



United States Department of the Interior

FISH AND WILDLIFE SERVICE Mountain-Prairie Region



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SEP 16 2005

Memorandum

To: Regional Director, Region 6

From: *Atwater* Assistant Regional Director, Ecological Services, Region 6

Subject: Findings and Recommendations on Issuance of an Enhancement of Survival Permit for the Utah Prairie Dog in Garfield County, Utah, to Mr. Allen Henrie (Permit Number TE-098809) and in southwestern Utah to the Utah Division of Wildlife Resources (Permit Number TE-097129)

I. DESCRIPTION OF PROPOSAL

Mr. Allen Henrie (Cooperator) has applied to the U.S. Fish and Wildlife Service (Service) for an Enhancement of Survival Permit to authorize take of Utah prairie dog (UPD) (*Cynomys parvidens*) in Garfield County, Utah, in support of the Cooperator's Safe Harbor Agreement (Agreement). The Cooperator has submitted the Agreement as part of his permit application. The Utah Division of Wildlife Resources (UDWR) has submitted an Enhancement of Survival Permit to be able to participate in implementation of the Agreement. The proposed permits will be issued in accordance with section 10(a)(1)(A) of the Endangered Species Act (ESA) of 1973, as amended (16 USC 1531 et seq.), and the Service's Safe Harbor Policy (64 FR 32717).

The purpose of this Agreement is for the Cooperator, UDWR, and the Service to reintroduce UPDs and implement conservation measures for them on a portion of the Cooperator's ranch. The area covered by the Agreement and permit is shown on the attached map. The reintroduction and conservation implementation will be conducted by the Cooperator, UDWR, the Service, and Environmental Defense and will generally consist of habitat restoration and reintroduction and management of UPDs. This Agreement is intended to create an incentive for a private landowner to voluntarily conserve prairie dogs and their habitat while securing regulatory certainty. The Agreement will provide for support of the UPD reintroduction and provide the Cooperator and UDWR with assurances that future activities will not be constrained and result in ESA restrictions.

The goal of these conservation measures is to improve foraging and visual surveillance habitat for UPDs, and subsequently reintroduce and establish a self-sustaining population on the Property. Conservation measures include--1) BRUSH TREATMENTS using mechanical and

chemical means to reduce shrub height and percent cover to approximately 0-3 percent on a selected site within the treatment area; 2) RE-SEEDING the treated site with native grasses and forbs to increase herbaceous forage quality, quantity, and diversity; 3) GRAZING DEFERMENT within the treatment area to promote sufficient vegetative recovery during treatments and ensure the maintenance of treatments thereafter; 4) MONITORING designed to measure basic vegetation response to treatments, ensure that the vegetation response meets the habitat standards set forth by the Utah Prairie Dog Recovery Team, monitor the reintroduced prairie dog population, and assess whether additional brush treatments or grazing reductions are necessary; and 5) REINTRODUCING UTAH PRAIRIE DOGS to the treatment area after vegetative recovery, and encouraging their long-term persistence using additional grazing deferment and brush treatments if necessary.

Under the proposed Agreement and the associated 10(a)(1)(A) Enhancement of Survival Permit, the Cooperator will receive regulatory assurances that should he provide restored habitat and allow the reintroduction of UPDs on a portion of his ranch, he will be provided with regulatory certainty that future activities will not be constrained and result in ESA restrictions. The permit will authorize incidental take of UPDs resulting from ranching related activities on the enrolled property.

II. EFFECTS TO UTAH PRAIRIE DOG

The UPD abundance has declined from an estimated 95,000 individuals in 1920 to 5,000–10,000 today. The species is currently federally listed as threatened. The UPDs inhabit relatively open, grassy areas within shrubland ecosystems. A full description of the species and its habitat requirements can be found in the Utah Prairie Dog Recovery Plan. According to this plan, actions needed to recover the species include selecting and managing transplant sites, monitoring transplanted colonies, ensuring the protection of prairie dogs and their habitat on both existing and transplant sites on public and private lands, and developing and implementing site-specific management plans for each colony or transplant site.

As identified in the Service's Safe Harbor Policy, the Agreement must provide a net conservation benefit for the species and the benefit must be sufficient to contribute directly or indirectly to recovery of the species. The net conservation benefit is defined as "the cumulative benefits of the management actions provide for increase in species' population and/or enhancement, restoration, or maintenance of covered species' habitat." Conservation benefits for UPDs from implementation of the Agreement are expected by--(1) increased availability of foraging (forage quantity and quality) and visual surveillance habitat for UPDs, (2) reduced risk of catastrophic decline due to increased UPD numbers and high plant diversity on colony site; (3) improved chance of natural restocking following catastrophic declines without increasing the risk of plague through an increased number of distinct colonies and reduced inter-colony distance, and (4) increased genetic mixing in the Pausaugunt Recovery Area following natural dispersal. Furthermore, conservation of UPDs will be enhanced by improving and encouraging cooperative management efforts with this private landowner, who is willing to establish a model for others to follow.

Approval of the Agreement and issuance of the permit will increase the likelihood that UPD recovery will occur. Up to 180 acres of additional habitat will be restored and occupied by the species. Under the Agreement, the Cooperator will be covered under the permit which will authorize incidental take of UPDs in conjunction with current agriculture or land use practices.

The property, including the 180-acre restoration and reintroduction area once required deferment ends, will remain in active livestock management. The potential of the introduced UPD population to grow rapidly is such that it may achieve a size that would detrimentally impact the Cooperator's ongoing livestock operations. Thus, the Cooperator, in conjunction with the Service and UDWR will be allowed to control UPDs within the treatment areas and elsewhere on the enrolled property if the adult population from a UDWR early spring count in 2 consecutive years exceeds 53 individuals, or if the spring count in any 1 year exceeds 75. The number of animals to be removed from the population under these circumstances will be determined by the Service and UDWR and will not exceed the number needed to maintain a viable population of animals on the site. Since the objective of the Agreement, and the expected net conservation benefit, is to establish a new colony, control of prairie dog numbers above this population size will not affect the net conservation benefit provided by the Agreement. If control measures are necessary to reduce the total size of the population, the Cooperator will follow the protocol outlined in the Agreement. The control will be conducted either by UDWR or by the Cooperator under a Certificate of Registration from UDWR.

Even with possible impacts from incidental and direct take authorized under the permit, conservation of UPDs will be enhanced under the Agreement compared to without it. Under the Agreement, habitat restoration and species reintroduction measures will occur that will not occur in the absence of the Agreement. The habitat improvement measures are expected to provide benefits to the prairie dog over approximately the 15 years of the Agreement and may extend beyond. The impacts to the species under the permit will be mitigated by the benefit of habitat restoration and increased abundance.

In summary, benefits are expected to occur for the UPD from conservation measures under the Agreement and from the Agreement serving as a model for similar agreements with other private landowners. The combination of these benefits with the Agreement's regulatory assurances creating a cooperative relationship with the landowner, is expected to result in an overall benefit to UPD conservation and likely an increase in species abundance and recovery.

III. ENHANCEMENT OF SURVIVAL PERMIT CRITERIA - ANALYSIS AND FINDINGS

The Service's analysis and findings with respect to the Agreement satisfying the permit issuance criteria through Safe Harbor Policy in accordance with 50 CFR 17.22(d)(2) (64 FR 32717) are presented below:

1. The taking of UPDs will be incidental and may be direct and will be in accordance with the terms of the Safe Harbor Agreement. If the landowner undertakes direct take of the UPD, he will do so under a Certificate of Registration from UDWR.

2. The Agreement complies with the requirements of the Service's Final Safe Harbor Policy. Based, in part, on the analysis provided above in Part II of this document, the Service finds that the Agreement's conservation measures and expected benefits to the UPD, when combined with those benefits that will be achieved if it is assumed that similar conservation measures also were implemented on other necessary properties, will provide a net conservation benefit to the species, as discussed in the Safe Harbor Policy. The Agreement also complies with all other requirements of the Safe Harbor Policy.
3. The probable direct and indirect effects of any authorized take of UPD under the permit will not appreciably reduce the likelihood of survival and recovery in the wild of any species. Issuance of the section 10(a)(1)(A) Enhancement of Survival Permit to the Cooperator was reviewed by the Service under section 7 of the ESA. In a biological opinion, which is incorporated here by reference (August 18, 2005), the Service concluded that the direct and indirect effects of issuing the permit and authorizing take of UPDs will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species including the UPD.
4. Implementation of the terms of the Agreement is consistent with applicable Federal, State, and Tribal laws and regulations. The Agreement is consistent with all applicable Federal and State laws and regulations. The Agreement is approved and the permit issued in accordance with the ESA. In accordance with the National Environmental Policy Act (NEPA), the Service determined it was categorically excluded from NEPA. Ground-disturbing activities in the form of crop agriculture have already occurred at the site, so additional cropping activities associated with restoration to native vegetation will not be in violation of the National Historic Preservation Act (NHPA). We will comply with section 106 on NHPA prior to reintroduction of UPDs.

There are no Tribal laws or regulations applicable to the Agreement as no tribal lands are located within the action area.

5. Implementation of the terms of the Agreement will not be in conflict with any ongoing conservation programs for the UPD. Approval of the Agreement and issuance of the permit will not be in conflict with any ongoing conservation programs for the UPD. In fact, Agreement approval will compliment ongoing conservation programs.
6. The applicant has shown capability for and commitment to implementing all of the terms of the Agreement. Signing of the legally binding Agreement by the Cooperator, UDWR, and the Service ensures that it will be implemented and commits all parties to obligations under the Agreement. Implementation of the Agreement will be a condition of the permit, and a failure to perform obligations under the Agreement may be grounds for suspension or revocation of the permit.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS - ANALYSIS AND FINDINGS

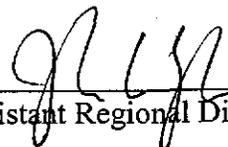
The Service has no evidence that the permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21(b)-(c). The Cooperator and UDWR have met the criteria for the issuance of the permits and do not have any disqualifying factors that will prevent the permit from being issued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

V. PUBLIC COMMENTS

The Service published a Notice of Availability of the Cooperator's and UDWR's permit applications, including the Agreement and NEPA documentation, in the *Federal Register* on April 18, 2005. Publication of the notice initiated a 90-day comment period, which closed on July 18, 2005. The Service received only one written comment from Environmental Defense, which strongly supports the issuance of the requested permit for the proposed Safe Harbor Agreement for the UPD with the Cooperator.

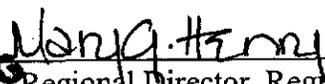
VI. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing finding with respect to the proposed action, I recommend issuance of a section 10(a)(1)(A) Enhancement of Survival Permit to authorize incidental and direct taking of the UPD by the Cooperator and/or UDWR in accordance with the Safe Harbor Agreement.



Acting Assistant Regional Director, Ecological Services

9/16/05
Date

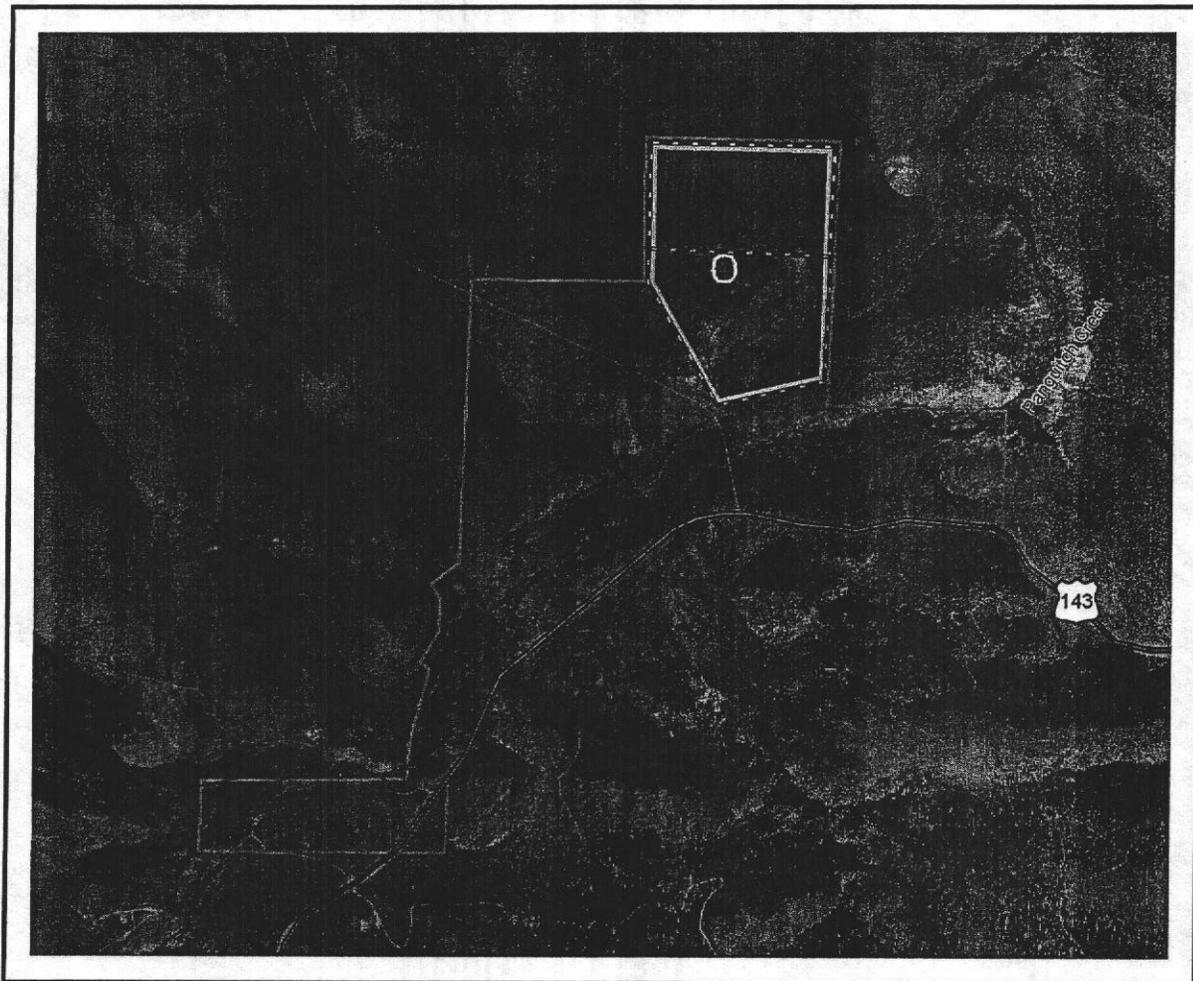
Concur: 

ACTING Regional Director, Region 6

9/19/05
Date

Appendix 1.

Map of Henrie Property
with Proposed Treatment Locations



- Prairie Dog Restoration Site
-  Treatment Site
 -  Existing Fence
 -  Proposed Fence
 -  Treatment Area
 -  Property Boundary

