

Appendix 1

Candidate Conservation Agreements and

Candidate Conservation Agreements with Assurances

Background

If and when a species becomes listed under the Endangered Species Act of 1973 (ESA), that action triggers both a regulatory and a conservation responsibility for Federal, State, and private landowners. These responsibilities stem from section 9 of the ESA that prohibits “take” (i.e., harass, harm, pursue, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct) of listed species. Along with the section 9 prohibitions, Federal agencies must ensure that their actions will not jeopardize the continued existence of the listed species and carry out programs for the conservation of listed species.

In the western United States many species that are candidates for listing under the ESA occur on both Federal and non-Federal lands. Non-Federal property owners whose operations may have impacts on candidate species on private lands sometimes have the opportunity to voluntarily enter into a Candidate Conservation Agreement with Assurances (CCAA) in order to implement conservation measures aimed at reducing and/or eliminating threats to candidate species and to ensure that their land operations can continue unaffected if the species is listed in the future.

Property owners whose operations rely on using a combination of land ownership types (i.e., Federal and non-Federal) are concerned that assurances provided to them under a CCAA do not apply to Federal lands, even if they implement conservation measures across all land ownership types where they operate. These property owners, as well as Federal lessees/permittees, are seeking greater certainty that if they implement conservation measures to enhance the habitat of candidate species, and yet listing occurs, they would not be required to change their activities on Federal lands in a way that could significantly impact their operations. In New Mexico, property owners, Federal lessees and permittees, the U.S. Fish and Wildlife Service (FWS), and the Bureau of Land Management (BLM) were concerned about activities on public/Federal lands that might affect the status of two candidate species, the lesser prairie-chicken (LPC) and the sand dune lizard (SDL), formally known as the dunes sagebrush lizard.

As a result of these concerns, in January 2003, a working group composed of local, State and Federal officials, industry representatives, and private and commercial stakeholders, was formed to address conservation and management activities for the LPC and SDL. This working group, formally named the New Mexico Lesser Prairie-Chicken/Sand Dune Lizard Working Group, worked diligently for 2.5 years resulting in the publication of the *Collaborative Conservation Strategies for the Lesser Prairie-Chicken and Sand Dune Lizard in New Mexico* (Strategy) in August 2005. This Strategy provided guidance in the development of BLMs Special Status Species Resource Management Plan Amendment (RMPA), approved in 2008, which also addresses the concerns and future management of LPC and SDL habitats on BLM lands. Both plans prescribe active cooperation among all stakeholders to reduce and/or eliminate threats to these species in New Mexico. As an outcome, the land use prescriptions contained in the RMPA

now serve as baseline mitigation (for both species) to those operating on Federal lands or non-Federal lands with Federal minerals.

This Candidate Conservation Agreement (CCA) between the FWS, BLM, Center of Excellence for Hazardous Materials Management (CEHMM), and Participating Cooperators will address the conservation needs of the LPC and SDL in New Mexico. Through this CCA, CEHMM will work with Participating Cooperators who voluntarily commit to implementing or funding specific conservation actions that will reduce and/or eliminate threats to these species. CEHMM is a 501(c)(3) organization, established in 2004, that is dedicated to cutting edge applied research programs, community support, education, and cooperative conservation. Flagship projects include participation in the recovery and conservation of listed and candidate species, including LPC conservation and recovery (including captive propagation), SDL conservation and recovery, riparian conservation, and conservation education.

The CCA will provide a mechanism for implementing and monitoring conservation measures that are not explicitly addressed in or applicable to the RMPA. Any conservation measures undertaken by Participating Cooperators as a result of this CCA are measures above and beyond those prescribed in the RMPA. A future decision to list either species would take into consideration actions planned and/or implemented pursuant to this CCA as well as land use prescriptions contained in the RMPA. However, such a decision would also need to consider threats facing the LPC and SDL now and into the foreseeable future throughout all or a significant portion of their current range. Since this CCA is designed to address the activities of lessees and permittees on Federal lands, a companion CCAA will also be used to address the needs of both species on non-Federal lands within New Mexico.

Benefits of this CCA

The most significant benefit of this CCA is that it will guide conservation actions for the LPC and SDL in order to improve the status of these species within New Mexico. In comparison to well-intentioned, but uncoordinated conservation efforts, this CCA provides a comprehensive and strategic landscape level approach to addressing the conservation needs of the LPC and SDL. Although the FWS cannot absolutely guarantee that listing will never be necessary, this CCA seeks to implement conservation measures on Federal lands, which, when combined with those benefits that would be achieved if conservation measures in the CCAA are implemented, would preclude or remove any need to list the LPC and SDL. It is important to note that “preclude or remove any need to list” is based upon the removal of threats and stabilization or improvement of the species. The decision to list is a regulatory process and no CCA or CCAA can predetermine the outcome. The actions and successes of this CCA/CCAA will be evaluated in accordance with FWS Policy for Evaluation of Conservation Efforts (2003). This will then be factored into the five-factor analysis of the listing decision.

This CCA is designed to include conservation measures that reduce and/or eliminate threats, on Federal lands. If enough Participating Cooperators on non-Federal lands implement conservation measures through their participation in the CCAA, the likelihood that the species will be listed will be greatly reduced. The implementation of conservation measures through the CCA and CCAA combined make it much less likely that lessees and permittees will bear additional conservation burdens on Federal lands. Again, this high degree of certainty that no

additional conservation measures will be required of Participating Cooperators would result from their implementation of conservation measures listed in this CCA, which are specifically designed to reduce and/or eliminate threats to the LPC and SDL.

In the event either species is listed, incidental take coverage provided by the section 7 conference opinion (see discussion below) for conservation actions undertaken on Federal lands would be converted to a biological opinion. This coverage, provided in advance of any possible listing, may serve to protect Participating Cooperators from additional disruption should one or both species become listed.

CCA Relationship to Section 7 of the ESA

Although not required by the ESA, prior to the approval of the CCA/CCAA, the FWS will conduct a section 7 “conference opinion” pursuant to section 7(a)(4) of the ESA to identify and resolve potential conflicts between the proposed action (in this case the Federal actions are: the approval of this agreement between two Federal agencies and a non-governmental entity; and the potential issuance of a section 10(a)(1)(A) permit for the attendant CCAA, should either species be listed at some time in the future) and the two candidate species. Any Federal agency has the option of conducting a 7(a)(2) conference for non-listed species to ensure that the actions they authorize, fund, permit, or carry out are not likely to jeopardize the existence of those species. The FWS supports a proactive approach to conserving candidate species, which may reduce and/or eliminate the need for future protection under the ESA.

The FWS will issue a section 7 conference opinion analyzing the potential effects to the LPC and SDL from the proposed action and the implementation of conservation measures as identified in this CCA. A decision to list either of the species covered by this CCA would be based on the five factor threats analysis required under the ESA. The overall effects of the CCA and its components would be considered in the listing determination. Should either species covered under the conference opinion become listed, the FWS would review the conference opinion in coordination with BLM. If no significant changes have been made in the CCA or other information used in the conference opinion, the FWS would confirm the conference opinion (as is) as the biological opinion and include an incidental take statement (required for the biological opinion). It is the goal of this CCA to ensure adequate conservation measures, sufficient adaptive management, and monitoring obligations to allow the conference opinion to be converted into a biological opinion on the effective date of any decision to list the LPC and/or SDL.

Authority

Sections 2, 7, and 10 of the ESA allow the FWS to enter into this CCA with other cooperating partners. Section 2 of the ESA states that encouraging interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs is a key to safeguarding the Nation’s heritage in fish, wildlife, and plants. Section 7 of the ESA requires the FWS to review programs it administers and utilize such programs in furtherance of the purposes of the ESA. By entering into this CCA, the FWS is utilizing its authority to enter into this type of agreement to further the conservation of the Nation’s fish and wildlife resources. Lastly, under the CCAA, should either species become listed, section 10(a)(1)(A) of the ESA authorizes the issuance of permits to “enhance the survival” of a listed species.

Additionally, the Federal Land Policy and Management Act (FLPMA, Section 307, 43 USC 1737), which provides overall direction to the BLM for conservation and management of public lands, allows the BLM to participate in conservation agreements. The BLM manual, Section 6840 (“Special Status Species Management”) provides overall policy direction to BLM managers to conserve listed threatened or endangered species on BLM administered lands, and to assure that actions authorized on BLM administered lands do not contribute to the need to list species deemed by the BLM to be “sensitive.” Finally, the BLMs “Guide to Agreements” notes that “Cooperative Management Agreements” are typically long-term agreements with other parties interested in joint management of wildlife habitats or other areas.