United States Department of the Interior

FISH AND WILDLIFE SERVICE

ECOLOGICAL SERVICES
MONTANA FIELD OFFICE
585 Shepard Way
HELENA, MONTANA 59601
PHONE (406) 449-5225, FAX (406) 449-5339

COPY FOR YOUR INFORMATION

ES-61130-Billings
M.42 – MT DNRC

October 31, 2006

Mr. Gary Brandenburg
Land Use Specialist
Department of Natural Resources and Conservation
Southern Land Office
Airport Industrial Park
Billings, Montana 59105-1978

Dear Mr. Brandenburg:

This letter responds to your request for guidance on controlling black-tailed prairie dogs on State Section 20, T. 1 N., R. 25 E., in Yellowstone County, Montana. Your letter was received at the Billings Sub Office on October 3, 2006. This response is provided by the U. S. Fish and Wildlife Service (Service) under the authority of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531-1543), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Migratory Bird Treaty Act (16 U.S.C. 703-712) (MBTA), and the Bald and Golden Eagle Protection Act (16 U.S.C. 668 et seq.).

The Montana State Department of Natural Resources and Conservation, Southern Land Office (State), is asking the Service for advice on the management of approximately 200 acres of active black-tailed prairie dogs (*Cynomys ludovicanus*) on State-owned land (and additional acres on private land in Section 21, T. 1 N., R. 25 E.). Your office has received complaints from residents of the Indian Hills Subdivision and Rehberg Estates about the expansion of prairie dogs from State lands onto deeded ground. Your office is also in the process of licensing a city domestic water line and sewer line for a proposed water reservoir (tank).

Species listed under the ESA in Yellowstone County include the whooping crane (*Grus americana*), the bald eagle (*Haliaeetus leucocephalus*), and the black-footed ferret (*Mustela nigripes*). Proper application of registered rodenticides in Montana will not affect the whooping crane or bald eagle. The black-footed ferret is an obligate of the prairie dog ecosystem. It cannot survive without large complexes of active prairie dog colonies. Black-footed ferrets may be affected by this action if prairie dog colonies are impacted. If black-tailed prairie dog colonies or complexes greater than 79 acres will be disturbed, surveys for ferrets should be conducted even if only a portion of the colony or complex will be disturbed. A prairie dog complex consists of two

or more neighboring prairie dog towns, each less than 7 kilometers (4.34 miles) from each other (Black-footed Ferret Survey Guidelines, USFWS 1986). However, in some situations, the

Service recognizes the very low probability that isolated colonies such as this 280-acre prairie dog town, harbors black-footed ferrets (Hanebury and Biggins 2006). Therefore, controlling all or part of the colony you refer to will not adversely affect the black-footed ferret.

The Service would like to emphasize the importance of maintaining current prairie dog acreages throughout the state. We therefore recommend that the State only control those acres that demonstrate a proven economic burden or threaten important infrastructure or agriculture investment.

Section 87-5-103 (1), Montana Code Annotated states that nongame wildlife species should be "perpetuated as members of ecosystems". The effort to recover the prairie dog ecosystem in Montana is demonstrated by the years of work by the Montana Prairie Dog Working Group (MPDWG). The MPDWG is composed of state and federal agencies, private conservation groups, landowner groups and private individuals concerned with the conservation and management of prairie dogs and associated species in Montana. In January 2002, the MPDWG released the "*Conservation Plan for Black-tailed and White-tailed Prairie Dogs in Montana*" (hereafter "Conservation Plan") (MPDWG 2002). This plan was approved by Montana Fish, Wildlife and Parks (FWP), the Montana Department of Agriculture (MDA) and the Montana Department of Natural Resources and Conservation (DNRC), and cooperation was pledged by the Bureau of Land Management (BLM), U. S. Forest Service (USFS), the Bureau of Indian Affairs (BIA), Natural Resources Conservation Service (NRCS) and U. S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS). The Conservation Plan can be accessed online at <http://www.fwp.mt.gov/wildthings/prairiedogs.asp>.

The goal of the Conservation Plan is to provide for management of prairie dog populations and habitats to ensure the long-term viability of prairie dogs and associated species. Five objectives were deemed necessary to achieve that goal: 1) Confer legal status on prairie dogs that is consistent with policy provisions of Sections 87-5-102 and 103, MCA, and current management needs; 2) Develop statewide and regional prairie dog distribution and abundance standards; 3) Develop management protocol for prairie dog conservation on federal, state and private lands; 4) Develop and implement a prairie ecosystem education program; 5) Identify and support or conduct research projects designed to form solutions to long-term biological and social problems related to black-tailed prairie dog communities and their management. The prairie dog is currently "non-game wildlife in need of management", simultaneously maintaining existing authority to control prairie dogs as pests.

Species Status

In response to a petition to list the black-tailed prairie dog under the ESA in 1998, the Service had found that the status of the species merited listing as threatened, but that further action to place it on the list was precluded by actions to address higher priority species. In 2004, the Service determined that "candidate" status was no longer necessary, and the "warranted, but precluded" status was removed. However, the Service will continue to monitor the status of the black-tailed prairie dog. Federal Register notices with respect to these decisions can be found

on-line at www.r6.fws.gov/btprairiedog <http://www.r6.fws.gov/btprairiedog>. Both the black-tailed and white-tailed prairie dog are considered "Species of Concern" in Montana. This informal designation (not a legal designation) by FWP and the Montana Natural Heritage Program indicates relative rarity, the existence of threats to the species, or the lack of status and

trend information. Montana's list of Species of Concern can be located on www.fwp.mt.gov/wildthings/concern/default.html <http://www.fwp.mt.gov/wildthings/concern/default.html>. Both the BLM and the USFS list both species of prairie dog in Montana on their Sensitive Species list.

Montana statutes provide dual status for black-tailed and white-tailed prairie dogs: as "Nongame wildlife in need of management" (87-5-101, MCA et seq.) and as "vertebrate species" for the purpose of forming rodent control districts (7-22-22, MCA et seq.). The annual rule regulating prairie dog shooting, jointly adopted by FWP and the Montana Fish, Wildlife and Parks Commission (FWP Commission) has been in effect for the past 5 years (2002 - 2006) and applies only to public lands (not including State school trust lands) (<http://www.fwp.mt.gov/wildthings/prairiedogs.asp>). Montana FWP and the FWP Commission will continue to consider adoption of management regulations for prairie dogs. The MDA continues to provide technical assistance to landowners who want to contain the size of prairie dog colonies.

In Montana, three prairie dog ecosystem species have been considered for protection under the ESA. The burrowing owl (*Athene cunicularia*), mountain plover (*Charadrius montanus*), and ferruginous hawk (*Buteo regalis*) are uncommon relative to historic populations (Allen 1874). The ferruginous hawk was petitioned for listing in 1991, but the petition was denied by Service. The mountain plover was originally considered a candidate for listing as a threatened species in 1982. It was proposed for listing as a threatened species under the ESA in 1999, and this was re-opened for comments in 2002. The petition to list the mountain plover as a threatened species was determined "not warranted" and in 2003 the proposed rule was withdrawn. The burrowing owl has not been petitioned for listing under ESA, but is considered threatened in Alberta and Saskatchewan. All of the above four species are considered "Species of Concern" (www.fwp.mt.gov/wildthings/concern/default.html <http://www.fwp.mt.gov/wildthings/concern/default.html>) in Montana due to declines in Montana or within their range. The ferruginous hawk, mountain plover, burrowing owl and prairie grassland birds associated with prairie dog colonies are migratory birds and therefore, protected under the MBTA.

Management Alternatives

The MPDWG has been working to develop a draft Landowner Incentives for Prairie Dog Ecosystem Conservation (MPDWG 2005) as a NRCS Environmental Quality Incentives Program (EQIP) Special Initiative. The primary goal of an incentive program in Montana is to provide economic incentives and regulatory assurances for private landowners who manage for prairie dog ecosystems. The State lands that your office manages may be eligible for such monetary incentives if the MPDWG is successful in developing a landowner incentive program. Another management tool available is the opportunity to translocate the prairie dogs to currently unoccupied prairie dog habitat. The ability to trap prairie dogs and move them to another area is possible under ARM 12.9.1050. Protocols for translocating prairie dogs are given in

Administrative Rules of Montana (http://161.7.8.61/12/12-951.htm). It is worth noting that translocations can be expensive and time consuming, and may be a management tool "of last resort".

This concludes informal consultation pursuant to regulations in 50 CFR 402.13 implementing the Endangered Species Act of 1973, as amended. Management of this black-tailed prairie dog

colony should be re-analyzed if new information reveals effects of the action that may affect threatened, endangered or proposed species, or if the project is modified in a manner that causes an effect not considered in this consultation. Please contact Lou Hanebury, Fish and Wildlife Biologist, at 406-247-7367 if additional information is needed.

Sincerely,

R. Mark Wilson

R. Mark Wilson
Field Supervisor

cc: USFWS, ES, Billings, MT (Attn: Lou Hanebury)
MT DNRC, Helena, MT (Attn: Michael Sullivan)
MTFWP, Nongame Species Coordinator, Billings, MT (Attn: Allison PuchniakBegley)
MT Department of Agriculture, Billings, MT (Attn: Monty Sullins)

References

Allen, J.A. 1874. Notes on the natural history of portion of Dakota and Montana Territories being the substance of a report to the Secretary of War on the collections made be the North Pacific Railroad Expedition of 1873. Proceedings from the Boston Society of Natural history, 17:38-86.

Hanebury, L. R., and D. E. Biggins. 2006. A History of Searches for Black-footed Ferrets. Pages 47-66 in Roelle, J.E., Miller, B.J., Godbey, J.L., and Biggins, D.E., Eds., 2006, Recovery of the black-footed ferret – progress and continuing challenges: U.S. Geological Survey Scientific Investigations Report 2005-5293, 288p.

Montana Prairie Dog Working Group. 2002. Conservation Plan for Black-tailed and White-tailed prairie Dogs in Montana. 51pp.

Montana Prairie Dog Working Group. In Draft. Landowner Incentives for Prairie Dog Ecosystem Conservation. November 2005. 17pp.

U.S. Fish and Wildlife Service. 1986. Black-footed ferret survey guidelines for compliance with the Endangered Species Act. U.S. Fish and Wildlife Service, Denver, CO., and Albuquerque, New Mexico. 17pp.

USFWS/ES, Billings
Received
George | Lou
Kathy | NOV 3 2006 | Shawn
Helena FO
File