

FINDINGS AND RECOMMENDATIONS

REGARDING ISSUANCE OF AN ENHANCEMENT OF SURVIVAL PERMIT TO THE OREGON DEPARTMENT OF STATE LANDS

In Association With The Greater Sage-Grouse (*Centrocercus urophasianus*) Candidate Conservation Agreement with Assurances between the Oregon State Land Board, Oregon Department of State Lands and the U.S. Fish and Wildlife Service

I. INTRODUCTION

Livestock production is a primary use of Oregon's rangelands. This land use and the associated rural communities of Oregon could be impacted by listing of the greater sage-grouse (*Centrocercus urophasianus*; hereafter sage-grouse) as threatened or endangered under the Endangered Species Act (ESA). In anticipation of a listing decision, the Oregon Department of State Lands (DSL) requested assistance from the Fish and Wildlife Service (Service) in developing a candidate conservation agreement that could offer assurances that livestock grazing and rangeland management practices could continue by DSL and their lessees in the event that the sage-grouse was listed under the ESA. Working together, the Service and DSL developed the Greater Sage-Grouse Candidate Conservation Agreement with Assurances (CCAA) for all of the lands that DSL administers in Oregon. Documents used in the preparation of this statement of Findings and Recommendations include the Greater Sage-Grouse Candidate Conservation Agreement with Assurances (Service 2015a), an associated environmental assessment (EA, Service 2015b) and finding of no significant impact (FONSI, Service 2015d), and the Service's Conference Opinion on the permit application (Service 2015c). All of the documents are incorporated by reference as described in 40 CFR § 1508.13.

II. DESCRIPTION OF THE PROPOSED ACTION

The Service proposes to enter into a CCAA and to issue an enhancement of survival permit (EOS permit) for incidental take of sage-grouse to DSL pursuant to Section 10(a)(1)(A) of the ESA as amended, and the Services' Final Policy for Candidate Conservation Agreements with Assurances (64 FR 32726, June 17, 1999). The term of the CCAA and EOS permit is 30 years.

Covered Activities

Activities covered under the proposed CCAA and permit, are described in detail in Section 10 of the CCAA. The covered activities include four categories of rangeland practices: rangeland treatments, livestock management, recreation, and agricultural operations. In addition, the following activities would also be covered under the permit:

conservation measures (CMs; Appendix A of CCAA) and changed circumstances conservation measures (Section 15 of CCAA); limited use of specific herbicides as described in Appendix E of the CCAA; and the inventory and monitoring activities identified in the CCAA and Appendix D of the CCAA.

Conservation Strategy

The conservation strategy described in the CCAA is an ecologically-based approach to maintain current sage-grouse habitat and to improve deficient habitat. This strategy relies on habitat models (Appendix C of the CCAA) that describe factors that impact plant community composition and structure over time. These models indicate specific threats that can be influenced by management to improve habitat quality for sage-grouse; these threats are, in turn, the basis for habitat-related CMs (Appendix A of the CCAA). Also identified are species-specific threats and associated CMs for non-habitat factors that directly (*e.g.*, West Nile virus) and indirectly (*e.g.*, insecticide use) impact sage-grouse populations (Appendix A of the CCAA).

The CCAA is designed to meet three goals:

- Provide DSL assurances that current ranch and land management practices covered by this CCAA will continue in the event sage-grouse is listed under the ESA, provided that the CCAA is being implemented as agreed upon.
- Promote CMs that reduce or remove threats to sage-grouse through proactive ranch and land management, providing comprehensive conservation to meet the CCAA standard.
- Provide an ecological approach to maintain current sage-grouse habitat and to improve habitat that is not meeting conservation objectives, as identified in DSL's sage-grouse habitat assessments.

III. ENHANCEMENT OF SURVIVAL PERMIT CRITERIA – ANALYSIS AND FINDINGS

As set forth in 50 CFR 17.32 (d)(2), the Service finds that the section 10(a)(1)(A) issuance criteria for a Candidate Conservation Agreement with Assurances and permit are met and are detailed below:

A. The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the CCAA.

The Service finds that proposed take of the sage-grouse would be incidental to otherwise lawful activities. These activities would occur as a result of the implementation of the conservation measures and covered activities described in the CCAA. The incidental take authorization provided under this permit will become effective if, and at such time, the sage-grouse becomes federally listed as either threatened or endangered under the ESA.

B. The CCAA complies with the requirements of the Service's CCAA policy.

Pursuant to the Service's CCAA policy, the Service is required to determine whether the *Greater Sage-grouse Candidate Conservation Agreement with Assurances between the Oregon State Land Board, Oregon Department of State lands and the U.S. Fish and Wildlife Service* contains and adequately addresses all the required elements of a CCAA as described in the Service CCAA policy and regulations. This includes satisfying the following CCAA standard for permit issuance:

"When evaluating a potential CCAA, the Service must determine that the benefits of conservation measures to be implemented by a property owner under a CCAA, when combined with those benefits that would be achieved if the conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species."

The Service has concluded that the CCAA contains all of the required elements of a CCAA and meets the CCAA standard described above. The following discussion provides the reasoning behind our conclusion and is organized into the three primary elements considered for determining that the CCAA standard is met: 1) Threats Reduction, 2) Conservation Benefits, and 3) Adaptive Management.

1. Threats Reduction

The long-term persistence of the sage-grouse will depend on maintenance of intact shrub steppe landscapes as well as associated riparian and meadow habitats. The sage-grouse is a landscape-scale species and the destruction and fragmentation of its habitat have contributed to significant population declines throughout its range over the past century. If current trends persist, many local populations may disappear in the next several decades, with remaining fragmented populations vulnerable to extinction. Habitat fragmentation is the most significant threat to the long-term persistence of the sage-grouse. The CCAA requires DSL to adopt the following conservation measure, known as CM 1: ***Maintain contiguous habitat by avoiding further fragmentation.*** The objective for this required CM is for no net loss in 1) habitat quantity (as measured in acres) and 2) habitat quality (as determined by the ecological state). Losses in sage-grouse habitat quantity may be offset by increases in sage-grouse habitat quality and vice versa, as long as the action avoids further fragmentation.

Habitat loss and fragmentation of sage-grouse habitat are the primary causes for long-term changes in population and abundance of the sage-grouse in Oregon and throughout the range of the species. Additional threats include wildfire in low elevation sagebrush habitats, invasive species, juniper encroachment in high-elevation sagebrush habitat, sagebrush removal, agricultural conversion, drought, rising CO₂ levels, flooding, West Nile virus, unmanaged or improper grazing, wild horses,

recreation, predation, sagebrush defoliating insects (*Aroga* moth), energy development, and other infrastructure development (USFWS 2010).

Implementation of the CMs in the CCAA is likely to avoid or minimize impacts from the threats described above. The overall management approach is to stratify the covered lands based upon the ecological requirements for sage-grouse habitat, and then identify the current state of that habitat for each plant community (determined by initial baseline inventory). Once identified, each plant community may transition (change) due to impacts on the site which may be natural, influenced by man, or a combination of both. Those actions that cause transition to improve or maintain sage-grouse habitat are considered CMs; the actions or impacts which degrade sage-grouse habitat are considered threats to the habitat. The ecological model, "state and transition" (Appendix C of the CCAA) demonstrates this process by plant community in a flow chart. An associated set of flow charts, located in Section 6 of the CCAA *Inventory and Monitoring Protocols*, describe the step-by-step process for habitat stratifying and identifying current states of plant communities. Derived from that classification, the flow charts continue on, identifying potential threats and CMs that will maintain or improve sage-grouse habitat. Through annual monitoring of the plant communities and their trends, the direction of transition of habitat can be determined. This will be the information base used to make informed decisions on habitat management and assign appropriate CMs.

2. Conservation Benefits

The threats listed above are addressed within the area of sage-grouse habitat covered under the CCAA. For this CCAA, the conservation actions must be likely to reduce all the threats on a particular property to the point, where, if these actions were undertaken on all necessary properties, the declining trend would be reversed and there would be no need to list this species under the ESA. This level of conservation benefit is more than just a net conservation benefit to recovery; it is likely to facilitate a reversal in the species declining population trend - if it could be replicated on all necessary properties.

Some specific benefits to sage-grouse habitat provided by rangeland management activities implemented in accordance with this CCAA include:

- maintenance of large tracts of un-fragmented and undeveloped land;
- managing fuels to help reduce the risk of catastrophic wildfires and associated fragmentation;
- potentially increasing rangeland plant diversity, including perennial grasses and forbs;
- weed and invasive species management;
- maintenance and enhancement of healthy springs and seeps;
- contributing to meeting the strategies and objectives of ODFW's Strategy (Hagen 2011) that are relevant to state lands; and

- ranking preference for obtaining resources from federal, state, and local programs for sage-grouse habitat improvement (e.g. NRCS Sage Grouse Initiative, Service Partners, OWEB).

3. Adaptive Management

The results of monitoring efforts outlined in Section 6, *Inventory and Monitoring*, in the CCAA and individual SGHAs will be considered from an adaptive management perspective. Many of the potential CMs have been successfully implemented as part of other conservation efforts. However, outcomes of a few CMs may vary based upon local site conditions. Specifically, CMs with a vegetation rehabilitation component may have varying success based upon local soil type, climatic conditions such as rainfall timing and amount, and level of historic disturbance. For these CMs, careful monitoring both before and after implementation, along with the flexibility provided through adaptive management, will maximize the likelihood of success through possible changes to seed mixtures, rescheduling of rehabilitation efforts, timing of treatments, and other adjustments.

Such an adaptive approach explicitly recognizes that multiple factors (*e.g.*, environmental conditions, biological processes) affect sage-grouse populations. Furthermore, the consequences of prescriptive CMs cannot be predicted with certainty. Therefore, the CCAA provides a framework for making objective decisions in the face of uncertainty. If the desired results of a CM are not achieved, DSL will modify the CM or enact another CM in order to achieve the desired results. Adaptive management relies on an iterative cycle of monitoring, assessment, and decision making to clarify the relationships among the CMs and the response of habitat and, ultimately, sage-grouse abundance.

C. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species.

The ESA's legislative history establishes the intent of Congress that this issuance criterion be identical to a regulatory finding of no jeopardy under section 7(a)(2) (see 50 CFR 402.03). Therefore, the potential effects to candidate and listed species of issuance of this section 10(a)(1)(A) permit was reviewed by the Service under section 7 of the ESA. In the Service's conference opinion, the Service concluded that issuance of the EOS permit will not jeopardize the continued existence of the greater sage-grouse or any federally listed or candidate species.

We reached this conclusion based on the following reasons:

- The total amount of annual incidental take associated with this proposed action, an average of 33 birds per year, represents 0.1 percent of the estimated 24,515 birds statewide and 5.2 percent of the sage-grouse population on state lands.
- CCMs implemented through the CCAA will facilitate avoidance, minimization, and mitigation of threats on approximately 611,000 acres across eight counties in Oregon.
- Although some adverse effects may occur as a result of the action, the CCAA is intended to promote conservation efforts in the context of ranch and rangeland management practices that should result in the improvement of both the habitat and long term viability of the species by addressing habitat loss, fragmentation, and degradation on state lands.
- The beneficial effects associated with implementation of the CCAA are expected to accrue over time and more than compensate for the incidental take.

D. Implementation of the terms of the agreement is consistent with applicable Federal, State, and Tribal laws and regulations.

The Service is not aware of any law or regulation that would prevent implementation of the CCAA and the accompanying permit. The CCAA does not preempt the need for DSL to comply with other 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 includes a specific condition that requires the permittee to be in compliance with all applicable Federal, State, or Tribal law or regulation. Failure to comply with this term and condition can result in suspension or revocation of the permit.

E. Implementation of the terms of the agreement will not be in conflict with any ongoing conservation programs for species covered by the permit.

Existing programs for conservation of the sage-grouse include:

- **NRCS** - The Sage Grouse Initiative (SGI) is a NRCS program to work with landowners that began in March 2010 to conserve sage-grouse and sustain working ranches throughout the range of the species.
- **ODFW's Local Implementation Teams (LIT)** - There is one team for each BLM District in the range of the sage-grouse and an additional team for the Baker Resource Area of the Vale District. The purpose of the LIT is to ensure that the decisions regarding sage-grouse and sagebrush habitat conservation decisions occur at the local level.

- **The Service's Partners for Fish and Wildlife Program** - Program staff provide technical assistance and funding to private landowners for habitat conservation on working lands, including the sage-grouse and their habitats.
- **BLM Candidate Conservation Agreement** - A Greater Sage-Grouse Programmatic CCA for Rangeland Management Practices on BLM Lands in Oregon was signed May 30, 2013. This agreement allows grazing permit holders to enter into a voluntary agreement with BLM to provide additional protections for sage-grouse on their BLM grazing allotments.
- **BLM Resource Management Planning** - The BLM will continue to incorporate best management practices for sage-grouse into Resource Management Plans developed for lands it manages throughout the current range of the species.
- **U.S. Forest Service** also manages sage-grouse habitat on its lands across the species' range. The agency has designated the sage-grouse as a sensitive species on USFS lands rangewide. Sensitive species require special consideration during land use planning and implementation.
- **Sage-Grouse Conservation Partnership (SageCon)** - The Governor of Oregon created this task force, which is composed of a diverse group of stakeholders including: County and Local officials, State agency personnel (ODFW, Oregon Department of Forestry, DSL, Oregon Department of Geology and Mineral Industries, and others), Federal Agencies (BLM, Service, NRCS, FS), and Non-Governmental Organizations (Audubon, Oregon Natural Desert Association, Defenders of Wildlife, others). SageCon is working to pull together an "all lands, all threats" approach to sage-grouse conservation to address both the Service's sage-grouse listing decision and support community sustainability in central and eastern Oregon into the future.

The Service's EA for this proposed permit (Service 2015b) contains additional information on current rangewide sage-grouse conservation programs. Many of these programs provide technical and financial assistance for habitat management for sage-grouse.

The Service finds that the CCAA for lands administered by DSL in Oregon would not be in conflict in any ongoing conservation programs for the sage-grouse, and, in fact, would complement these other conservation efforts.

F. The applicant has shown the capability for and commitment to implementing all the terms of the CCAA.

DSL has already conducted baseline inventories of ecological condition on approximately 90% of their administered grazing parcels and threats to sage-grouse have been identified on these lands. The remaining data from parcels are scheduled for completion in 2015. The level of available funding each year will be dependent upon the Governor's budget once approved, however 12% of DSL's budget is dedicated to rangeland improvements. Also, due to the comingling of DSL land with BLM land and private lands, they often partner with other agencies to implement rangeland conservation measures such as weed treatments and juniper thinning.

Implementation of CMs on grazing parcels will be prioritized using the best available sage-grouse use data, the degree of human disturbance, the connectivity of the landscape, and the amounts of Preliminary Priority Habitat (PPH – see definition below) and Preliminary General Habitat (PGH – see definition below).

PPH & PGH defined:

PPH: areas that have been identified as having the highest conservation value to maintaining sustainable sage-grouse populations. These areas correspond to Core Area Habitat in the ODFW Sage-grouse Conservation Assessment and Strategy for Oregon which includes known breeding, late brood-rearing, and known winter concentration areas. These areas also correspond to Priority Areas for Conservation (PACs) as identified in the Service 2013 Conservation Objectives Team Report which include the most important areas for maintaining sage-grouse populations across the landscape.

PGH: areas of occupied seasonal or year-round habitat outside of PPH. These areas include Low Density Habitat as described in ODFW Sage-grouse Conservation Assessment and Strategy for Oregon, as well as additional areas of suitable sagebrush habitat.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS

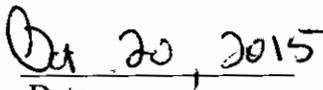
The Service has no evidence that the permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21 (b-c). DSL has met the criteria for the issuance of the permit and does not have any disqualifying factors that would prevent the permit from being issued under current regulations.

V. RECOMMENDATIONS ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, I recommend issuance of ESA section (10)(a)(1)(A) enhancement of survival permit (TE72132B-0) to the Oregon Department of State Lands to authorize the incidental taking of the greater sage-grouse in accordance with the *Greater Sage-grouse Candidate Conservation Agreement with Assurances between the Oregon State Land Board, Oregon Department of State lands and the U.S. Fish and Wildlife Service*.



Richard Hannan
Deputy Regional Director, Region 1
U.S. Fish and Wildlife Service


Date

Supporting References

Hagen, C. A. 2011. Greater sage-grouse conservation assessment and strategy for Oregon: a plan to maintain and enhance populations and habitat. Oregon Department of Fish and Wildlife, Salem, USA.

U. S. Fish and Wildlife Service (Service). 2010. 50 CFR Part 17 Endangered and threatened wildlife and plants; 12-month findings for petitions to list the greater sage-grouse (*Centrocercus urophasianus*) as threatened or endangered. Proposed Rule. 105 pp.

Service. 2015a. Greater Sage-Grouse (*Centrocercus urophasianus*) Candidate Conservation Agreement with Assurances between the Oregon State Land Board, Oregon Department of State Lands, and the U.S. Fish and Wildlife Service.

Service. 2015b. Final Environmental Assessment for the Greater Sage-Grouse (*Centrocercus urophasianus*) Candidate Conservation Agreement with Assurances between the Oregon State Land Board, Oregon Department of State Lands, and the U.S. Fish and Wildlife Service.

Service. 2015c. Conference Opinion Regarding the Effects of the Proposed Greater Sage-Grouse (*Centrocercus urophasianus*) Candidate Conservation Agreement with Assurances between the Oregon State Land Board, Oregon Department of State Lands, and the U.S. Fish and Wildlife Service.

Service. 2015d. Finding of no significant impact for issuance of an enhancement of survival permit for the Greater Sage-Grouse (*Centrocercus urophasianus*) Candidate Conservation Agreement with Assurances between the Oregon State Land Board, Oregon Department of State Lands and the U.S. Fish and Wildlife Service