



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
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October 18, 2013

Memorandum

To: Regional Director, Region 6 / Ecological Services; Lakewood, Colorado
Attention: Amelia Orton-Palmer (Mail Stop 60120)

From: Scott Larson, Field Supervisor
South Dakota Ecological Services Field Office; Pierre, South Dakota

Subject: Findings and Recommendations on the issuance of an Endangered Species Act Section 10(a)(1)(A) Enhancement of Survival Permit Associated with the Black-footed Ferret Programmatic Safe Harbor Agreement

I. DESCRIPTION OF PROPOSAL

The Black-footed Ferret Recovery Coordinator, who would be the Permittee, has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531-1544). The requested permit, which is for a period of 50 years, would authorize the incidental take of the endangered black-footed ferret (*Mustela nigripes*) during the implementation of a Programmatic Safe Harbor Agreement (SHA) designed to enhance the recovery of the species on non-Federal lands within its historic range.

The goal of the SHA is for the Service, via the Permittee, to implement conservation measures for the black-footed ferret throughout its range, in support of the Permittee's ongoing and future efforts to manage, conserve, and ultimately recover the species. The SHA pertains to non-Federal lands within the historic range of the black-footed ferret in the following states, which will be referred to as the action area: Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming. Enrolled lands are those lands within the action area that are included under the SHA and the permit through the process of 1) individual landowners developing Reintroduction Plans for the black-footed ferret in conjunction with the Permittee that designate strategies for black-footed ferret reintroduction, monitoring, prairie dog management, and plague management; 2) the Permittee issuing individual certificates of inclusion (CI) for each landowner; and 3) the Permittee monitoring the status of each Reintroduction Plan and its attendant CI on an annual basis.

II. INCIDENTAL TAKE PERMIT CRITERIA – ANALYSIS AND FINDINGS

1. *Take will be incidental to otherwise lawful activity and in accordance with the SHA.*

The Service finds that take of black-footed ferrets will be incidental to otherwise lawful implementation of any activities. Incidental take in the form of injury or mortality of black-footed ferrets could occur through reintroduction and monitoring of black-footed ferrets while handling or transporting to the reintroduction site. Black-footed ferret deaths have occurred while anesthetizing animals for health care purposes. In addition, release sites have experienced occasional black-footed ferret deaths during transportation due to heat stress when air conditioning equipment failed; however, less than one half of one percent of more than 2,700 black-footed ferrets reintroduced have perished from handling and transportation (Gober, personal communication 2012; see Biological Opinion for more information).

Incidental take in the form of injury or mortality of black-footed ferrets may also occur in carrying out other conservation activities, including implementing plague management, prairie dog management, and routine ownership interest activities including, but not limited to, livestock grazing and ranching activities. The most likely means of incidental take associated with these activities would occur through vehicle or equipment collisions. While such incidental take has been documented, the risk of vehicle collisions is low due to the nocturnal habits of black-footed ferrets and is not expected to be a significant mortality factor impacting reintroduction sites.

None of these forms of take or the purpose the actions to be implemented in the SHA are deliberate, nor are there any other actions under the SHA that would constitute deliberate or purposeful take resulting in death or injury of black-footed ferrets.

2. *The SHA complies with Service policy.*

The Service finds that the SHA complies with the Service's Final SHA Policy (64 FR 32717). The purpose of the proposed action is to reintroduce black-footed ferrets within its range on lands volunteered for that purpose by landowners who enroll in the SHA. Associated management activities will maintain or enhance habitat for the black-footed ferret at reintroduction sites and will provide incentives for landowner participation by allowing defined management of prairie dogs. Implementation of these activities is expected to lead to increased abundance and distribution of the species. The SHA is expected to benefit the black-footed ferret by encouraging non-Federal landowners to undertake conservation activities that may ultimately recover the species and remove it from its listed status under the ESA. Therefore, implementation of the SHA would result in a net conservation benefit to the black-footed ferret as required by the Safe Harbor Policy and as further described in detail in Section 8.2 of the SHA.

3. *Direct and indirect effects of take will not appreciably reduce the likelihood of survival and recovery.*

The Service finds that implementation of the SHA will not appreciably reduce the likelihood of survival and recovery (i.e., jeopardize) of any listed, proposed, or candidate species. The ESA's legislative history establishes the intent of Congress that the issuance criteria be based on a finding of "not likely to jeopardize" under Section 7(a)(2) [see 50 CFR 402.02]. As a result, approval of the Permittee's permit application has also been reviewed by the Service under Section 7 of the ESA. Black-footed ferrets used for the SHA reintroductions will come from the black-footed ferret captive breeding program or from existing black-footed ferret reintroduction sites that can be translocated. The effects of the proposed action on the black-footed ferret and other potentially affected listed, candidate, and proposed species (Gunnison's prairie dog, California condor, greater sage-grouse, Gunnison sage-grouse, lesser prairie-chicken, northern aplomado falcon, and Sprague's pipit) and proposed critical habitat for the Gunnison sage-grouse are fully analyzed in the Service's Environmental Assessment (EA), pursuant to the National Environmental Policy Act of 1969 (NEPA), the Biological Opinion, and Section 7 of the ESA, for the proposed action which are incorporated herein by reference. In the Biological Opinion, the Service concluded that issuance of the permit would not jeopardize the continued existence of the black-footed ferret, Gunnison's prairie dog, California condor, greater sage-grouse, Gunnison sage-grouse, lesser prairie-chicken, northern aplomado falcon, and Sprague's pipit nor adversely modify proposed critical habitat of the Gunnison sage-grouse.

4. *The terms of the SHA are consistent with Federal, State, and Tribal laws and regulations.*

The Service finds that the SHA complies with all other applicable Federal, State, and Tribal laws and regulations as outlined in the SHA and the EA. Implementation of the terms of the SHA is consistent with applicable Federal, State, and Tribal laws and regulations. In accordance with the NEPA, the Service prepared an EA and analyzed the proposed action and two alternatives.

5. *The SHA will not conflict with ongoing conservation plans for the black-footed ferret.*

The Service finds that implementation of the SHA will not be in conflict with any ongoing conservation programs for the black-footed ferret and, in fact, would complement past and ongoing conservation measures, efforts, and programs for the species. The reintroduction and associated conservation activities in the SHA are consistent with those used for reintroductions within the ESA Section 10(j) areas and under separate ESA Section 10(a)(1)(A) permits. Assurances to landowners and streamlined participation processes in the SHA would serve to increase opportunities for reintroductions across the species' range. Other conservation activities included in the SHA are designed to reduce the known threats to the black-footed ferret, e.g., plague management that would reduce outbreaks that deplete the species' prey base. These activities are consistent with other ongoing efforts to manage plague in prairie dogs within the range of the black-footed ferret and also would complement other conservation efforts for the black-footed ferret.

6. *The Permittee shows commitment to the terms of the SHA and the capability to implement them.*

The Black-footed Ferret Recovery Coordinator oversees the recovery activities for the black-footed ferrets and works closely with the Black-footed Ferret Recovery Implementation Team (BFFRIT) to further the conservation of the species. The BFFRIT is comprised of Federal, State, Tribal, and non-governmental conservation organizations throughout the range of the species who work in a collaborative effort to address the threats to species and to implement recovery actions. Thus, by virtue of the position's responsibilities for conservation of the species, the Service finds that the Permittee is committed to implementation of the terms of the SHA. The Permittee is especially capable of implementing the SHA based on the qualifications of the Black-footed Ferret Recovery Coordinator position regarding the conservation needs for the black-footed ferret, relationships with interested parties, and relevant ESA policy and regulations, including those pertaining to the Safe Harbor Program.

III. PUBLIC COMMENTS

A public comment period on the draft SHA was announced in the Federal Register on December 19, 2012. The draft SHA was available for public review at the National Black-footed Ferret Conservation Center in Carr, Colorado, and online at www.blackfootedferret.org and www.fws.gov/mountain-prairie/species/mammals/blackfootedferret/. In response to requests for an extension of the public comment period, the Service provided the draft document for review for an additional 30 days on January 23, 2013. A total of 302 comments were received from a combination of individuals, organizations, State agencies, local agencies, Federal agencies, and industrial organizations. Approximately 42 percent of the comments were in favor of permit issuance, 44 percent were opposed, and 14 percent expressed no opinion. The Service reviewed all substantive comments submitted by the public and made changes to the Glossary, Sections 1.0, 2.0, 3.2, 6.0, 7.0, 7.3, 8.1, 10.1, 10.2, 11.0, 17.0, and Appendix B of the SHA. These changes included clarifying the potential impacts to non-participating landowners; revising the definitions of baseline, early termination, incidental take, Management Zone, and Conservation Zone; adding definitions for several biological terms; clarifying where lethal control of prairie dogs may occur on enrolled lands; addressing concerns relative to private property rights; providing clarification on disease management practices; and addressing split estate concerns as they pertained to energy development on enrolled lands.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS – ANALYSIS AND FINDINGS

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 Black-footed Ferret Recovery Coordinator has met the criteria for the issuance of the permit and does not have any disqualifying factors that would prevent the permit from being issued under current regulations.

V. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, issuance of an Enhancement of Survival Permit to authorize incidental take of the black-footed ferret through implementation of the SHA by the Black-footed Ferret Recovery Coordinator is recommended.

APPROVED AND CONCUR:



Scott Larson, South Dakota ESFO Supervisor



Date



Michael Thabault, Assistant Regional Director
Ecological Services



Date