

FINDINGS AND RECOMMENDATIONS

**FOR ISSUANCE OF SECTION 10(a)(1)(A) ENHANCEMENT OF SURVIVAL PERMIT
ASSOCIATED WITH THE 4W RANCH LFP CANDIDATE CONSERVATION
AGREEMENT WITH ASSURANCES**

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1. DESCRIPTION OF THE PROPOSED ACTION

The Fish and Wildlife Service (Service) proposes to issue an enhancement of survival permit (Permit) to the 4W Ranch LFP under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the Service's Final Policy for Candidate Conservation Agreements with Assurances (64 FR 32726, June 17, 1999). The permit would be in effect for a period of 10 years. Documents used in the preparation of this statement of Findings and Recommendations include the 4W Ranch LFP Candidate Conservation Agreement with Assurances (Agreement), and the Service's conference opinion on the permit applications (Fish and Wildlife Service 2009). These documents are incorporated by reference as described in 40 CFR § 1508.13.

Under the permit, the 4W Ranch would receive incidental take authorization for certain covered activities as identified in the Agreement. The Permittees are requesting coverage under the permit for the following four non-listed species should they become listed during the term of the permit: the black-tailed prairie dog (*Cynomys ludovicianus*), mountain plover (*Charadrius montanus*), burrowing owl (*Athene cunicularia*), and ferruginous hawk (*Buteo regalis*) [Covered Species]. In addition, the 4W Ranch would receive direct take authorization for certain covered activities for the black-tailed prairie dog as identified in the Agreement.

A single 10(a)(1)(A) permit incorporating two sets of terms and conditions will be issued for the Covered Species. Routine ranch activities (e.g., agricultural and recreational activities, such as livestock grazing and production, and use of vehicles on and off roads within the Agreement area) will be provided coverage under 50 CFR § 17.22(d) (endangered species) and 17.32(d) (threatened species). Since the 4W Ranch carefully manages their population of black-tailed prairie dogs, with the goal of sustaining prairie dogs on the property, the other portion of the 10(a)(1)(A) permit would authorize the direct take of black-tailed prairie dogs through recreational shooting and other legally approved control methods. This take will be regulated under the authorities of 50 CFR § 17.22(a) and 17.32(a). The permit includes conditions, such as monitoring, reporting, and annual review with the Service, that require implementation under the Agreement.

Actions conducted under the Agreement will comply with the provisions of the Migratory Bird Treaty Act (MBTA) with avoidance measures for actions affecting Covered Species, protected under the MBTA, which include the mountain plover, burrowing owl, and ferruginous hawk. The MBTA prohibits the killing or possessing of migratory birds and identifies a variety of prohibited actions such as the taking of individual birds, young, feathers, eggs, and nests. There are currently no Covered Species that are subject to a Special Purpose take Permit under the MBTA. Should any of the Covered Species protected by the MBTA become listed under the ESA during the life of the Permit, the Permit

would also constitute an MBTA Special Purpose take Permit for that species for a three-year term as specified under 50 CFR § 21.27 subject to renewal by the 4W Ranch. The Permit would authorize for a period of 10 years the incidental take of Covered Species associated with specified ranch operations, habitat management, and other conservation measures on a total of 3,370 acres. There are currently approximately 3,000 acres containing potential prairie dog habitat and approximately 370 acres where prairie dogs will be excluded. The 4W Ranch will establish a 3,000-acre managed conservation area, referred to as the “core management area” (CMA) in the Agreement, which will be managed to sustain viable populations of black-tailed prairie dogs, thereby providing habitat for mountain plovers and burrowing owls, and a forage source for ferruginous hawks. Habitat improvements such as restoring native vegetation and removing invasive native and non-native weed species are primary goals of the Agreement, which will benefit all Covered Species. The Agreement also includes minimization measures to reduce impacts of permitted activities on the Covered Species and their habitats.

1.1 Types of Covered Activities

Activities proposed to be covered over an area of approximately 3,370 acres under the Permit are the otherwise lawful activities that are described in detail in the Agreement. The following is a brief summary. The covered activities generally include agriculture-related actions on the hay meadows and habitat management actions on the CMA, and active management of prairie dogs through recreational shooting on the 4W Ranch’s private lands to minimize the expansion of prairie dog colonies outside the 3,000-acre CMA. The Permit’s coverage would include routine ranching activities on approximately 3,000 acres of CMA and 370 acres of highly important forage areas (e.g., hay meadows) that are managed to exclude prairie dogs. The 4W Ranch is seeking coverage for potential impacts associated with management activities, biological monitoring, and ranch maintenance activities (e.g., fence, re-seeding, aerating the range).

1.2 Relationship of the Plan to Section 7 Consultations

Private or public actions that are covered activities under the Agreement may also be subject to separate ESA section 7 consultation if those actions are authorized, funded, or carried out by Federal agencies. Incidental and direct take coverage for the Federal action agency will be granted through the incidental take statement issued with the Service’s section 7 conference opinion. Incidental and direct take of listed species for covered activities carried out by the 4W Ranch will be granted under the section 10(a)(1)(A) permit and will be subject to the take avoidance minimization, and mitigation measures provided for under the Agreement.

1.3 Term of the Permit

The permit and Agreement would be in effect for a period of 10 years. In accordance with 50 CFR § 17.22(d)(8) and 50 CFR § 17.32(d)(8), we believe the duration of the permit is sufficient to achieve conservation benefits that, when combined with those benefits that would be achieved if it is assumed that the conservation measures would also be implemented on other necessary properties, would preclude the need to list the species covered by the Agreement.

1.4 Conservation Strategy

The overall goal for the Agreement is to maintain viable and self-sustaining populations of black-tailed prairie dogs across the 3,000 acres of the CMA. Management goals include controlling and minimizing the spread of weeds, re-vegetating disturbed areas, and increasing the availability of habitat for the Covered Species. The vegetation community comprised by the management area is utilized directly or indirectly by all four Covered Species. Specific management activities will be focused on manipulating prairie dog populations through recreational shooting with objectives of sustaining managed populations, eliminating prairie dog expansion beyond the CMA, and maintaining population densities low enough to minimize the spread of sylvatic plague while providing for recreational use.

A total of 3,000 acres within the 4W Ranch has been designated as a CMA for the benefit of the black-tailed prairie dog. A rotational grazing system has been developed to aid in distributing livestock grazing pressure across the ranch, so as to reduce conflicts with forage utilization, and to minimize impacts to vegetation. Improvements in the control of non-native invasive species, minimization of disturbance to native habitats and active management of livestock on the ranch should improve habitat for the Covered Species. The timing and location of grazing would be tailored to maximize benefits and minimize impacts to the Covered Species.

The 4W Ranch will implement an active weed management program to control the establishment and spread of noxious weeds throughout its property, with an emphasis on the CMA. This program will include an integrated approach to pest management, addressing more than one weed species, employing a range of control measures, and promoting preventative practices.

1.5 Monitoring and Reporting

The Agreement is based on rigorous monitoring, with an adaptive management component; if monitoring indicates the current management direction is not achieving the desired results then changes in management will be implemented to correct any deficiencies. A complete listing of monitoring and reporting provisions for the 4W Ranch is located in Section 12 (Biological Monitoring) of

the Agreement. The 4W Ranch will prepare an annual monitoring report, documenting all activities that may impact the Covered Species for the CMA and the exclusion areas, including black-tailed prairie dog harvest records and habitat restoration efforts (e.g., weed control programs, habitat enhancement projects). The Covered Species will be monitored to detect changes in distribution and abundance. The mountain plover, burrowing owl and ferruginous hawk will be surveyed in conjunction with black-tailed prairie dog management area surveys, which are conducted annually. The Service may assist in these surveys. For “on-going” ranching activities (as defined in the Agreement), the 4W Ranch will notify the Service at least 48 hours prior to any likely incidental take of Covered Species.

1.6 Species to be Covered under the Conservation Agreement

Four species will be covered by the Agreement. The black-tailed prairie dog has been petitioned for listing under the ESA, but a 2004 12-month finding (69 FR 51217) indicated the species was not warranted for protection under the ESA. However, a recent 90-day finding (73 FR 73211) indicates the status may be warranted, and a new 12-month finding will be conducted. The black-tailed prairie dog has a wide distribution across the western United States, but its range has decreased by approximately 98% since the settling of the West by Europeans. The mountain plover was proposed for listing under the ESA (68 FR 53083), but the Service found it to be not warranted for listing in 2004. However, it remains a species of concern for the BLM, and is also a Wyoming species of greatest conservation need. Habitat loss and degradation is the single most important threat to the burrowing owl’s persistence, mostly due to declines in prairie dog colonies and to land conversion for urban and agricultural uses. The burrowing owl is listed as a Wyoming state-sensitive species (WGFD 2006). The ferruginous hawk is a species of concern and a Wyoming state-sensitive species (WGFD 2006). While the ferruginous hawk is still fairly common in Wyoming, they were likely more abundant in the early 1900s. The loss of shrub-steppe and grassland communities has likely contributed to their lower densities. The local dependence of the Covered Species on shrub-steppe and grassland communities, the declines of these community types in the region, and the existence of a block of these habitat types within the 4W Ranch Agreement area, made them appropriate species to be covered by the Agreement. Refer to the Agreement and conference opinion for more background information on the status and threats of the Covered Species.

1.7 Threats Analysis in Making a Listing Determination

Threats to the Covered Species include: disease, habitat loss, conversion of grassland to cropland, changes in range management emphasizing uniform grass cover (i.e., monoculture), declines in native ungulates and burrowing animals, and oil and gas development resulting in habitat fragmentation, urbanization, grazing, control of small mammals, mining, and fire management. As identified in the

Service's Candidate Conservation Agreement with Assurances Final Policy (64 FR 32726, June 17, 1999), the Service must determine that the conservation measures and the expected benefits, when combined with those benefits that would be achieved if it is assumed that similar conservation measures were also implemented on other necessary properties, would preclude or remove the need to list the Covered Species.

When making a decision to list a species under the ESA, the Service is required to determine whether the species is threatened by any of the following factors: 1) the present or threatened destruction, modification, or curtailment of its habitat or range, 2) overutilization for commercial, recreational, scientific, or educational purposes, 3) disease or predation, 4) the inadequacy of existing regulatory mechanisms, or 5) other natural or manmade factors affecting the species continued existence.

Please refer to the Conference Opinion for the 4W Ranch CCAA for a threats analysis for each species

1.8 Changes Made Between Draft and Final Conservation Agreement

No substantive public comments were received that required any changes to the final version of the Agreement.

2. PUBLIC COMMENT

A notice of availability of the 4W Ranch Agreement and draft categorical exclusion was published in the Federal Register on October 20, 2008 (see 73 FR 62305). Public comments on the permit application, the proposed Agreement, and the draft categorical exclusion were requested by November 19, 2008. Five comment letters were received. While supportive responses were received from all the public comments, the Wyoming Game and Fish Department (Department) raised two issues regarding specifics of the Agreement:

Comment: *“Based on the data presented, it is unlikely that the plan will enhance the presence, quality, or quantity of habitat for the targeted species. The CCAA is not specific with regard to habitat improvement measures. The plan mentions mechanical removal of prickly pear and alludes to light tilling and seeding, however, it does not provide specific seed types, seeding rates, acres to be treated, or follow-up management. Additionally, the agreement does not address grazing management on the ranch. Much of the ranch has been converted to a very stable prickly pear, cheatgrass, rhizomatous grass climax community through long-term intensive use by domestic livestock. This climax plant community has reduced the habitat value for many species of wildlife on the ranch. Species diversity and habitat suitability for all of the species in the CCAA could be enhanced through aggressive prickly pear and noxious weed control,*

performed in conjunction with grazing management strategies that provide optimal benefits for wildlife.”

Response: Habitat treatments in conjunction with the Natural Resource Conservation Service (NRCS) have been, and continue to be, implemented to reduce the very problems mentioned in the Department’s comments. Consultation with the NRCS has occurred regarding seed types, seeding rates and acres to be treated. The specific details regarding these practices were not included in the Agreement because these types of Agreements are intended to be overarching guidance documents rather than extensive treatises on total habitat management. However, the Agreement very specifically relates management direction, which does include the control of noxious weeds as well as the establishment and maintenance of native plant communities.

Comment: *“Finally, we question why sage grouse were not included in the CCAA [Agreement]. We understand that initially this species was part of the plan. Sage grouse are present on the ranch year round; and given the concern with their current status and future persistence potential in northeast Wyoming, it would be beneficial to include them in any plan or action aimed at securing the long-term viability of sensitive species in the area.”*

Response: The cooperator’s developing the agreement, including the Department, decided early in the process that the focus of this Agreement would be on preserving grassland habitat for black-tailed prairie dogs and the other grassland-dependent species (Covered Species). Additionally, the State has taken the lead on producing a statewide Agreement specifically addressing sage-grouse, and the 4W may participate in such an agreement under a certificate of inclusion upon its completion, negating the need to develop a plan independently.

3. INCIDENTAL TAKE PERMIT CRITERIA-ANALYSIS AND FINDINGS

The final Agreement policy and associated regulations specifying the issuance criteria were published in the Federal Register on June 17, 1999 (see 64 *FR*32706 and 32726). As set forth in this policy, the Agreement includes either: the estimated population levels and/or habitat characteristics that sustain the current use by the Covered Species (see Agreement Section 4); the conservation measures the 4W Ranch is willing to undertake to conserve the Covered Species (see Agreement Section 5); the benefits expected to result from those conservation measures (see Agreement Section 6); assurances provided by the Service (see Agreement Section 8); monitoring provisions (see Agreement Section 12); a notification requirement to provide the Service or state agency reasonable opportunity to rescue individuals subject to incidental take (see Agreement Section 13).

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

3.1 The taking of Covered Species will be incidental

The Service finds that the taking of the Covered Species under the Agreement will be incidental to otherwise lawful activities. The activities for which incidental take coverage is sought under the permit includes biological monitoring and research, grazing, haying, weed management, vegetation restoration activities such as seeding and controlled burning, vehicle access, and other routine ranching activities.

3.2 The Agreement complies with the Candidate Conservation Agreement with Assurances Policy

The Service finds that the benefits of the conservation measures implemented by the 4W Ranch under the Agreement, when combined with those benefits that would be achieved if we assumed that similar conservation measures were also to be implemented on other necessary properties would preclude or remove the need to list the Covered Species under the ESA. For all the Covered Species, there will be 3,000 acres set aside and managed for the purpose of maintaining a viable and self-sustaining population of black-tailed prairie dogs, which should provide habitat for mountain plover and burrowing owls. Suitable nesting habitat for mountain plover and burrowing owls occurs on the CMA, and the prairie dogs also provide a valuable forage source for ferruginous hawks.

Black-tailed Prairie Dog

The Agreement provides conservation benefits for the black-tailed prairie dog under the direct control of the 4W Ranch within the boundaries of the 3,000 acres of enrolled lands by maintaining and enhancing, where feasible, habitat within the core management areas. However, approximately 370 acres of hay meadows and important livestock forage areas are required to maintain ranch viability, and will be managed to exclude prairie dogs. We believe setting aside the 3,000 acres for 10 years with the protection of the management areas, would preclude or remove the need to list the black-tailed prairie dog if we assumed that similar conservation measures were also to be implemented on other necessary properties.

In the latest 90-day Findings (73 FR 73211), two threats were identified as potentially leading to the listing of black-tailed prairie dogs: 1) disease, and 2) inadequacy of existing regulatory mechanisms. An individual landowner can do little to influence the threat of disease transmission, with the exception of possibly maintaining the density of prairie dogs at a level where the spread of sylvatic plague is minimized. We are not aware of any information suggesting that careful

management of a prairie dog population as described in the Agreement will exacerbate the threat posed by plague. Rather we anticipate that by ensuring harvests only occur when populations are above specific thresholds, the management approach described in the agreement should help ensure that populations can rebound from plague episodes. The terms of the management plan outlined in the Agreement address the inadequacy of regulatory mechanism on this property. Pursuant to the management plan specified in the agreement, it is unlikely that there will be any need by the 4W Ranch to regulate black-tailed prairie dogs via control other than highly regulated recreational shooting.

Mountain Plover

The decline of mountain plover is associated with the decline of prairie dog numbers. Prairie dog density and colony size appear important to plovers and nesting success seems higher on active prairie dog colonies. By conserving populations of prairie dogs, we will conserve habitat important to the mountain plover, and consequently, we expect to increase mountain plover presence, and nesting birds. Also, the Agreement has “no disturbance zones” with timing restrictions around any mountain plover nests to provide additional protective measures. We believe the measures to set aside and manage lands for the prairie dog and protect nest sites would preclude or remove the need to list the mountain plover if we assumed that similar conservation measures were also to be implemented on other necessary properties.

Burrowing Owl

Since the main threat to the persistence of the burrowing owl is habitat loss and degradation due to elimination of burrowing rodents, this Agreement will manage 3,000 acres toward maintaining viable populations of prairie dogs that will provide habitat needed by the burrowing owl. We believe the measures to set aside and manage lands for the prairie dog would preclude or remove the need to list the burrowing owl if we assumed that similar conservation measures were also to be implemented on other necessary properties.

Ferruginous Hawk

There are potential nest sites located within the Agreement area, and nesting structures have been placed on the 4W Ranch in the past, but there has been no confirmed use of any nest substrates or nesting structures within the area. However, ferruginous hawks may use rocky outcrops and isolated cottonwood trees found on other portions of the ranch for nesting. There are no plans to remove any potential nest trees on the 4W Ranch. A buffer zone of 0.5-mile with timing restrictions will be established around any known active hawk nest. The Agreement area will be managed to promote healthy prey populations with improved foraging conditions, increasing the likelihood of future suitable nest sites becoming established in this area.

Since one of the covered activities includes recreational shooting, it is assumed that there is a potential threat of ferruginous hawks consuming and assimilating lead through consumption of shot black-tailed prairie dogs. However, through the phase out of lead shot in favor of non-toxic or non-expanding bullets, we believe there will be no take as a result of this covered activity.

We believe the measures to set aside and manage lands containing the majority of potential known nest sites and promote a prey base would preclude or remove the need to list the Ferruginous hawk if we assumed that similar conservation measures were also to be implemented on other necessary properties (See Agreement for additional information).

3.3 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 Service has determined that the proposed Agreement will not jeopardize the continued existence of any of the Covered Species (USFWS 2008). “*Jeopardize the continued existence of*” means to engage in an action that would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild (50 CFR § 402.02). This determination was based upon reviewing the current status of the species, the environmental baseline for the action area, and the direct and indirect effects of the proposed action. The Service finds that take to be authorized under the proposed Permit will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild. The ESA’s legislative history establishes the intent of Congress that this issuance criterion be identical to a finding of “no jeopardy” pursuant to section 7(a)(2) of the ESA and the implementing regulations pertaining thereto (50 CFR 402.02). As a result, the Service has reviewed the Agreement under section 7 of the ESA. In a conference opinion (USFWS 2008), which is incorporated herein by reference, the Service has concluded that the issuance of the proposed Permits is not likely to jeopardize the continued existence of the four species covered under the Permit. The Service’s finding that the Covered Species will not be jeopardized as a result of the take authorized under the permit is discussed in detail in the Service’s conference opinion (USFWS 2008).

3.4 Implementation of the terms of the candidate conservation agreement is consistent with applicable Federal, State, and Tribal laws

The Agreement does not preclude the need to comply with any federal, state, or tribal laws, but solely serves as an instrument to comply with certain provisions of the ESA under which an incidental take permit is being sought. Activities taken pursuant to the Agreement or the permit must be otherwise lawful and in compliance with all applicable state and Federal laws and regulations. The Agreement addresses many on-going activities and existing facilities for which

any legal compliance measures have not changed as a result of the agreement. Continued operations and future operations will continue to be regulated by applicable laws.

The Agreement was developed in close coordination with affected state agencies, as appropriate. For example, the Wyoming Game and Fish Department (WGFD) has primary responsibilities in the state of Wyoming for fish and wildlife, including all of the Covered Species. All Covered Species are listed as species of greatest conservation need by the WGFD, and the Department has been involved in discussions about the Agreement and management of the conservation areas. On behalf of Section 106 of the National Historic Preservation Act, as amended, a record search conducted by the Wyoming State Historic Preservation Office, revealed that a few surveys have been conducted over the last 20 years and that prehistoric and historic sites have been identified within the Agreement area. These sites, however, will not be impacted by project activities. Given that much of the enrolled lands have been used for ranching for over 12 decades, the potential for intact sites in those areas are likely. The 4W Ranch, however, will ensure that cultural resource surveys will be conducted on the Agreement area where intact sites may be located. A letter dated April 28, 2008, was sent to the 4W Ranch to inform them of the project and whether they had any issues or concerns. No issues or concerns were raised by the 4W Ranch. However, they have requested a copy of the cultural resources report when completed.

3.5 Implementation of the terms of the candidate conservation agreement will not be in conflict with any on-going conservation programs

We are unaware of any on-going conservation programs within the Covered Area, or involving the Covered Species for which the Agreement might be in conflict, outside of those begun as a consequence of negotiations on the Agreement.

3.6 The applicants have shown capability for and commitment to implementing all the terms of the candidate conservation agreement

The applicant has shown capability for and commitment to implementing all the terms of the Agreement. The 4W Ranch has already implemented the provisions of the Agreement including setting aside the CMA, and inventorying and managing the area. The 4W Ranch has been conducting biological monitoring on their property for the past seven years and has hired a biologist to support management of the enrolled lands.

4. DIRECT TAKE PERMIT CRITERIA-ANALYSIS AND FINDINGS

Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit (50 CFR 17.22(a)(2)(i) and 17.32 (a)(2)(i);

The Agreement provides conservation benefits for the black-tailed prairie dog under the direct control of the 4W Ranch within the boundaries of the 3,000 acres of enrolled lands by maintaining and enhancing, where feasible, habitat within the core management areas. However, approximately 370 acres of hay meadows and important livestock forage areas are required to maintain ranch viability, and will be managed to exclude prairie dogs. As discussed previously, the Service finds that the benefits of the conservation measures implemented by the 4W Ranch under the Agreement, when combined with those benefits that would be achieved if we assumed that similar conservation measures were also to be implemented on other necessary properties would preclude or remove the need to list the Covered Species under the ESA.

The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit (50 CFR 17.22(a)(2)(ii) and 17.32 (a)(2)(ii);

The overall goal for the Agreement is to maintain viable and self-sustaining populations of black-tailed prairie dogs across the 3,000 acres of the CMA. Management goals include controlling and minimizing the spread of weeds, re-vegetating disturbed areas, and increasing the availability of habitat for the Covered Species. Specific management activities will be focused on manipulating prairie dog populations through recreational shooting with objectives of sustaining managed populations, eliminating prairie dog expansion beyond the CMA, and maintaining populations to minimize the spread of sylvatic plague (Cully and Williams 2001), while providing for recreational use.

Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed (50 CFR 17.22(a)(2)(iii) and 17.32 (a)(2)(iii);

The Agreement was developed in close coordination with affected state agencies, as appropriate. For example, the Wyoming Game and Fish Department (WGFD) has primary responsibilities in the state of Wyoming for fish and wildlife, including all of the Covered Species. All Covered Species are listed as species of greatest conservation need by the WGFD, and the Department has been involved in discussions about the Agreement and management of the conservation areas.

In addition to state agencies, the U.S. Forest Service was concurrently drafting a black-tailed prairie dog plan for the Thunder Basin National Grasslands

(Grasslands). This plan was initiated around the possibility of re-introducing black-footed ferrets on the Grasslands. Central to the plan, was incorporation of private lands around the Thunder Basin that could allow re-colonization of black-tailed prairie dogs in the event of a plague outbreak. While the plan called for 7,000 acres of private lands, the 4W Ranch Agreement area can provide 3,000 of these acres.

Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit (50 CFR 17.22(a)(2)(iv) and 17.32 (a)(2)(iv));

We have determined that the conservation measures applied to the 3,000 acres for 10 years with the protection of the management areas would preclude or remove the need to list the black-tailed prairie dog if we assumed that similar conservation measures were also to be implemented on other necessary properties.

The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application (50 CFR 17.22(a)(2)(v) and 17.32 (a)(2)(v));

The Agreement was developed in close coordination with affected state agencies, as appropriate. For example, the Wyoming Game and Fish Department (WGFD) participated in discussions about the Agreement and management of the conservation areas. In the public comment period, the WGFD expressed concerns about the lack of specificity in the Agreement for detailed habitat improvement measures. As we noted above, the Agreement was never intended provide detailed habitat management prescriptions (e.g., seeding rates), but rather a framework for managing the habitat and species. Further, in conjunction with the NRCS habitat treatments have been, and continue to be, implemented to reduce the very problems mentioned in the WGFD's comments. Consultation with the NRCS has occurred regarding seed types, seeding rates and acres to be treated.

Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application ((50 CFR 17.22(a)(2)(vi) and 17.32 (a)(2)(vi)).

The 4W Ranch carefully manages their population of black-tailed prairie dogs, with the goal of sustaining prairie dogs on the property. The Agreement is based on rigorous monitoring, with an adaptive management component; if monitoring indicates current management direction is not achieving the desired results, then changes in management will be implemented to correct any deficiencies. A complete listing of monitoring and reporting provisions for the 4W Ranch is located in Section 12 (Biological Monitoring) of the Agreement. Since 2001, the 4W ranch has been implementing the rigorous monitoring and hunter management programs. We believe that the signed agreement and permit

issuance will only strengthen the 4W's commitment to the long term conservation of the black-tailed prairie dog.

5. MIGRATORY BIRD SPECIAL PURPOSE PERMIT

Pursuant to the MBTA, 16 V.S.C. 703 -712, and 50 CFR 21.27, the Service finds that the 4W Ranch has made a sufficient showing that each of the three Covered Species protected under the MBTA will benefit from the conservation measures included in the Agreement to minimize disturbance and enhance the habitat of these species. The section 10(a)(1)(A) permit application submitted by the 4W Ranch including the Agreement, provide detailed information regarding the MBTA related activities, the purpose of such activities, the permit areas, the effects of those activities on the MBTA Covered Species, and other information relevant to the issuance of the Special Purpose Permits required under 50 C.F.R. 21.27. Therefore, the section 10(a)(1)(A) permit, if issued, shall also constitute Special Purpose Permits under the MBTA and 50 CFR 21.27 for each MBTA Covered Species that may become listed under the ESA during the term of the section 10(a)(1)(A) permit. Therefore, any incidental take covered by the Section 10(a)(1)(A) permit, if issued, will not be in violation of the MBTA, as amended. Such Special Purpose Permit shall become effective concurrent with the listing of the MBTA Covered Species under the ESA.

6. GENERAL CRITERIA AND DISQUALIFYING FACTORS - FINDINGS

The Service has no evidence that the Permit applications should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21 (b) through (c). The applicant has met the criteria for the issuance of the permits and approval of the Agreement, and do not have any disqualifying factors that would prevent the permits from being approved under current regulations.

7. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, I recommend approval and the issuance of an enhancement of survival permit to authorize the incidental take of four unlisted species in accordance with the Agreement, and direct (purposeful) take of the black-tailed prairie dog.

7. LITERATURE CITED

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