

# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
MOUNTAIN-PRAIRIE REGIONAL OFFICE  
P.O. BOX 25486 DFC  
DENVER, COLORADO 80225

July 20, 2009

## **FINDING OF NO SIGNIFICANT IMPACT FOR ISSUANCE OF A PERMIT FOR THE UTAH PRAIRE DOG TO THE PANORAMALAND RESOURCE AND CONSERVATION DEVELOPMENT COUNCIL**

In 2007, the U.S. Fish and Wildlife Service (Service) proposed to issue a section 10(a)(1)(A) Incidental Take Permit (ITP) under the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended (ESA), to the Panoramaland Resource Conservation and Development Council (RC&DC) (Program Administrator). The Program Administrator prepared a Programmatic Safe Harbor Agreement (Programmatic Agreement) that identified conservation measures that benefit the Utah prairie dog on nonfederal lands throughout the range of the species. Under the Safe Harbor, the RC&DC will enroll private or nonfederal landowners through Cooperative Agreements (CA) and Certificates of Inclusions (COI). The duration of the ITP was originally proposed as 50 years. However, in response to comments received, we have reevaluated the permit term and it is now set at 35 years. Cooperative Agreements developed pursuant to this Safe Harbor will be for a term of at least 15 years. Certificates of Inclusion issued under this permit will have a term of 10 years beyond the term of the Cooperative Agreement, but in no event beyond 2044. The Certificates of Inclusion provide the Cooperator with incidental take and control assurances that may be needed because of increased populations of prairie dogs pursuant to management activities conducted under the Cooperative Agreements.

On September 6, 2007, the Service issued a Notice of Availability in the Federal Register (Vol. 72, No. 172 FR 2007) announcing the receipt of the application for the permit and the availability of the Programmatic Agreement for public review. In compliance with the National Environmental Policy Act (NEPA), the Service determined that the proposed action was covered by Categorical Exclusion 516 DM 8.5. A 30-day comment period was open until October 9, 2007. All documents were available at, or could be requested through the Mountain-prairie Regional Office, Region 6 (Regional Office) of the Service or on the Regional Office websites. The Service received one comment letter during the public comment period for the Programmatic Agreement. However, because the comment letter identified a high level of controversy associated with the proposed action, we prepared an Environmental Assessment analyzing the effects of the issuance of the permit; the implementation of the Programmatic Agreement; and alternatives to this action. The availability of this document for 45 days was made through press releases and through the Regional Office website beginning June 20, 2008. The Service has incorporated relevant

comments. Responses to the comments are attached.

The Environmental Assessment (EA) evaluates the potential environmental effects associated with three Alternatives:

- 1) Alternative A -- No Action Alternative
- 2) Alternative B – Preferred Alternative – Approval of a Programmatic Safe Harbor Agreement and Issuance of a 10(a)(1)(A) Permit for a term of 50 years.
- 3) Alternative C – Approval of Individual Safe Harbor Agreements and Issuance of 10(a)(1)(A) permits.

We have selected to implement Alternative B, the Preferred Alternative to implement a Programmatic Safe Harbor agreement for the Utah prairie dog, and issue a corresponding 10(a)(1)(A) permit. We have selected Alternative B because it provides the best means to establish coordinated, long-term conservation efforts and benefits for the Utah prairie dog through voluntary partnerships with local landowners. Alternative A, the No Action alternative does not provide the same opportunities to work with landowners due to the lack of assurances that can be provided under a safe harbor agreement. Alternative C, while it allows for the development of safe harbor agreements and the issuance of section 10(a)(1)(A), does so on an individual agreement basis. Individual agreements entail a complex and lengthy application process for each landowner, which can reduce the interest level and the numbers of enrolled landowners, and could lead to less consistent conservation measures for the species across its range.

The purposes of the Programmatic Agreement are (1) to promote the conservation of Utah prairie dogs (*Cynomys parvidens*), 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 Program Administrator has prepared the Programmatic Agreement which describes the eligible lands, the process for enrollment, the management activities that provide the conservation benefit for Utah prairie dogs and the responsibilities of all parties including the RC&DC, the Cooperators (nonfederal landowners) the Service, and the Utah Division of Wildlife Resources. Eligible lands consist generally of those nonfederal owned lands within the historic range of the Utah prairie dog as identified in the Programmatic Agreement. Participation in the Safe Harbor is voluntary. Landowners that choose to enroll their property will sign a Cooperative Agreement and will be issued a Certificate of Inclusion. Enrolled lands will be more precisely indicated on maps attached to the Cooperative Agreements. Land use practices on the enrolled properties are likely to vary and include prescribed grazing, crop production, and other agricultural uses, as well as recreational uses. Prior to enrollment in the Safe Harbor, each parcel of land must have a baseline survey completed or approved by the Service according to survey protocol, identifying the acres of occupied Utah prairie dog habitat and the population size of the colony. Management activities that provide a net conservation benefit for the Utah prairie dog will be described in the Cooperative Agreement

including a timetable for those actions.

Each Cooperative Agreement will identify the conservation measures to be undertaken by the landowner. All Cooperative Agreements will include limiting the use of pesticides and herbicides within 100 feet of active prairie dog burrows; avoiding the use of heavy equipment in occupied prairie dog habitat during sensitive life stages such as breeding and nursing; and monitoring of habitat restoration activities. In addition, all Cooperative Agreements will include two of the following: prescribed grazing; brush management; seeding; prescribed burning; and/or noxious weed control. Any of the following actions may also be included: improving irrigation; planting vegetative barriers to manage dispersal of prairie dogs into inappropriate areas; dusting burrows for fleas; or preparing artificial burrows and translocating live Utah prairie dogs.

Implementation of the conservation measures and normal agricultural activities could result in the take of Utah prairie dogs through accidental crushing. Take will be minimized by avoiding deep tilling (greater than 18 inches) and avoiding the use of heavy equipment during sensitive life stages. Conversely, due to the conservation measures and management activities, a participant may experience increases in Utah prairie dog populations that could be detrimental to the landowners ongoing agricultural activities. Therefore, limited control of Utah prairie dogs could be considered for each Cooperative Agreement and authorized through the Utah Division of Wildlife Resources under a Certificate of Registration if Utah prairie dog numbers go above twenty animals or twice the baseline (whichever is larger).

The Panoramaland RC&DC will hire a qualified biologist to oversee the program; complete outreach to potential participants; assist landowners in the development of appropriate management activities as identified in the Safe Harbor; and coordinate all monitoring and reporting requirements for annual submission to the Service. The Service will oversee all baseline determinations and will review and approve all Cooperative Agreements. The Utah Division of Wildlife Resources will survey all enrolled properties that have occupied Utah prairie dog habitat and coordinate with the Panoramaland RC&DC for reporting purposes.

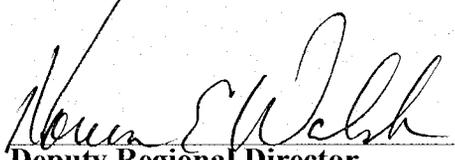
The Service finds that the proposed issuance of a section 10(a)(1)(A) ITP to the Panoramaland Resource and Conservation District for the Utah prairie dog as described in the Programmatic Agreement for Utah Prairie Dogs will not have a significant effect on the human environment for the following reasons:

1. The stated purpose of the project is to facilitate voluntary conservation activities on non-federal lands within the historical range of the threatened Utah prairie dog and provide landowners with assurances that they will not be subjected to increased restrictions should their beneficial stewardship efforts result in increased Utah prairie dog populations.
2. Lands potentially eligible for participation represent less than 8.5 % of the total land area within the seven county area. Lands that are likely to be enrolled in the voluntary program are made up predominantly of lands already affected by land management practices associated with agriculture such as grazing and farming, and have altered vegetation communities.

3. Conservation measures identified to benefit the Utah prairie dog project will have a net conservation benefit to the Utah prairie dog by improving and increasing available habitat and contributing to the enhancement and survival of the species. Potential impacts to other wildlife species will be avoided and minimized in the development of each Cooperative Agreement with individual landowners and are expected to be insignificant and short term.
4. The proposed project may expand established colonies currently located on nonfederal lands and promote their existence for a minimum of 15 years per individual Cooperative Agreement.
5. If the "enrolled properties" are returned to baseline conditions, they will still maintain any baseline active prairie dog colonies.
6. The selected alternative would have no effect or no significant effects on all other aspects of the human environment as addressed in the EA: vegetation, wildlife, threatened and endangered species, geology and soils, land use, air quality, water resources, cultural resources, and the socio-economic environment.

Documents used in the preparation of this Finding of No Significant Impact include: the Panoramaland Programmatic Safe Harbor Agreement for Utah Prairie Dogs, the Environmental Assessment (USFWS 2008), the biological opinion on the Program Administrator's permit application and the Findings (USFWS 2009) for the Program Administrator's activities. All documents are incorporated by reference as described in 40 CFR 1508.13.

Based on my review and evaluation of the EA and Safe Harbor and other supporting documentation, I have determined that issuance of an ESA section 10(a)(1)(A) permit TE 155376 to the Program Administrator for take of the federally threatened Utah prairie dog on enrolled nonfederal lands is not a major Federal Action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the NEPA of 1969. Accordingly, preparation of an environmental impact statement on the proposed action is not required. Therefore, an environmental impact statement will not be prepared.

  
**Deputy Regional Director  
Region 6**

7/23/09  
**Date**

## **Responses to public comments on the Environmental Assessment for the Panoramaland Programmatic Safe Harbor Agreement for the Utah Prairie Dog.**

*This appendix summarizes and responds to comments received on the Environmental Assessment*

### **Number and Type of Comments Received.**

The U.S. Fish and Wildlife service received two sets of comments on the Environment Assessment and Safe Harbor Agreement from WildEarth Guardians. WildEarth Guardians July 18, 2008 comment letter was the most current, and referenced their previous October 9, 2007 letter. Issue statements were formulated and responses for those issues are presented below. Substantive comments are defined as those that do one or more of the following:

- Question, with reasonable basis, the accuracy of the information in the EA.
- Question, with reasonable basis, the adequacy of the EA.
- Present reasonable alternatives other than those presented in the EA.
- Cause changes or revision in the proposal, raise debate or question a point or fact of policy.

### **Responses to Comments**

1. The term of the Permit is excessive and should be reduced to a maximum of 25 years.

The purpose of the Safe Harbor program is to provide a net conservation benefit to listed species, in this case the Utah prairie dog. The term of permit can vary depending on the needs of the species and is based on the time necessary to provide a conservation benefit. Based on this comment, we have reconsidered the appropriate term for the Agreement and Permit. The new term will be 35 years. A 35 year term effectively provides the Program Administrator with a 10 year window to work with landowners and develop and implement safe harbor agreements. This is due to the fact that most Cooperative Agreements will be 15 year agreements; the amount of time it is believed necessary for most conservation measures to provide a conservation benefit. The Certificates of Inclusion will be issued for an additional 10 years beyond the term of the Cooperative Agreement. Each enrolled property is therefore part of the safe harbor program for 25 years; and the Certificate of Inclusions can not extend beyond the term of the Programmatic Agreement or the Permit. Thus, for a 35 year term, all properties must be enrolled by year 10 so that a 25 year window remains. A 35 year term is the minimum necessary to provide an adequate timeframe to establish a programmatic safe harbor program due to the time commitment of contacting landowners, establishing long-term working relationships, and realizing benefits from the conservation measures.

2. Renewals of Cooperative Agreements should be subject to Service review.

Language contained in the Cooperative Agreement regarding modification or renewal of Cooperative Agreements has been changed to include approval by the Service. Language regarding baseline determination associated with renewals has been clarified to ensure that baselines for renewals shall be determined by the same methods as described for initial participants. Language in the Certificates of Inclusion has been clarified to match the term of the Cooperative Agreement.

3. The Service is delegating too much authority for management of a listed species to a "community based, local non-profit". There is not enough oversight provided by the Service.

In accordance with Service regulations, a permit can be issued to any non-federal landowner who shows the capability and the commitment to implement the Programmatic Agreement. The Program Administrator has hired a professional biologist to oversee the Programmatic Agreement. The Service will review all Cooperative Agreements, participate in baseline determinations and review all annual reports. We believe that the Program Administrator possess the necessary commitment to successfully implement the Agreement to provide conservation benefits to Utah prairie dogs on nonfederal lands. Language in section 8 of the Programmatic Agreement has been clarified to ensure that the Service will review and approve all Cooperative Agreements prior to issuance by the Program Administrator. In addition, the Service is prepared as a last resort to revoke a permit implementing a Programmatic Agreement where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit, although the Services would first have to exercise all possible means to remedy such a situation prior to taking such a step.

4. This safe harbor program should require more review by the Service and the public over the life of the permit. In addition, the annual report from the Program Administrator should include a database that shows the baseline and subsequent survey data for Utah prairie dog populations, suitable habitat, and occupied habitat. This report and database should be provided to the public upon request.

All Cooperative Agreements in this safe harbor program must undergo Service review and approval. If any Cooperative Agreement does not comply with the Programmatic Agreement and does not provide a net conservation benefit for the species, the Service will work with the Program Administrator until it meets these requirements. If these requirements cannot be met, the Service would not approve that Cooperative Agreement. Furthermore, as part of the Programmatic Agreement the Program Administrator must submit an annual report by March 1 of each year, which will be reviewed by the Service. These reports must describe the results of surveys, any changes in habitat conditions, and use of the habitat by the prairie dog. The Service will provide reminders, by email or letter, to the Program Administrator regarding approaching annual reporting deadlines. The Service maintains a very high interest in ensuring the success of the programmatic safe harbor program as a means to improve the long-term conservation and recovery of the species. These review processes support our investment in the success of this program. In accordance with NEPA and our 5-Point Policy, we fulfilled our obligations for

public review by providing opportunities for public input on the Agreement, permit application, and NEPA documents during 2 comment periods totaling 75 days.

We agree a database would be helpful for our long-term management and evaluation of this program. As information is submitted to our office we will consider developing a database in coordination with the Program Administrator. Information on specific colony locations is managed and protected by the Utah Division of Wildlife Resources.

5. The Safe Harbor Agreement identifies "Emergency Situations" (drought, wildfire, plague or insect infestations) which may preclude the implementation of management actions described in the Cooperative Agreement. The commenter believes that drought and plague constitute an emergency to the prairie dog and should be addressed as such.

This list of "Emergency Situations" included in the Safe Harbor Agreement (drought, wildfire, plague or insect infestations) serve as examples of situations that may occur in which the landowner may not be able to provide the identified 90-day notice prior to taking actions which may take the species back to baseline. These are situations that are beyond the control of the landowner and may include other unforeseen circumstances. The Cooperative Agreement (Exhibit 1, #11) provides additional specifics regarding the need, where feasible, in emergency situations for the Cooperator to coordinate with the Program Administrator; to make reasonable accommodations for surveying and relocating affected prairie dogs; to work cooperatively to avoid impacts to the covered species; and to allow translocations and response to plague situations in an effort to protect Utah prairie dogs on the enrolled properties. These cooperative measures provide more conservation for the species than would occur on un-enrolled properties or without this Programmatic Agreement.

6. Take and control authorized under this Safe Harbor Agreement will be additive to already exempted take under the 4(d) rule. Thousands of prairie dogs could be controlled under this Agreement without a numeric take limit.

In 1984, the Service issued a section 4(d) rule under the Endangered Species Act (Act), for Utah prairie dogs, which was amended in 1991. The current rule authorizes control of up to 6,000 animals annually on non-Federal lands between July 1 and December 31 throughout their range. The take of Utah prairie dogs authorized under the 4(d) rule is overseen and permitted by the UDWR through the issuance of Certificates of Registration. A 10-year review of Certificates of Registration from 1997 through 2004 for agricultural landowners indicated that an average of 976 animals was taken annually range-wide. Although future take under the 4(d) rule cannot be precisely predicted, it is reasonable to assume that a similar amount of take as in the past would be authorized in a given year as needed to control animals causing damage on agricultural lands. Under the Programmatic Agreement, enrollees would not be able to take prairie dogs below the baseline number at the time of enrollment. Any control of prairie dogs would only be authorized under those Cooperative Agreements where numbers of prairie dogs have increased to a minimum of 20 animals or twice the baseline (whichever is larger) and where they are causing damage

to private or non-Federal property. Control of Utah prairie dogs under the Programmatic Agreement must be approved by the UDWR through the issuance of Certificates of Registration. The number of Utah prairie dogs cannot be brought below the baseline at the time of enrollment through either incidental take or control. It is very unlikely that the amount of take under the Programmatic Agreement would approach “thousands.” Landowners who elect to enroll in the Programmatic Agreement will do so to implement conservation measures to improve habitat conditions and expand populations of the Utah prairie dog. Because enrollees are volunteering to participate in the program, we anticipate any request to take prairie dogs back to baseline to be rare and that the implementation of the program’s conservation measures will ultimately enhance habitat and populations of Utah prairie dogs. Furthermore, because any take under the Programmatic Agreement would be of animals above the baseline, the loss of those animals would not be additive to take under the 4(d) rule in terms of impacts to the population

7. One way to limit lethal control is through the use of vegetative barriers. The use of vegetative barriers should be moved to be a required Management Activity.

Vegetative barriers are included in the Programmatic Agreement (Exhibit 2) as an “Additional Activity” in part because the use of this type of activity is dependent on site-specific conditions and needs of the Cooperator. However, as with all Cooperative Agreements, the Service must approve the Agreement, and the Agreement must provide a net conservation benefit for the species. Therefore, if an individual scenario necessitates the use of vegetative barriers, these will likely be included in the final Cooperative Agreement.

8. The EA fails to consider livestock grazing and oil and gas activities on public lands in its cumulative effects section.

The EA Cumulative Effects section was revised to identify specific human land-use activities that may occur across the species range, including livestock grazing and oil and gas activities. We do not anticipate negative effects from these activities when evaluated in light of the Programmatic Agreement. The programmatic safe harbor program is designed to provide a net benefit to the Utah prairie dog. Enrolled landowners would manage their properties to the species’ benefit, so activities such as grazing would likely be managed to ensure conservation of the prairie dog; an improvement from current conditions.

9. Remedies -- Clarify that participants in this program could be prosecuted for take under section 9 of the Endangered Species Act if they do not comply with the Agreement.

If an enrollee is not complying with the Agreement, the Service would first work with the Program Administrator and the landowner to determine the cause of non-compliance and recommend appropriate measures that would allow the landowner to get back into compliance. We fully expect that landowners who volunteer to participate in this conservation program will make every reasonable effort to comply

with the Agreement and the terms and conditions of the permit. Furthermore, those who choose to enroll in the program are likely to be aware of the relevant provisions and prohibitions of the Endangered Species Act (ESA) pertaining to take of listed species. Because participants are volunteering to promote conservation of the Utah prairie dog, we believe that a statement regarding mandatory prosecution for violation of section 9 of the ESA is unnecessary, and contrary to the collaborative nature of this program. Prosecutions of section 9 violations are considered very seriously and are taken when appropriate.

10. Availability of Funds – The Service or NRCS could refuse or fail to allocate sufficient funds or staff time to oversee this Safe Harbor Agreement. Please add language that if federal agencies involved in the Agreement do not fully participate and provide sufficient funds, participants will not be provided with protection from prosecution for take under ESA section 9.

The Service, Natural Resource Conservation Service, and the RC&DC place very high importance on the successful establishment and implementation of this safe harbor program. It is unlikely that we not be able to provide adequate attention to this program to the point where it would be necessary to prosecute under section 9. Furthermore, as explained in Response #7, we believe it is unlikely that landowners who volunteer to participate in this program to promote conservation of Utah prairie dogs would violate the ESA. Section 9 violations will be carefully considered by the Service.

11. Define “structure” to avoid overbroad designation of areas of control.

The Programmatic Agreement definition provides the examples of a house or a barn. The actual structures on each enrolled property that will necessitate some protection through allowed control of animals may vary. However, these structures will be specifically identified for each enrolled property during development of each Cooperative Agreement.

12. The Safe harbor Agreement includes the requirement to “Avoid the use of heavy equipment in occupied prairie dog habitat during sensitive life stages such as breeding and nursing. The time frame when breeding and nursing is expected to occur should be specified.

Specific details such as property-specific management activities and timing of activities will be described in the individual Cooperative Agreements.

13. Include the baseline determination protocol in the final Programmatic safe harbor agreement.

The Final Programmatic Safe Harbor Agreement includes Exhibit 6, the Utah Prairie Dog Safe Harbor Agreement Baseline Determination Protocol.

14. This Safe Harbor should only include private lands. Other non-federal landowners, such as the state, counties, and municipalities can develop their own Safe Harbors or habitat conservation plans to address Utah prairie dogs.

We envision that the majority of Cooperative Agreements under this safe harbor will be with private landowners. However, there may be opportunities to conduct beneficial conservation activities on other non-federal lands, particularly in situations where there is checkerboard land ownership. We believe it is important to allow for the inclusion of other non-federal landowners where there will be a net conservation benefit for the Utah prairie dog. As with all Conservation Agreements, they must be reviewed and approved by the Service prior to implementation.

15. Recommend that the Service request the appropriations needed to properly manage ESA-listed species rather than handing over authority to a private entity.

The Service is not “handing over authority” to manage Utah prairie dogs to a private entity. Conservation of listed species on private lands requires an unprecedented need for long-term partnerships with landowners. The RC&DC provides a great benefit and service in their ability to foster relationships with landowners and achieve long-term conservation for species. The Service maintains the responsibility to approve all Conservation Agreements prior to their implementation; to review and approve any amendments or modifications to the Programmatic Agreement; and to monitor the species and the efficacy of the safe harbor program through review of annual reports. The Service also retains the authority to suspend or revoke the permit if necessary in accordance with applicable laws and regulations.

16. The Safe Harbor must include language on how other listed, candidate, or species of concern will be protected from harm.

The EA includes a list and discussion regarding the presence of other listed, candidate, or species of concern in the project area (section 3.4). The EA also provides effects analyses for each of these species in section 4.2.3, and describes the potential for both positive and negative impacts depending on the specific habitat treatment. Individual projects can be planned to avoid and minimize adverse effects on other wildlife species. The intent of all Parties has always been to ensure that conservation measures are planned accordingly. We have revised Exhibit 2 of the Programmatic Agreement to provide written direction that other species will be considered when developing and implementing Management Activities: “In addition, individual projects will be planned to avoid or minimize adverse effects on all other applicable wildlife species.”

17. The 90-day notice requirement prior to commencing land use changes may preclude translocation options if it occurs during hibernation, the breeding season, or too late in the fall.

The 90-day window is the notification timeframe. The Program Administrator agreed to provide 90-days notice; we note our regulations require only 30 days notification. The limits on take established in the Permit will help ensure that all appropriate

measures are considered in accordance with the intent of the Safe Harbor Agreements to provide a net species benefit.