, or mortality. Not all individuals of each species exposed to a particular disturbance will respond negatively such that effects reach the level of take. Adverse effects may occur, such as flushing of birds during livestock management activities, but may be insignificant such that vital rates (reproductive success, survival, etc.) are not affected.

The Permit would include incidental take associated with: implementation of conservation commitments and measures described in the CCAA, and existing land uses, including, general

farm operations, general ranching and livestock operations, certain recreational activities, and rangeland treatments on the enrolled properties. Take authorized would be documented in TNC's Permit and each participant's CI.

**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)).**

TNC has developed the CCAA pursuant to the requirements in the implementing regulations and the issuance criteria for a Permit. Conservation benefits for the Covered Species 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 the Covered Species.

Threats Reduction and Associated Conservation Measures

In order to avoid and minimize potential effects of habitat fragmentation and loss associated with the Covered Activities; Conservation Measures will be implemented, as appropriate, to maintain contiguous habitat by not undertaking new activities that would result in fragmentation, avoiding impacts to populations and individuals of the Covered Species present on enrolled properties.

In addition to site-specific Conservation Measures to address fragmentation, several other threat-specific Conservation Measures were developed in order to address the following: *livestock grazing management; non-native, invasive plant species; haying/mowing and seed harvest; range management structures; conifer encroachment; tree rows and windbreaks; infrastructure, fences; insecticides; roads; and recreation.*

*Livestock grazing management:* Conservation Measures will be implemented to maintain or improve current native vegetation cover, accounting for soils and corresponding ecological site potential, to provide sage-grouse and/or declining grassland songbird habitats; avoid and minimize disturbance to sage-grouse breeding and nesting activities; minimize disturbance to nests and young birds, minimize impacts of salt and other supplement placements to breeding or late brooding-rearing sage-grouse habitats; and minimize impact of cattle congregating near leks while active.

*Non-native, invasive species:* Conservation Measures will minimize the introduction or spread of invasive and/or noxious weed species that reduce habitat quality for the Covered Species; and restore marginal cropland and/or monotypic crested wheatgrass stands to facilitate recovery of sagebrush and/or native grassland habitats for the Covered Species.

*Haying/mowing and seed harvest:* Conservation Measures will avoid direct mortality of the Covered Species due to haying/mowing or seed harvest; and reduce seed production, dense vegetation, and litter associated with tame grass pastures to increase habitat suitability of these pastures for grassland songbirds.

*Range Management Structures:* Conservation Measures will reduce risk of mortality of Covered Species due to drowning; and reduce the impact of range management structures on habitat quality for the Covered Species.

*Conifer Encroachment:* Conservation Measures will maintain suitable sage-grouse habitat by removing conifers that have encroached into sagebrush habitats.

*Tree Rows and Windbreaks:* Conservation Measures will maintain suitable habitat for the Covered Species by removing existing and/or not planting woody vegetation such as linear tree rows and other shelterbelts/windbreaks.

*Infrastructure:* Conservation Measures will maintain intact native sagebrush and grassland plant communities by avoiding fragmentation of suitable habitats associated with infrastructure such as power lines and communication towers. This will also reduce the potential for introduction of non-native, invasive plant species as well as the potential to attract predators.

*Fences:* Conservation Measures will reduce the risk of fence collisions, reduce the availability of perching sites for avian predators, and avoid fragmentation of suitable habitats for the Covered Species.

*Insecticides:* Conservation Measures will maintain insects as seasonally important food items for the Covered Species.

*Roads:* Conservation measures will reduce the impacts of roads, which fragment otherwise suitable habitats and diminish habitat quality through the introduction of non-native, invasive plant species.

*Recreation:* Conservation Measures will reduce disturbance or harassment of sage-grouse and declining grassland songbirds.

## Conclusion

Loss and degradation of sagebrush and grassland systems has led to declines in populations of the Covered Species. Sage-grouse and the four declining grassland songbirds are landscape-scale species, relying on diverse habitat conditions to meet their life history requirements. Privately owned grazing lands in Montana provide large, intact habitats vital to populations of these species. In Montana, approximately 66 percent of sagebrush and 63 percent of grassland habitats are privately owned. Conservation efforts by private property owners are critical to maintaining these habitats.

Along with decreasing fragmentation, Conservation Measures will help address other threats to the Covered Species. Through the implementation of Conservation Measures associated with CIs, participating landowners will be able to manage their lands to benefit the Covered Species and, in return, receive assurances that no additional Conservation Measures or land, water, or resource use restrictions will be imposed on these lands should the Covered Species become listed under the ESA in the future. Should all landowners within the Covered Area participate

and provide Conservation Measures as outlined in the CCAA, threats would be reduced within the Covered Area. Therefore, a substantial conservation benefit would be realized for the Covered Species.

Conservation Measures include standard/general avoidance and minimization measures and site-specific measures to address impacts from Covered Activities. We anticipate that the CCAA will provide a long-term net benefit for the Covered Species and their habitats on a landscape scale within the Covered Area. We conclude, therefore, that if the Conservation Measures were implemented to address threats associated with Covered Activities across the entire species' ranges for the Covered Species, the benefits associated with the implementation of these measures would preclude the need to list the species due to impacts associated with Covered Activities and provide net conservation benefit to the Covered Species.

**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 a Permit 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 a Permit will not jeopardize the continued existence of the Covered 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 Permit. 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 Covered Species 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.**

Through the development of the CCAA, TNC has committed to complying with the terms and conditions of the Permit, conducting public outreach and education to encourage enrollment of property owners through CIs, assisting in the selection of appropriate Conservation Measures for each CI, reviewing CIs for consistency with the CCAA, assisting in the implementation of Conservation Measures and compliance and effectiveness monitoring, collecting and evaluating monitoring data (in coordination with the enrolled property owner and the Service), providing technical assistance to enrolled property owners, assisting in obtaining funding from other sources for implementation of Conservation Measures, and submitting annual reports to the Service.

Prior to receiving a CI, a participating landowner must commit to the responsibilities outlined in the CCAA. TNC is committed to education of landowners of all necessary requirements for participation in the CCAA.

The Programmatic CCAA was developed in cooperation with the Service’s Partners for Fish and Wildlife Program (PFW), which provides technical guidance and financial assistance to private property owners who voluntarily agree to improve habitats on their properties for the benefit of priority species. In an effort to streamline the enrollment process, the Montana PFW is developing private landowner agreements (PLAs) that benefit the Covered Species by addressing the same threats and implementing equivalent Conservation Measures identified under this Programmatic CCAA. Interested property owners with approved and signed PLAs can be provided with CIs that comply with this Programmatic CCAA.

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 an incidental take Permit for the Covered Species in accordance with the CCAA.

Assistant Regional Director – Ecological Services  
U.S. Fish and Wildlife Service  
Mountain-Prairie Region

Date

*Acting for*