

**FINDING OF NO SIGNIFICANT IMPACT FOR ISSUANCE OF
AN ENHANCEMENT OF SURVIVAL PERMIT FOR
THE NATURE CONSERVANCY'S CCAA FOR GREATER SAGE-GROUSE
AND DECLINING GRASSLAND SONGBIRDS IN MONTANA**

INTRODUCTION

The Nature Conservancy (TNC) prepared a Programmatic Candidate Conservation Agreement with Assurances (CCAA) to provide private landowners in Montana with the opportunity to voluntarily conserve five species in sagebrush and grassland habitats, while carrying out general farm operations, general ranching and livestock operations, certain recreational activities, rangeland treatments, and species and habitat monitoring activities described in the CCAA. The Covered Species for the CCAA include the greater sage-grouse (*Centrocercus urophasianus*), Baird's sparrow (*Ammodramus bairdii*), chestnut-collared longspur (*Calcarius ornatus*), McCown's longspur (*Rhynchophanes mccownii*), and Sprague's pipit (*Anthus spragueii*). Private landowners in Montana may apply for a Certificate of Inclusion under the CCAA's enhancement of survival permit (Permit) under section 10(a)(1)(A) the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), by agreeing to implement conservation measures in the Programmatic CCAA.

The Programmatic CCAA covers an area of approximately 28.9 million acres of privately owned lands within the range of the Covered Species. A private landowner who wishes to enroll in the Programmatic CCAA would develop a Certificate of Inclusion with TNC for the enrolled property and agree to implement the appropriate Conservation Measures.

The U.S. Fish and Wildlife Service (Service) is proposing to issue a Permit to TNC. The CCAA, and the subsequent enrollment of landowners through Certificates of Inclusion, encourages private and other non-federal property owners to implement conservation efforts for species by assuring participating property owners that they will not be subjected to increased land use restrictions as a result of efforts to attract or increase the numbers or distribution of a Covered Species on their property if that species becomes listed under the ESA in the future. The CCAA permit application requirements and issuance criteria are found in 50 CFR 17.22(d) and 17.32(d).

The Permit will authorize a specified amount of incidental take of the Covered Species for TNC. The Permit will be in effect for 20 years. The amount of authorized incidental take for each of the Covered Species is based on the assumption that all privately owned lands within potential habitats for the Covered Species are enrolled in the CCAA. If less than 100% of the covered area is enrolled upon listing of any of the Covered Species, the amount of authorized take will be proportionally less than the authorized take described below.

The incidental take limit of greater sage-grouse is 2,775 birds annually, if all private lands within the covered area were enrolled. The incidental take limit of Baird's sparrow is 3,205 birds annually, if all private lands within the covered area were enrolled. The incidental take limit of chestnut-collared longspur is 3,814 birds annually, if all private lands within the covered area were enrolled. The incidental take limit of McCown's longspur is 1,331 birds annually, if all private lands within the covered area were enrolled. The incidental take limit of Sprague's pipit is 982 birds annually, if all private lands within the covered area were enrolled.

After reviewing the current status of the Covered Species, the environmental baseline for these species within the action area, the effects of the proposed action, and the cumulative effects, it is the Service's conference opinion that approval of the Programmatic CCAA and issuance of a Section 10(a)(1)(A) Enhancement of Survival Permit, as proposed, is not likely to jeopardize the

continued existence of the greater sage-grouse, Baird's sparrow, chestnut-collared longspur, McCown's longspur, and Sprague's pipit. Short-term, site-specific, unavoidable adverse effects to these species and their habitats are likely to occur from projects implemented under the Programmatic CCAA. Critical habitat has not been proposed for any of the Covered Species; therefore, none will be affected (Service 2017b).

Pursuant to the National Environmental Policy Act (NEPA) of 1969, we evaluated the potential environmental effects associated with the Proposed Action of issuing the Enhancement of Survival Permit and implementation of the Programmatic CCAA in an Environmental Assessment (EA). Two additional alternatives analyzed included: a No Action Alternative and an Alternative in which issuance of a CCAA would be done strictly on an individual landowner basis.

DECISION RATIONALE

Based on a detailed review of the CCAA and the analyses in the EA, we selected the Proposed Action because it:

- provides benefits to the Covered Species through maintenance, enhancement, and restoration of their habitats, and reductions of threats to habitat fragmentation, direct mortality, and disturbance;
- reduces the likelihood that lands will be subdivided, developed, or converted by providing regulatory assurances to property owners who enroll in the Programmatic CCAA that incentivizes continuation of ranching and agricultural operations on enrolled properties;
- provides a larger scale, more cost-effective, and more efficient process for ESA coverage, rather than a piecemeal approach that would occur in either the No Action or Individual Landowner Alternative, which would rely on the development of an individual CCAA on a case-by-case basis.

Table 1 provides a summary description of the three alternatives we analyzed. Further details on each alternative are in Section 2.0 of the EA.

Table 1. Summary of the Alternatives Evaluated

Topic	No Action	Landowner by Landowner CCAA Alternative	Programmatic CCAA (Proposed Action)
Type of Activities Covered	None	General farm operations, general ranching and livestock operations, certain recreational activities, rangeland treatments, and species and habitat monitoring activities	General farm operations, general ranching and livestock operations, certain recreational activities, rangeland treatments, and species and habitat monitoring activities
Participants	None	Private landowners on individual basis	Private landowners all under the Programmatic CCAA
Covered Species	None	Species of interest to specific landowners; possibly greater sage-grouse (<i>Centrocercus urophasianus</i>), Baird’s sparrow (<i>Ammodramus bairdii</i>), chestnut-collared longspur (<i>Calcarius ornatus</i>), McCown’s longspur (<i>Rhynchophanes mccownii</i>), and Sprague’s pipit (<i>Anthus spragueii</i>)	Greater sage-grouse (<i>Centrocercus urophasianus</i>), Baird’s sparrow (<i>Ammodramus bairdii</i>), chestnut-collared longspur (<i>Calcarius ornatus</i>), McCown’s longspur (<i>Rhynchophanes mccownii</i>), and Sprague’s pipit (<i>Anthus spragueii</i>)
Likelihood of signing-up all applicants	N/A	Low	High
Permit Area/ Duration	N/A	Non-federal land in Montana, likely in opportunistic locations rather than based on conservation need; Duration dependent on each landowner	Non-federal land in Montana within the range of the Covered Species; 20 year duration
Threats Addressed through Conservation Measures (CMs)	Determined on an individual landowner basis as part of other (non-CCAA related) actions such as Farm Bill Programs like EQIP, SGI	Would be dependent on Covered Species and Covered Activities included, but may include: <ul style="list-style-type: none"> Habitat fragmentation and destruction; Livestock grazing management; Non-native, invasive plant species; Haying/mowing and seed harvest; Range management structures; Conifer encroachment; Tree rows and windbreak; Infrastructure; Fencing; Insecticides; Roads; Recreation 	<ul style="list-style-type: none"> Habitat fragmentation and destruction Livestock grazing management Non-native, invasive plant species Haying/mowing and seed harvest Range management structures Conifer encroachment Tree rows and windbreak Infrastructure Fencing Insecticides Roads Recreation
Monitoring	None required but may occur on a project-specific basis	<ul style="list-style-type: none"> Conservation Measure Compliance Monitoring Biological/Habitat Monitoring 	<ul style="list-style-type: none"> Conservation Measure Compliance Monitoring Biological/Habitat Monitoring
Adaptive Management	None	<ul style="list-style-type: none"> Annual monitoring to evaluate effectiveness of CMs Opportunity to evaluate effectiveness of Conservation Measures and adapt accordingly for willing landowners Opportunity to evaluate need for changes based on Changed Circumstances 	<ul style="list-style-type: none"> Annual monitoring to evaluate effectiveness of CMs Opportunity to evaluate effectiveness of Conservation Measures and adapt accordingly for willing landowners Opportunity to evaluate need for changes based on Changed Circumstances
Administration	Determined on a project- specific basis	<ul style="list-style-type: none"> Service CCAA coordinator, Service permit coordinator (for every individual permit issued) 	<ul style="list-style-type: none"> Service CCAA coordinator & Service permit coordinator (for one permit)

PUBLIC COMMENT

The Programmatic CCAA was developed through coordination of The Nature Conservancy, and the Service, with input from potential participating property owners. Additional technical assistance and review was provided by the Natural Resources Conservation Service (NRCS) and Montana Fish, Wildlife, and Parks (MFWP). On September 25, 2017, the Service issued a Notice of Availability in the *Federal Register* (82 FR 44651) for the draft CCAA and draft Environmental Assessment (EA) for public review. A 30-day public review and comment period was open until October 25, 2017. The draft EA and draft CCAA were available at the Service's sage-grouse website, and were available for review at the Montana Ecological Services Office in Helena, MT.

We received five comment letters from the following entities: one state-level agency from Montana; one conservation non-governmental organization; and three individuals from the general public. Three commenters included only supportive comments of the draft CCAA; one commenter supported the draft CCAA and included suggestions for improvement; and one commenter included only suggestions for improvement and opposition. None of the comments identified any significant new environmental impacts that had not already been addressed in the draft EA. A summary of substantive comments and the Service's responses, in addition to changes made between draft and final CCAA and EA can be found in Appendix A to this document.

FINDING OF NO SIGNIFICANT IMPACT

Based upon information contained in the EA and CCAA, and consideration of comments received during the public review, we find that the proposed issuance of a section 10(a)(1)(A) enhancement of survival permit for the Covered Species in association with general farm operations, general ranching and livestock operations, certain recreational activities, rangeland treatments, and species and habitat monitoring activities in Montana as described in the CCAA, will not significantly affect the quality of the human environment for the following reasons:

1. Regulatory assurances conferred to enrollees participating in Covered Activities will provide an incentive for more landowners to voluntarily identify and implement coordinated and collaborative Conservation Measures within the action area. Enrollees conducting ranching activities are more likely to maintain their ongoing operations and lessen the likelihood these lands will be sold and divided for exurban development. The Conservation Measures implemented would benefit Covered Species populations by maintaining habitat quantity and quality.
2. The Service has concluded that the short-term, site-specific, unavoidable adverse effects of the proposed action in the action area are unlikely to result in an appreciable reduction in the likelihood of survival and recovery of the Covered Species across their entire range (Service 2017b). Further, the CCAA will result in a net conservation benefit to the Covered Species because conservation measures will be implemented across large, intact, areas providing suitable habitat for the Covered Species. Without implementation of the Programmatic CCAA, private landowners would likely continue to participate in other

programs to implement on-the-ground efforts to conserve some of the Covered Species (e.g., Farm Bill Programs such as EQIP and others, as well as the NRCS Sage Grouse Initiative), it is unlikely that the full suite of conservation measures stated in the CCAA would be implemented.

The Conservation Measures identified in this CCAA are expected to benefit Covered Species through maintenance, enhancement, and restoration of Covered Species populations and their habitats and by reducing threats causing direct mortality. Conservation Measures address potential threats associated with: habitat fragmentation and destruction; livestock grazing management; non-native, invasive plant species; haying/mowing and seed harvest; range management structures; conifer encroachment; tree rows and windbreaks; infrastructure; fencing; insecticides; roads; and recreation. Since non-federal landowners control substantial acreage of important habitat for the Covered Species, encouraging implementation of Conservation Measures by enrolled landowners throughout the action area will improve conservation of these species in these areas.

3. The Programmatic CCAA provides further incentives for landowner participation through a streamlined enrollment process. Although each enrollee will need to sign a Certificate of Inclusion, the programmatic CCAA simplifies the process for developing site-specific plans by providing the suite of appropriate Conservation Measures for each threat that may occur on the property. With anticipated increased enrollment as a result of these incentives, benefits to the species are expected at a landscape scale.
4. The short-term economic costs to the landowner from implementing Conservation Measures would be off-set by the long-term benefits; overall, the programmatic CCAA would result in long-term, minor socioeconomic benefits. Additionally, there will be no impacts to cultural or historic properties, and no impacts to minority or low-income populations.

CONCLUSION

Based upon my review and evaluation of the information contained in the EA, Programmatic CCAA, and other supporting documents, I have determined that the issuance of an Enhancement of Survival permit and implementation of the CCAA, as proposed, is not a major federal action that will significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, preparation of an environmental impact statement on the Proposed Action is not required.

Documents used in the preparation of this finding of no significant impact include the EA (Service 2017a), Programmatic CCAA (TNC 2017), and Intra Service Section 7 Conference Opinion (Service 2017b). All documents are incorporated herein by reference, as described in 40 CFR 1508.13. All supporting documents are on file and available for public inspection, by appointment, at: U.S. Fish and Wildlife Service, Montana Ecological Services Office, 585 Shephard Way, Suite 1, Helena, MT 59601; (406) 449-5225.



Assistant Regional Director – Ecological Services
U.S. Fish and Wildlife Service
Mountain-Prairie Region

Date

Asking for

Related Documents

The Nature Conservancy. 2017. Final CCAA for Greater Sage-Grouse and Declining Grassland Songbirds in Montana.

U.S. Fish and Wildlife Service. 2017a. Final Environmental Assessment for The Nature Conservancy's CCAA for Greater Sage-Grouse and Declining Grassland Songbirds in Montana.

U.S. Fish and Wildlife Service. 2017b. Intra-Service Section 7 Conference Opinion and Determination of Non-Jeopardy for The Nature Conservancy's CCAA for Greater Sage-Grouse and Declining Grassland Songbirds in Montana.

Appendix A

The Nature Conservancy's CCAA for Greater Sage-Grouse and Declining Grassland Songbirds in Montana – Response to Public Comments

Introduction

This document, Appendix A, is a companion document to the Finding of No Significant Impact (FONSI) and includes a summary of comments from federal, State, and local government agencies and individuals, as well as responses to comments.

The draft CCAA and associated draft Environmental Assessment (EA) were released to the public for review and comment on September 25, 2017. A 30-day comment period for the documents closed on October 25, 2017. The U.S. Fish and Wildlife Service received five comments.

This Appendix addresses the substantive comments. As defined by National Environmental Policy Act (NEPA) compliance guidelines, comments are considered substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document
- Question, with reasonable basis, the adequacy of the environmental analysis
- Present reasonable alternatives other than those presented in the Environmental Assessment
- Cause changes or revisions in the proposal

The U.S. Fish and Wildlife Service (USFWS) has summarized the general nature of the comments received and tracked the number of individuals that expressed each general comment. The Service has responded to each of the individual comments that are substantive. Where appropriate, the text of CCAA has been revised to address comments. We received no comments related to the draft EA.

CCAA Comments

- 1) **CCAA Comment Summary:** One commenter encouraged the USFWS to explicitly state how the conservation measures detailed in the CCAA will be consistent with the management standards for sage-grouse already being implemented in Montana.

USFWS Response: We have added language to the CCAA on page 37 clarifying how Conservation Measures in the CCAA are consistent with other state and federal policies in sage-grouse habitat in Montana.

- 2) **CCAA Comment Summary:** One commenter encouraged the USFWS to clarify how inconsistencies between the CCAA and enrollment in other conservation programs will be addressed.

USFWS Response: As stated in Section 1.4 (Permit Issuance Criteria) of the CCAA, the Service must determine that the implementation of the CCAA and issuance of the associated Permit will not be in conflict with any ongoing conservation programs for the Covered Species. Additionally, the CCAA provides exceptions on a site-specific basis in the implementation of certain Conservation Measures for lands enrolled in other conservation programs that may limit management options under the CCAA (e.g., grazing of CRP lands).

- 3) **CCAA Comment Summary:** One commenter encouraged the USFWS to ensure that recreational access restrictions are not in conflict with other programs designed to expand recreational access opportunities, and to consult with Montana Fish, Wildlife, and Parks (MFWP) on a site-by-site basis prior to adopting any access restriction measures.

USFWS Response: Recreation is a Covered Activity under the CCAA, meaning that it is considered compatible with or beneficial to populations and habitats of the Covered Species if properly implemented with appropriate Conservation Measures. Enrolled landowners have complete control over public access to their properties. Conservation Measures related to recreation would only be applied in cases where non-consumptive recreation is clearly resulting (or clearly threatening to result) in substantive disturbance to or harassment of the Covered Species. Sage-grouse hunting is not specifically addressed in the CCAA as this activity would result in intentional (not incidental) take and would also be unlikely to occur in a post-listing scenario. Conservation Measures related to recreation provide for exceptions for property owners participating in MFWP Block Management or similar programs that allow access to the property. Landowners will be encouraged to consult with MFWP prior to adopting access restriction measures.

- 4) **CCAA Comment Summary:** One commenter encouraged the USFWS to prioritize Certificate of Inclusion applications received from any sage-grouse Core Area.

USFWS Response: The CCAA attempts to prioritize conservation efforts for all of the covered species, while considering budget and staffing levels that affect the on-the-ground capacity of the Service and TNC to assist landowners. The areas prioritized for CCAA enrollment represent the intersection of sage-grouse core areas and connectivity habitats and areas of high breeding bird abundance for the four declining grassland bird species. Prioritization of enrollment efforts may change over the life of the CCAA as interest and capacity expand into surrounding areas. All high and medium priority focal areas contain at least portions of most of the sage-grouse Core and Connectivity Areas (Montana EO 12-2015). For instance, 345,589 acres of the North Rosebud Core Area is designated as a high priority focal area in the CCAA. Further, there are no prohibitions on enacting agreements in areas outside of current prioritization areas as appropriate or advantageous opportunities arise.

- 5) **CCAA Comment Summary:** One commenter expressed concern over having The Nature Conservancy hold the permit due to their funding sources and possible relationships with hunters.

USFWS Response: The Service believes The Nature Conservancy meets the qualifications necessary to become a CCAA permit-holder, as allowed under the Service's CCAA guidance. To date, we have not received any specific information that would exclude them from acting as a permit holder for the CCAA. The Nature Conservancy, as permit-holder, would be required to follow commitments described in the CCAA and permit, including monitoring and reporting. The Service would be required to review annual reports and ensure that the CCAA is being implemented properly by The Nature Conservancy.

- 6) **CCAA Comment Summary:** One commenter requested that the CCAA include protection for all species in the CCAA coverage area.

USFWS Response: The Nature Conservancy, through coordination with the Service, chose to focus on the selected five Covered Species for this CCAA. However, the conservation measures within the CCAA are likely to provide conservation benefits to numerous additional species that use the habitat of the five Covered Species.