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FINDING OF NO SIGNIFICANT IMPACT FOR THE REVISED 4(d) PROTECTIVE REGULATIONS FOR THE UTAH PRAIRIE DOG

On June 2, 2011 (76 FR 31906) we announced a proposed rule to revise our 4(d) special regulations for the conservation of the Utah prairie dog. Our proposed rule included limits to the allowable take, and new incidental take exemptions for otherwise legal activities associated with standard agricultural practices. On April 26, 2012 (77 FR 24195) we notified the public that we were making changes to our proposed rule of June 2, 2011, to revise the 4(d) special rule for the Utah prairie dog. These changes included allowing take where Utah prairie dogs cause serious human safety hazards or disturb the sanctity of significant human cultural or burial sites, allowing entities other than the Utah Division of Wildlife Resources (UDWR) to permit take, and changes to the seasonal and numeric limits for take.

In compliance with the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR 1500–1508; July 1, 1986) and the Department of the Interior's (Departmental) regulations for implementing NEPA (43 CFR §46; October 15, 2008), we prepared an environmental assessment (EA) analyzing the effects of our proposed revisions to the 4(d) special regulations. We provided the draft EA for 30 days of public review and comment on April 26, 2012 (77 FR 24195). We did not receive any comments on our draft EA. We evaluated three alternatives in the EA; full descriptions of each can be found in the Final EA:

- 1) Alternative 1 (No Action) – Under Alternative 1 we would not change the existing special 4(d) rule, as amended in 1991. Up to 6,000 Utah prairie dogs per year could continue to be authorized for lethal take on private lands throughout the species' range in the months of June 1 to December 31 (56 FR 27438; 50 CFR 17.40(g)). Under this Alternative, Utah Code (R657-19-6, R657-19-7) restricts take to agricultural lands.
- 2) Alternative 2 (Preferred Action) – Under Alternative 2, we would amend the existing special rule and extend the prohibitions in Section 9(a)(1) of the Endangered Species Act (ESA) to Utah prairie dogs on all lands across the species' range, where not specifically exempted. We would clarify those areas specifically exempted from the prohibitions (i.e., where lethal take is allowed) to include agricultural lands where prairie dogs are causing damage, private property neighboring conservation lands, and properties where

Utah prairie dogs are causing serious human safety hazards or disturbing the sanctity of significant human cultural or human burial sites and the amount of prairie dogs that can be taken in these areas. We would limit the methods of take that can be permitted on agricultural lands and properties near (within 0.8 km (0.5 mi)) conservation lands to translocations, trapping intended to lethally remove prairie dogs, and shooting, and to modify the season in which take can occur on these lands to June 15 through December 31. There would be no limits on the amount, methods, or timing on take in areas where prairie dogs cause serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites. In addition, we propose to authorize incidental take from normal agricultural practices.

- 3) Alternative 3 – Under Alternative 3 we would promulgate the blanket 4(d) rule that applies all ESA Section 9(a)(1) take prohibitions to the Utah prairie dog. Under this alternative, direct lethal take would not be allowed unless permitted pursuant to Section 10(a)(1)(A) of the ESA.

When the Utah prairie dog was reclassified from endangered to threatened status in 1984, we issued a special 4(d) rule applying all of the ESA's prohibitions to the Utah prairie dog except for take occurring in specific delineated portions of the Cedar and Parowan Valleys in Iron County, Utah, when permitted by the UDWR, provided that such take did not exceed 5,000 animals annually and that such take was confined to the period from June 1 through December 31 (49 FR 22330, May 29, 1984). In 1991, we amended the special rule (56 FR 27438, June 14, 1991), expanding the authorized taking area to include all private land across the species' range, and raised the maximum allowable take to 6,000 animals annually (50 CFR 17.40(g)). Under these previous special rules, as described in the EA, the rangewide Utah prairie dog population has remained stable to increasing. However, the UDWR has never permitted the annual maximum allowed take of 6,000 animals; therefore, we do not know the potential effects of taking 6,000 prairie dogs annually should that level be reached at current prairie dog population levels. In addition, many of UDWR's permitting practices under the previous special rules were based on Utah Code (R657-19-6, R657-19-7), and were not codified in our own rulemaking.

Therefore, our Preferred Action amendments are largely consistent with the past practices and permitting as administered by UDWR under the previous special rules. Our amendments are necessary and advisable to ensure conservation for Utah prairie dogs and the species' continuing stable to increasing long-term population trends. First, our Preferred Action specifically restricts where direct take can be permitted to: 1) agricultural land being physically or economically impacted by Utah prairie dogs when the spring count on the agricultural lands is 7 or more individuals; 2) private property near (within 0.8 km (0.5 mi)) Utah prairie dog conservation lands; and 3) in areas where Utah prairie dogs are determined, with the written approval of the Service, to be presenting a serious human safety concern, or disturbing the sanctity of significant human cultural or human burial sites if these lands are determined not necessary for the conservation of the species. Second, this rule limits the amount and distribution of direct take that can be permitted. Total take cannot exceed 10% of the estimated annual rangewide population. On agricultural lands, permitted take is limited to 7% of the estimated annual rangewide population and within colony take is limited to one-half of a colony's estimated

annual productivity. On properties near conservation lands, the remaining take (3% of the estimated annual rangewide population or more, depending on the amount permitted on agricultural lands) is restricted to animals in excess of the baseline population. Third, this rule limits methods of take that can be permitted on agricultural lands and properties near conservation lands to include: 1) activities associated with translocation efforts by trained and permitted individuals complying with current Service-approved guidance; 2) trapping intended to lethally remove prairie dogs; and 3) shooting. Additionally, this rule exempts standard agricultural practices from incidental take prohibitions on private property meeting the Utah Farmland Assessment Act of 1969 (Utah Code Annotated Sections 59-2-501 through 59-2-515) definition of agricultural lands. Allowable practices include plowing to depths that do not exceed 46 cm (18 in.), discing, harrowing, irrigating crops, mowing, harvesting, and bailing, as long as the activities are not intended to eradicate Utah prairie dogs. Finally, the Service maintains the right to immediately prohibit or restrict permitted taking. Restrictions on permitted taking could be implemented without additional rulemaking, as appropriate for the conservation of the species, if we receive evidence that taking pursuant to the special rule is having an effect that is inconsistent with the conservation of the Utah prairie dog. We concluded in the EA that these new restrictions on direct take and the new incidental take provision will support the conservation of the species while still providing relief and conservation incentives to private landowners. On the whole, we concluded in the EA that our Preferred Action will provide conservation benefits for the Utah prairie dog and help maintain the stable-to-increasing long-term population trends we have seen over the last 25 years, thus facilitating the recovery of the Utah prairie dog.

Our conclusion is based on:

- 1) Twenty-five years of available data under the previous special rules which show stable to increasing Utah prairie dog population trends. As compared to the previous special rules, this revised special rule is more restrictive in the amount and locations where take can occur than the previous special rules. Therefore, we conclude that prairie dog populations will continue to be stable to increasing with implementation of this revised special rule.
- 2) Available modeling presented in the rule and the final EA (Reeve and Vosburgh 2006; Colorado Division of Wildlife 2007) indicate that harvest rates of 20 to 25% of a prairie dog population are sustainable. While not specific to Utah prairie dogs, these models assessed in conjunction with our 25 years of data show that the limits prescribed by our revised rule (10% allowable take on agricultural lands and properties adjacent to conservation lands) will support the continued stable to increasing Utah prairie dog population trends.
- 3) Our ability to allow take on agricultural lands will have beneficial effects to the biological viability of prairie dog colonies in these areas because of our ability to manage their unnaturally high densities. Allowing take on agricultural lands, lands within 0.8 km (0.5 mi) of conservation lands, and areas of serious human safety hazards or where prairie dogs disturb the sanctity of significant human cultural or human burial sites would help us achieve species' recovery by gaining landowner and local community support for Utah

prairie dog recovery efforts. In addition, as compared to Alternative 1, this Alternative would provide Federal regulations which limit take based on best available scientific information and would help us ensure the continued stable to increasing rangewide trends for the Utah prairie dog that we have seen over the past 25 years.

We decided not to adopt Alternative 1 because it does not provide limits to the amount, timing, and methods for take. Our best available information indicates that it is prudent to provide these limits, based on 25 years of data and modeling of the effects of shooting on other prairie dog species, as described above. We decided not to adopt Alternative 3 because using the definition of take as defined in the blanket 4(d) rule is not necessary and advisable for the conservation of the Utah prairie dog. For the reasons described above, we conclude that a tailored 4(d) rule that considers the specific needs of the species in the take prohibitions is important for the long-term conservation of the Utah prairie dog.

As described in our Final EA, implementation of the Preferred Action will have negligible to no impacts, or beneficial impacts to threatened or endangered species; other fish and wildlife; transportation; farm lands; livestock grazing; and socioeconomics.

Documents used in the preparation of this Finding of No Significant Impact include: the final EA for the revised 4(d) special rule (USFWS 2012a), our biological opinion (USFWS 2012b), and the Final Utah Prairie Dog Revised Recovery Plan (USFWS 2012c). All documents are incorporated by reference, as described in 40 CFR 1508.13.

Based on my review and evaluation of the enclosed EA, biological opinion, and other supporting documentation, I have determined that the proposed action is not a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Consequently, we will not prepare an environmental impact statement.



for U.S. Fish and Wildlife Service
Assistant Regional Director

7/24/12
Date

RELATED DOCUMENTS

U.S. Fish and Wildlife Service. 2012a. Final Environmental Assessment of 4(d) Protective Regulations for the Utah Prairie Dog. June 2012.

U.S. Fish and Wildlife Service. 2012b. Intra-Service Consultation for the Revision of the 4(d) Protective Regulations for the Utah Prairie Dog. June 20, 2012.

U.S. Fish and Wildlife Service. 2012c. Utah Prairie Dog Final Revised Recovery Plan. March 2012. 169 pp.