

Findings and Recommendations for Issuance of an Endangered Species Act Section 10 (a)(1)(A) Enhancement of Survival Permit (Permit #TE00738A-0) to the Idaho Department of Fish and Game in Association with a Programmatic Candidate Conservation Agreement with Assurances for the Greater Sage-Grouse in the West Central Planning Area of Idaho

I. DESCRIPTION OF THE PROPOSED ACTION

The Idaho Department of Fish and Game (IDFG) has submitted an application to the Fish and Wildlife Service (Service) for an enhancement of survival permit (permit) that authorizes incidental take of the greater sage-grouse (*Centrocercus urophasianus*; sage-grouse) within the West Central Planning Area (WCPA) of Idaho. The WCPA encompasses approximately 644,707 acres and includes portions of Adams, Gem, Payette, and Washington counties in Idaho. As a condition of the proposed permit, IDFG, in coordination with the Service and the Natural Resource Conservation Service (NRCS; collectively the Agencies), would be responsible for implementing a programmatic Candidate Conservation Agreement with Assurances (CCAA; Northwest Natural Resource Group (NNRG) *et al.* 2010). The programmatic CCAA includes various measures to provide conservation benefits to the sage-grouse, and would be implemented through the development of site-specific plans for non-Federal property owners whose land is within the WCPA and enroll their lands under the proposed permit and the CCAA. The IDFG has submitted the CCAA as part of their permit application. The proposed permit would be issued for a period of 30 years under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), and the Service's final CCAA policy (64 FR 32726).

Under the CCAA, the Agencies would cooperate to implement various conservation measures designed to benefit the sage-grouse and its habitat within the WCPA (see Figure 1 of the CCAA). In association with the CCAA, an enhancement of survival permit authorizing incidental take of the sage-grouse would be issued to the IDFG consistent with section 10 of the ESA. The permit would authorize incidental take of the sage-grouse as a result of otherwise lawful activities (as identified in section V of the CCAA), as long as the permit conditions, CCAA, and any site-specific plans are being properly implemented. The types of activities proposed to be covered under the permit are range and livestock management, farm operations, and recreation. The permit would include ESA regulatory assurances as discussed in the Service's final CCAA policy (64 FR 32726). These ESA regulatory assurances would limit the need for the IDFG and enrolled property owners to make additional changes in land use activities, beyond those identified in the CCAA, should the sage-grouse be listed under the ESA in the future.

Threats to the sage-grouse in the WCPA include: wildfire; infrastructure; annual grasslands; livestock impacts; human disturbance; West Nile virus; prescribed fire; seeded perennial grasslands; climate change; isolated populations; predation; development; sagebrush control; insecticides; agricultural expansion; and poaching or accidental shooting. Other threats to the sage-grouse are present in other parts of the species' range, which extends across portions of 11 western states.

The CCAA is intended to reduce or eliminate threats on the covered lands by maintaining all currently occupied habitat, and through restoration of potential habitat within the WCPA. This

would result in an increase in the abundance and distribution of the sage-grouse, and in the quantity and quality of habitat for the species on enrolled lands within the WCPA. The Agreement contains two biological objectives for conserving the sage-grouse in the WCPA. The first objective is to maintain existing high quality habitat and implement habitat enhancement or restoration measures to increase habitat quality and quantity for the species. The second objective is to implement conservation measures to reduce direct and indirect sage-grouse mortality on enrolled lands associated with covered activities. These objectives are the basis for the conservation measures identified in the CCAA. The biological goal of the CCAA is to maintain or restore, in a high quality condition, at least 50 percent of enrolled lands that contain existing or potential sage-grouse habitat for purposes of contributing to and supporting a viable population of the sage-grouse within the WCPA.

Under the CCAA, the amount of sagebrush habitat on the covered lands that is subject to conservation measures is defined through “No Net Loss” and “Fair Share” standards, which will be implemented on all enrolled lands. Under the No Net Loss standard, participating property owners will agree not to intentionally convert suitable sage-grouse habitats to unsuitable habitat over the term of their site-specific plan and certificate of inclusion. The Fair Share Standard was developed to ensure that 50% or more of the enrolled covered lands would be maintained in or restored to sagebrush habitat over the duration of the permit and associated CCAA; this level of habitat protection is critical to the persistence of the sage-grouse population within the WCPA (see Habitat Characteristics section below; Aldridge et al. 2008, p.990; Wisdom et al. *in press*, p. 17). The model used to implement the Fair Share Standard is Appendix C of the Agreement.

By enrolling their lands under the CCAA, all participating property owners are agreeing to the no net loss and fair share standards, as well as the following conservation actions: (1) allow Agency access to verify implementation of site specific plans, evaluate habitat conditions, monitor sage-grouse populations, and identify needed habitat enhancement/rehabilitation measures; (2) implement measures to minimize or avoid the adverse effects of land use activities on sage-grouse populations; (3) allow translocations of sage-grouse to or from enrolled lands, if appropriate; (4) encourage and support local efforts to protect sage-grouse populations and habitat through land use planning and zoning, fire prevention and protection, mosquito abatement, and weed and insect control which minimizes the potential impact on sage-grouse; and (5) work with the Agencies to actively pursue funding, as appropriate, to implement their site-specific plan. Participating property owners will work with the Agencies to develop site-specific measures within each of the above categories that are appropriate to their lands, and commit to implementing those measures on their lands for the length of their site-specific plan. These efforts are intended to provide for the conservation of the sage-grouse on non-Federal lands throughout the WCPA, including currently suitable and/or occupied habitat, and potentially suitable sagebrush habitat. The conservation goal of the CCAA will be met by giving property owners incentives to implement, or by allowing the Agencies to implement, conservation measures for the sage-grouse, while providing property owners with regulatory certainty concerning land use restrictions that might otherwise apply should the sage-grouse become listed under the ESA in the future.

Each site-specific plan must minimize all threats that occur on any parcel of land enrolled under IDFG’s permit to ensure that adequate conservation benefits are being provided and to meet

issuance criteria. The NRCS, as a signatory to the CCAA (although no regulatory assurances are being provided to the NRCS), may assist landowners in the preparation of a site-specific plan using the measures in the CCAA. However, the Service, in coordination with IDFG, must review each site-specific plan to determine whether it meets CCAA permit issuance criteria prior to the IDFG and the Service signing a certificate of inclusion to enroll a participating property owner. If the Agencies and the property owner cannot reach agreement on these measures, and the Service determines the measures will not meet intended conservation benefits, the property owner will not be enrolled under the CCAA. Should the property owner or the IDFG be found to not be in compliance with the conditions of the permit, the Service will retain the authority to immediately suspend the permit at its sole discretion, consistent with current regulations described in 50 CFR 13.27 (a).

For reference and additional details, the reader is referred to the CCAA (NNRG et al. 2010).

II. ANALYSIS OF EFFECTS

To meet issuance criteria under the Service's CCAA policy and section 10 permit regulations, a CCAA must reduce or minimize the threats to the covered species and provide conservation benefits such that, if similar measures were implemented in similarly-situated lands across the species' range, it would preclude the need to list the covered species.

Under this CCAA, all threats on an enrolled property must be addressed, and measures taken to reduce or minimize them. With application of the Fair Share and No Net Loss standards, this CCAA is likely to result in the maintenance of all existing high quality habitat and the restoration of some potential habitat on enrolled lands. Ultimately, implementation of this CCAA is likely to result in a higher quantity and quality of available habitat for the sage-grouse on enrolled lands within the WCPA.

The Service has determined, based on the analysis presented below, that implementation of this CCAA on enrolled lands is likely to reduce or eliminate all known threats to the sage-grouse that currently exist on those lands. The Service has further determined that implementation of this CCAA is likely to increase the abundance and expand the distribution of the sage-grouse on enrolled lands. The Service has also determined that any adverse impacts to the sage-grouse likely to result from covered actions under the CCAA are likely to be minimized by conservation measures described in the CCAA and the associated ESA section 10 Permit. The effects of the CCAA on the sage-grouse in the WCPA are fully analyzed in the CCAA (NNRG et al. 2010) and the Service's Conference Opinion (Service 2010); both of these documents are herein incorporated by reference. A summary of those analyses is provided below.

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 5 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. Current threats to the sage-grouse within the WCPA fall into each of these 5 categories, and are discussed below.

1. Threat Reduction

Under this CCAA existing sage-grouse and their habitat on all enrolled lands within the 644,707-acre WCPA would be protected for 30 years. Currently, the number of participating landowners and the size and location of enrolled lands are unknown. However, priority will be given to enroll those lands that currently have occupied habitat or have the most potential to support sage-grouse populations in the future. Any lands that are enrolled will implement the conservation measures identified in the CCAA, and those actions are likely to reduce all known threats and minimize any potential for incidental take of the sage-grouse.

Habitat Destruction or Modification

The sage-grouse is dependent on large, contiguous, sagebrush-dominated landscapes (Knick and Connelly *in press*, p. 1; Wisdom et al. *in press*, p. 1). Deterioration of the sagebrush steppe ecosystem has had the most pronounced effect on sage-grouse populations. Habitat modification and degradation have occurred from numerous factors throughout the range of the sage-grouse but such effects within the WCPA have primarily been caused by wildfire, invasive plants, urbanization, habitat conversion, and livestock grazing. Loss of sagebrush cover in an area results in declines in lek trend (Johnson et al. *in press*, p. 12), increases in lek abandonment (Knick and Hanser *in press*, p. 21), and increased risk of sage-grouse population extirpation (Wisdom et al. *in press*, p. 17). The loss of sagebrush cover across the WCPA has primarily resulted from wildfire and its relationship with exotic annual grasses (e.g., cheatgrass), urbanization, and habitat conversion (e.g., Conservation Reserve Program and perennial grass seedings, and establishment of row crops).

The “No Net Loss” and “Fair Share” standards, which will be implemented on all enrolled lands, are likely to minimize further loss and degradation of sage-grouse habitat on enrolled lands and are likely to facilitate restoration of sagebrush cover across enrolled lands within the WCPA. The Fair Share Standard was developed to ensure that greater than 50% of existing or potential sage-grouse habitat on enrolled lands will be maintained or restored in sagebrush cover over the duration of the CCAA (Aldridge et al. 2008, p.990; Wisdom et al. *in press*, p. 17). This standard accounts for the current amount of sagebrush cover across the landscape and estimated future losses due to wildfire and urbanization, the two primary threats to the sage-grouse in the WCPA. This standard will ensure that over 50% of suitable or potentially suitable sage-grouse habitat on all enrolled lands will be actively maintained or restored to provide suitable sage-grouse habitat.

Furthermore, this CCAA includes numerous conservation measures designed to prevent and limit the spread of wildfire and invasive weeds including: installation of “green strips” and/or buffers; restoration of annual/biannual grasslands; and education/outreach of participants and visitors. Although wildfire can’t be completely prevented, conservation measures in the CCAA improve the potential for restoration of sagebrush habitat through interagency and interdisciplinary collaboration, seeding using native species, if practicable, and rest from livestock grazing. Other conservation measures in the CCAA aim to improve habitat quality by adjusting the timing, intensity, and duration of livestock use to meet sage-grouse habitat standards described in the Bureau of Land Management’s “Framework for describing sage-grouse habitat at multiple

scales.” Additional conservation measures to reduce habitat fragmentation or improve habitat quality include stipulations on the placement of new fences and visibility measures for existing fences (tagging), minimization of infrastructure development on enrolled lands (e.g., wind turbines, cell towers), design standards for water developments, delayed stock turn-out in pastures near leks, and restrictions on the chemical or mechanical treatment of sagebrush.

It is not possible to describe precisely which conservation measures will be implemented across the landscape of the WCPA because each site-specific plan and the associated conservation measures will be developed through site evaluations, and based on existing habitat conditions, sage-grouse use, and threats on the property. However, the Fair Share Standard will ensure that sufficient measures to increase habitat quality and quantity in the WCPA will occur across the enrolled lands; such increases should provide for an associated increase in the population of the sage-grouse. Over time, implementation of this CCAA is likely to allow for sage-grouse population expansion into adjacent areas of the enrolled lands, and into currently unoccupied areas within the historical range of the species in the WCPA. Additional population connectivity resulting from such an expansion will reduce the risk of local population extirpation from stochastic events.

Overutilization

Hunting seasons have been closed throughout the WCPA for over 20 years. Although hunting is not impacting the sage-grouse population in the WCPA, direct mortality from poaching or accidental shooting continues to be a threat. Under the CCAA, sage-grouse would be afforded additional protection from accidental shooting through education and outreach to family members and guests of the enrolled property owner. In this way, the CCAA is expected to minimize sage-grouse mortality from poaching and accidental shooting on enrolled lands.

Predation

Predation is the most commonly identified cause of direct mortality for the sage-grouse (Schroeder et al. 1999, p. 9; Connelly et al. 2000b, p. 228). However, adult sage-grouse typically experience relatively high annual survival rates, suggesting that predation has little impact on breeding populations (Connelly et al. 1994 cited in Connelly 2000, p. 29). Due to its isolated status, the population of the sage-grouse that currently exists in the WCPA is more susceptible to diseases, predators, and other stochastic events.

The CCAA contains provisions for the Service and the IDFG to minimize the amount of sage-grouse mortality caused by avian species, domestic dogs and cats, and other predators. These provisions are likely to reduce and minimize mortality due to predation where it is a threat.

Inadequacy of Regulatory Mechanisms

In the WCPA, the long-term survival of the sage-grouse is dependent on non-Federal land. Sixty-four percent of the land in the WCPA, including many of the leks and nesting habitats, is non-Federal land. Landowners have regulatory concerns related to the potential listing of the sage-grouse under the ESA, and these concerns could negatively affect their interest in

conserving the species. The ESA regulatory assurances that would be provided to participating landowners under this CCAA and the associated ESA section 10 permit would limit the need to make additional changes in land use activities, beyond those identified in the CCAA, should the sage-grouse be listed under the ESA. In doing so, the CCAA is expected to reduce incidental take and thereby benefit the species by reducing participating landowners' regulatory concerns about its possible listing. Implementation of the CCAA is also likely to encourage additional cooperative efforts for conservation of the sage-grouse on enrolled lands. Indirect benefits of the CCAA are also expected by encouraging cooperative sage-grouse conservation efforts between the Agencies and other landowners.

Other Natural or Manmade Factors

Pesticides and contaminants are manmade factors that may affect the sage-grouse. Pesticides can potentially affect sage-grouse through impacts to habitat quality, abundance of prey items, and direct effects to the bird's health and survival. Although research has shown that pesticides can cause direct mortality to individuals, those pesticides have been banned or have had their use further restricted for more than 20 years (e.g., dieldrin). Application of herbicides and insecticides may also impact individual sage-grouse through reductions in food and cover availability. Conservation measures in the CCAA minimize the use of herbicides and insecticides on enrolled lands that may reduce food and cover availability for the sage-grouse. Although the uses of these chemicals are not defined as "covered activities" under this CCAA, usage will be restricted to crop areas not likely to be used by the sage-grouse. Thus, their use on covered lands is not likely to adversely affect sage-grouse habitat.

There is currently not any published literature concerning non-consumptive (non-hunting) recreational impacts to the sage-grouse, but significant research has been conducted on the impacts of recreation to various other wildlife species and their habitats. In general, recreation may have direct effects to wildlife through mortality from collisions or disturbance to individuals. Indirect effects to sage-grouse from road construction include: habitat loss and fragmentation, increased risk of fire, increased risk of weed invasion, and increased access for predators. Increasing popularity and improved access to sage-grouse leks have recently resulted in concerns over disturbance to mating sage-grouse. Implementation of the CCAA is likely to minimize the potential impacts of disturbance by reducing recreational access to leks on enrolled lands, as well as minimizing off-highway vehicle use in lek or nesting areas.

2. Adverse Impacts

The CCAA sets out measures to reduce threats to the sage-grouse across the WCPA through the development of site-specific plans that identify conservation measures and measures to minimize the adverse effects of ongoing activities on enrolled lands. However, not all adverse effects on enrolled properties will be eliminated. We anticipate that adverse effects associated with the following activities would continue to occur at low levels on enrolled lands.

Farm Operations: Adverse effects to sage-grouse associated with farm operations are often related to loss of habitat. Enrollees will agree to the "no net loss" standard, therefore we will not be authorizing any loss of habitat. Furthermore, the "fair share" standard will likely result in

increased amounts of habitat and corresponding increases in the sage-grouse population over the term of the CCAA. Cultivation of alfalfa crops may result in adult sage-grouse being flushed from fields; this is a normal behavior and will not likely affect the fitness of these individuals. An abundance of forage throughout native rangelands during the early brood-rearing period typically precludes the need for broods to use irrigated agriculture during this time. In dry years or in areas where forage may not be abundant on native rangeland, hens and broods may forage within irrigated alfalfa fields during the early brood-rearing period. In these cases, young broods of chicks (that are unable to fly) may not be able to flee hay swathers during the first crop cutting and may be killed. Enrollees with irrigated alfalfa crops will agree to conservation measures that have been designed to reduce and minimize this take. For example, machinery operators will make visual observations for sage-grouse and start swathing the crop from the inside of field working towards the outside edge. This will allow hens with broods the opportunity to escape from the field into adjacent sage-brush cover. Therefore, we anticipate that adult birds will easily be able to avoid being struck by machinery and few broods will be killed. Although hens and broods often use irrigated alfalfa fields later in the summer and fall, chicks are able to fly and easily avoid being hit by machinery.

Range and Livestock Management: Feeding, calving, and herding livestock may affect sage-grouse. During these activities it is likely that some sage-grouse will be flushed short distances. This is a natural response and will not likely have any effect on the fitness of these individuals. Although disturbance of nests and eggs by livestock activities has been reported in the literature, implementation of conservation measures will minimize the risk of these effects. Another activity that may affect sage-grouse is fence construction or replacement. Flying sage-grouse may inadvertently fly into the top wire on new or reconstructed fences, resulting in a few individuals being maimed or killed. The risk of these effects has been reduced through conservation measures that address the placement and monitoring of fences. If fence strikes are observed, these areas of the fence will be flagged or the fence will be relocated.

Recreational Activities: Incidental disturbance or harassment of some individuals may occasionally occur from recreational activities (e.g., horseback riding, ATV riding, and legal hunting). These incidences are expected to be rare and will likely only result in birds being flushed a short distance and for a short period of time. This will not likely have any effect on the fitness of these individuals. Conservation measures have been developed in the CCAA to educate recreational users on the identification and status of the sage-grouse, thereby reducing the likelihood of adverse effects from these activities.

3. Effects Summary

In summary, direct and indirect beneficial effects to the sage-grouse from conservation measures under the CCAA are expected to occur and increase sage-grouse habitat quantity and quality. Limited adverse effects are likely to occur due to continued land uses such as livestock management and farming of crops (e.g., alfalfa) in areas used by the sage-grouse. However, the net effect of implementing this CCAA will be to reduce the likelihood and amount of direct and indirect adverse effects that occur on enrolled private lands throughout the WCPA by increasing landowner awareness of the species' needs, by maintaining or increasing available habitat, and through the conservation measures that participating landowners will commit to implement to

reduce identified threats on enrolled lands. The commitments made by participating property owners are expected to result in an increase in sage-grouse habitat quantity and quality, and an expansion of the species' distribution within the WCPA. The combination of these benefits with the CCAA's regulatory assurances encouraging a cooperative relationship between the Agencies and participating property owners is expected to result in an overall benefit to sage-grouse conservation. By reducing landowner's regulatory concerns related to the potential listing of sage-grouse, and gaining increased cooperation with and support from landowners for the CCAA and measures contained therein, conservation of the sage-grouse should be enhanced. The anticipated net result of implementing the CCAA is an increase in the number and distribution of the population of sage-grouse in the WCPA, and more secure stands of sagebrush habitats on the landscape than occurs currently, resulting in enhancement of the long-term survival of the sage-grouse in the WCPA. The effects of implementing the CCAA on the sage-grouse are more completely described in the CCAA (NNRG et al. 2010) and the Service's Conference Opinion on this action (Service 2010).

4. Summary

Implementation of the CCAA is expected to result in a reduction of all the known threats to the sage-grouse on enrolled lands, an increase in sage-grouse habitat quality and quantity on those lands, and an increased sage-grouse population within the WCPA. If conservation measures included in this CCAA were implemented where applicable on all similarly-situated properties (Federal and non-Federal) within the range of the species, the Service believes that the need to list sage-grouse would be precluded.

The Service estimates that it may take 10 years of implementing the CCAA and site-specific plans to fully reach the conservation benefit that is expected for the sage-grouse. This is primarily due to the extended period of time necessary for sagebrush recovery or re-establishment to the point that it can provide functional habitat for the sage-grouse. The arid environment on the enrolled lands and variable precipitation result in variable vegetation re-establishment rates and planting success. In some areas, changes to livestock management practices may require 2 to 3 years for desirable understory vegetation to re-grow and provide cover and/or forage for the sage-grouse in areas previously subjected to inappropriate livestock grazing. Similarly, we anticipate another few years for the affected sage-grouse populations to begin to respond to increased or improved habitat availability.

III. ENHANCEMENT OF SURVIVAL PERMIT CRITERIA – ANALYSIS AND FINDINGS

As set forth in 50 CFR 17.32 (d)(2), the Service finds that the ESA section 10 (a)(1)(A) permit issuance criteria for a CCAA are met as discussed below.

1. The taking of the sage-grouse will be incidental and will be in accordance with the terms of the CCAA.

The Service finds that any take of the sage-grouse resulting from covered activities included in the CCAA will be incidental to, and not the purpose of, these lawful activities. Otherwise lawful

agricultural and recreational activities on the enrolled lands are identified in the CCAA and include crop cultivation and harvesting on existing cultivated lands, livestock grazing and management, farm equipment operation, and recreational activities as described in each site-specific plan. Enrolled property owners are responsible for obtaining other authorizations, if any, necessary under State, Federal, or local laws or regulations in order to carry out these activities. The validity of the permit will be conditioned upon strict observance of all applicable State, local or other Federal laws.

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

Based, in part, on the analysis provided above in Part II of this document, the Service finds that the CCAA's conservation measures and expected benefits to the sage-grouse, when combined with those benefits that would be achieved if it is assumed that similar conservation measures were also implemented on other similarly-situated properties range-wide, would preclude or remove the need to list the species, as discussed in the Service's final policy for CCAAs. The CCAA also complies with all other requirements of the Service's CCAA policy.

3. The probable direct and indirect effects of any authorized take of the sage-grouse under the permit will not appreciably reduce the likelihood of survival and recovery of the species in the wild.

Issuance of the ESA section 10(a)(1)(A) enhancement of survival permit to the IDFG was reviewed by the Service under section 7 of the ESA. In a conference opinion, which is incorporated here by reference (Service 2010), the Service concluded that the direct and indirect effects of implementing the CCAA and issuing the permit authorizing incidental take of the sage-grouse would not appreciably reduce the likelihood of survival and recovery of any listed species in the wild.

The Service also finds that the taking authorized under the permit will not appreciably reduce the likelihood of the survival and recovery of the sage-grouse in the wild. The CCAA is intended to provide for protection of sage-grouse populations over all enrolled lands. Under the CCAA, sagebrush habitat will be maintained on enrolled properties, and additional habitat will be restored. In addition, conservation measures to reduce threats to the sage-grouse on the enrolled lands will be implemented under every site-specific plan. The Service does not believe the actual incidental take of the sage-grouse will have adverse population-level impacts, and the effects of such take will be far outweighed by the benefits of improving habitat and minimizing all adverse impacts. A total of 20 sage-grouse may be taken on enrolled lands across the WCPA, averaged over any 5-year period. All incidental take of the sage-grouse will be reported to IDFG and the Service, and, if necessary, the Agencies may work with the participating property owner to identify and implement additional protective measures to minimize any further incidental take.

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

The CCAA is consistent with all applicable Federal and State laws and regulations.

In accordance with the National Environmental Policy Act, the Service prepared an Environmental Assessment (EA) and subsequently a Finding of No Significant Impact.

The permit authorizes incidental take of the sage-grouse for covered activities that are implemented in accordance with the CCAA and the ESA permit. The IDFG is responsible for obtaining other authorizations, if any, under State, Federal, or Local laws or regulations in order to carry out their activities. The validity of the permit will be conditioned upon strict observance of all applicable State, local or other Federal laws.

The issuance of the permit is an undertaking as defined by National Historic Preservation Act (NHPA). The Service has determined that the permit, in and of itself (without the enrolled property owners), is an undertaking of the type that has little or no potential to cause effects on historic properties (Section 800.3 a (1)). However, as private property owners enroll and specific information on the type of activities and where they will occur on the ground is made available, the Service will at that time assess the level of work that will be necessary for ensuring compliance with NHPA. It is important to note that many of the enrolled lands have been previously disturbed and that the maintenance and protection of any remaining native sage steppe habitat is likely to conserve any existing cultural or historic resources that may be present in these relatively undisturbed areas.

There are no Tribal laws or regulations applicable to the CCAA.

5. Implementation of the terms of the CCAA will not be in conflict with any ongoing conservation programs for the sage-grouse.

Approval of the CCAA and issuance of the permit will not be in conflict with any ongoing conservation program for the sage-grouse. In fact, this CCAA will compliment ongoing conservation programs for the sage-grouse that are occurring throughout Idaho and the range of the sage-grouse, particularly those administered by the NRCS.

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

Signing of the legally-binding CCAA by the Agencies assures that it will be implemented, and commits all parties to the responsibilities outlined in the CCAA. Implementation of the CCAA will be a condition of the permit, and a failure to perform obligations under the CCAA may be grounds for suspension or revocation of the permit and cancellation of the CCAA.

The IDFG has demonstrated their interest and capability in, and commitment to, sage-grouse conservation. IDFG personnel have conducted sage-grouse surveys and implemented a telemetry study within the WCPA, and have also been active members of the WCPA sage-grouse Local Working Group. Statewide, the IDFG is committed to sage-grouse conservation, as evidenced by their leadership in developing and implementing the Conservation Plan for Greater Sage-Grouse in Idaho (Idaho Sage-Grouse Advisory Committee 2006), and ongoing leadership

in the facilitation of the State Advisory Committee and local working groups around the state. The IDFG has also actively cooperated with the Service throughout the status review process to determine whether sage-grouse warrant listing under the ESA; they have provided extensive information and have committed significant resources to the Service's efforts. In Fiscal Year 2010, the State of Idaho received a special federal appropriation of \$1 million specifically for sage-grouse conservation in Idaho, some of which is expected to be directed towards the implementation of this CCAA.

7. The duration of the CCAA is sufficient to allow for conservation of the sage-grouse.

The duration of this CCAA will be 30 years from the date on which it is signed by the Agencies. Given the difficulty and length of time to restore sagebrush habitat, the probable lag time between approval of site-specific plans, habitat treatments, changed management, and sage-grouse response, the Service estimates it may take 10 years of implementing the CCAA and site-specific plans to fully benefit the species, however, other benefits will occur immediately upon approval of an individual site plan and issuance of a certificate of inclusion. Therefore, the duration of any individual site-specific plan will be a minimum of 10 years and the duration will be identified in each site-specific plan.

The permit will contain notification requirements pertaining to incidental take and land transfers. Enrolled property owners will notify the IDFG and the Service at least 60 days in advance of a potential land sale or transfer. Both requirements are designed to allow the Agencies to review the status of the CCAA and the distribution of the sage-grouse and its habitat on the enrolled land and make informed decisions about the best course of action.

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 IDFG 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. PUBLIC COMMENTS

The Service published a Notice of Availability of IDFG's permit application, including the CCAA and draft EA, in the Federal Register on July 23, 2009 (74 FR 140). Publication of the notice initiated a 30-day comment period that closed on August 24, 2009. A press release and the Federal Register notice were transmitted to over 600 contacts, including members of the Idaho Federal and State congressional delegations, Federal and State government agencies, County governments, Tribes, the media, environmental organizations, private property owners, and other interested individuals and groups. The Service received six written comments, including letters from two private citizens, the Idaho Department of Lands, The Nature Conservancy – Idaho Chapter, Little Land and Livestock, LLLP/V Dot Cattle Company, and one coordinated comment letter from Idaho Cattlemen's Association, Montana Public Lands Council, Montana Association of State Grazing Districts, National Cattlemen's Beef Association, Public

Lands Council, and Washington Cattlemen's Association. We responded to all comments that were provided by the above listed entities; their comments and our responses are provided below.

Jean Public – Email received July 23, 2009

Comment 1: This is another proposal where the FWS wants to put one over on the general taxpayers. They want the general taxpayers to pay to restore a grouse population so the gun wacko minority in America can blow these poor birds into smithereens, all on the taxpayers' dollars. FWS has come up with a proposal to shift costs so that general taxpayers have to pay to restore a population that the gun wacko animal murderers have depopulated.

Response: There is no hunting of sage-grouse in the WCPA; legal hunting has not occurred there for over 20 years. Current population declines are not attributed to hunting. Conservation measures associated with this agreement aim to reduce any poaching or illegal shooting of sage-grouse. No hunting will occur under this agreement.

Comment 2: In the first place, the first thing the FWS should do is restrict all grouse hunting. They have not done that.

Response: See above; there is no hunting in the WCPA. In addition, the FWS does not regulate or restrict hunting of sage-grouse. The Idaho Department of Fish and Game is the responsible agency for determining hunting seasons, regulations and restrictions.

Comment 3: Stop this nonsense. Tell the FWS where to go. It is time this agency gets some sense. To date, they have shown none.

Response: Comment and opposition noted.

Felix Rigau – Email received July 23, 2009

Comment 1: I support the FWS proposed agreement to conserve the greater Sage-Grouse.

Response: Comment noted.

Little Land and Livestock, LLLP and V Dot Cattle Company – Letter received August 20, 2009

Comment 1: A portion of our private, State, and Federal cattle range is included in the current West Central Sage-Grouse planning area. We believe the current map boundaries for the West Central Sage-grouse Planning Area, as shown in the Conservation Plan for the Greater Sage-grouse in Idaho and reprinted in the CCAA, are over-inclusive. The maps include our range which is encompassed by the south eastern portion of the planning area where there is an absence of sage-grouse and sage-

grouse leks. As discussed in the Conservation Plan for the Greater Sage-grouse in Idaho, the planning area is subject to change. We are currently working with the West Central LWG to amend the maps to exclude our range.

Response: Comment noted. We will consider changes to the WCPA and area covered by the CCAA if those changes are brought forward by the applicant.

The Nature Conservancy Idaho Chapter – Boise Office – Letter received August 24, 2009

Comment 1: The Idaho Chapter of The Nature Conservancy supports the draft programmatic CCAA for the greater sage-grouse with the IDFG. The agreement represents an important opportunity to engage landowners in proactive conservation efforts for greater sage-grouse across several hundred thousand acres of sagebrush steppe habitat in west central Idaho. We commend the West Central sage-grouse local working group, cooperating landowners, and the IDFG for bringing this effort forward.

Response: Comment noted.

Comment 2: We encourage the Service to commit the resources needed to implement the CCAA over time. The success of the CCAA requires that sufficient funding be allocated to completing the site-specific assessments needed to enroll new landowners and monitoring over the long-term.

Response: We agree that the success of the agreement will depend on the resources available to implement it. To address this concern, the Natural Resources Conservation Service has agreed to be a signatory to the final CCAA so that their programs can be used to aid the implementation of the CCAA, including implementation of conservation actions and habitat assessments.

Idaho Department of Lands – Letter received August 24, 2009

Comment 1: On page 25, it states: *"For every threat that is identified on a particular property (either across the property or within certain pastures), the property owner will be required to implement or cooperate in the implementation of conservation actions identified ..."* Who determines the threat" on an individual applicant's lands? Is it Idaho Fish and Game, US Fish and Wildlife Service, Local Working Committee, or landowner? This type of language is elsewhere in the document and it should be clearly stated who the determining party(s) *is/are*.

Response: Comment noted. We have clarified the role of the Agencies in implementing the agreement, and defined Agencies as FWS, IDFG, and NRCS. Regarding this comment in particular, it now specifies that the Agencies will determine the threats on the property.

Comment 2: On page 41, it states: *"Generally, participating property owners will agree not to convert areas of sagebrush in their ownership to other uses or vegetative types*

unless conversion is determined by the agencies to be beneficial to sage-grouse. "Agencies" is not defined in the CCAA and it is used in numerous locations in similar instances. Same comment for page 43 item 4.

Response: Comment noted. See response to Comment 1 above.

Comment 3: On page 48, it states: *"Major potential sources of government funds include habitat improvement funds that are a part of various Farm Bill programs; Section 6 ESA funds granted to the states for conservation of listed or candidate species; state funds appropriated to the Idaho Office of Species Conservation; State Wildlife Grants and Habitat Improvement Program funds administered by the Idaho Department of Fish and Game; and potentially the general operating funds of such agencies as the Bureau of Land Management, FWS, and the Idaho Department of Lands."* Has an economic analysis been initiated or completed which describes how much "operating funds" will be needed by IDL, or what the economic impact to IDL would be under enrollment in the CCM?

Response: An economic analysis has not been completed or initiated to determine how much it would cost IDL to enroll endowment lands under the CCAA. It will be the responsibility of the enrolling property owner to work with the IDFG and other participating agencies to determine whether the economic cost to enroll lands is acceptable.

Comment 4: We recommend that *"Appendix A. Template for Landowner Site-Specific Plan,"* be replaced or supplemented with an example Site Specific Plan. Templates without sufficient detail result in a long chain of "bring us another rock" approval process. An example plan would provide an actual model for landowner enrollees to assess the implications of enrolling and save time and expense delegated to format and *process* instead of on the ground conservation. We understand that the CCM authors (Northwest Natural Resource Group LLC) have prepared at least one site specific plan under this CCM already, which could be readily edited to supplement the current Appendix A.

Response: Comment noted. We have edited the template site-specific plan to more closely reflect the site-specific plan that is under development. The draft site-specific plans that are currently available are not approved or complete, so it is not appropriate for them to be part of the template.

Idaho Cattlemen's Association, Montana Public Lands Council, Montana Association of State Grazing Districts, National Cattlemen's Beef Association, Public Lands Council, and Washington Cattlemen's Association – Coordinated letter received August 24, 2009.

Comment 1: The undersigned organization submit these comments in strong support of the Department's proposal to issue a programmatic candidate conservation agreement with assurances (CCAA) for the Greater sage-grouse with the Idaho Department of Fish and Game.

Response: Comment noted.

Comment 2: The actual conditions for management of sage-grouse habitat will be determined by IDFG and a landowner in the covered area within the framework of the CCAA.

Response: Comment noted. Each site-specific plan will evaluate and recommend management based on the conditions and land use on the enrolled lands.

Comment 3: CCAAs are one of the most important regulatory tools available to involve more private landowners in the conservation of wildlife habitat. From the ranchers' point of view, CCAAs provide a measure of regulatory certainty, and therefore the promise of greater stability for their livestock operations. We urge the Department to aggressively use these agreements whenever appropriate as a realistic means to balance the conflicting demands for use of the public lands.

Response: Comment noted.

VI. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, I recommend issuance of an ESA section 10(a)(1)(A) Enhancement of Survival Permit to authorize incidental taking of the sage-grouse by the IDFG caused by covered activities carried out in accordance with the CCAA in the WCPA of Idaho.


Deputy Regional Director

Date

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