

Draft Black-footed Ferret Programmatic Safe Harbor Agreement

properties would not be implementing the conservation activities, ferrets are unlikely to persist and establish additional populations on such lands.

The provisions to provide regulatory assurances to nearby non-participating landowners would contribute to increased enrollment by other landowners and ultimately increased conservation for the ferret. The intra-Service ESA section 7 consultation on the issuance of the permit under this Agreement will provide incidental take coverage to non-participating landowners should ferrets disperse to their lands. If a non-participating landowner desires additional written assurances that the Service would not impose land-use restrictions or commitments as a result of dispersing ferrets on their lands, he/she would sign a Non-Participating Landowner Statement (Appendix F). The Statement contains provisions for identifying the baseline on subject properties and notice to and access by the Permittee (or their Designee) for the opportunity to translocate such animals before any take may occur.

15.0 Modifications

15.1 Modifications of the Agreement or Reintroduction Plans

Any party to this Agreement or the associated Reintroduction Plan may propose modifications by providing written notice to the other parties explaining the proposed modification and the reasons for the modification. Approval of a modification will require the written consent of all parties and must be consistent with the assurances described in Section 13.0 of the Agreement. Any proposed modification to the Agreement or associated Reintroduction Plan will be considered effective as of the date that all affected Participants have agreed in writing to the modification.

15.2 Amendment of the Permit or Certificate of Inclusion

The Enhancement of Survival Permit or the Certificate of Inclusion may be amended in accordance with all applicable legal requirements in force at the time of the amendment, including, but not limited to, the ESA, National Environmental Policy Act, and USFWS permit regulations (50 CFR, Parts 13 and 17). A request for an amendment of the Permit or Certificate of Inclusion would require, at a minimum: (1) a written explanation of why the amendment is needed; and (2) an explanation of what, if any, effects the amendment would have on the black-footed ferret. and (3) a *Federal Register* notice of the proposed amendment and 30-day public comment period.

15.3 Early Termination of the Agreement

As provided for in Part 12 of the Service's Safe Harbor Policy (64 FR 32717), the Permittee may terminate the Agreement or an associated Reintroduction Plan, prior to its expiration date. In such circumstances, the Cooperator may return the enrolled lands to baseline conditions even if the conservation activities identified in the Reintroduction Plan for the enrolled lands have not been fully implemented. However, if the Cooperator terminates the Reintroduction Plan early, they relinquish all take authorities and assurances provided to them through the Certificate of Inclusion. The Cooperator must notify the Permittee prior to carrying out any activity that may result in take of black-footed ferrets on the enrolled lands

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so that efforts to recapture any ferrets can occur in the fall to the extent possible, when trapping success can be maximized.

16.0 Permit Suspension or Revocation

The FWS may suspend the privileges of exercising some or all of the permit authority at any time if the permittee is not in compliance with the conditions of the permit, or with any applicable laws or regulations governing the conduct of the permitted activity. Such suspension shall remain in effect until the issuing officer determines that the permittee has corrected the deficiencies.

The FWS may not revoke the permit except as follows:

- The FWS may revoke the permit for any reason set forth in 50 CFR 13.28(a)(1) through (4). This regulation authorizes revocation if:
 - (1) the permittee willfully violates any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, which involves a violation of the conditions of the permit or of the laws or regulations governing the permitted activity; or
 - (2) the permittee fails within 60 days to correct deficiencies that were the cause of a permit suspension; or
 - (3) the permittee becomes disqualified; or
 - (4) a change occurs in the statute or regulation authorizing the permit that prohibits the continuation of a permit issued by FWS.
- The FWS may revoke the permit if continuation of the permitted activity would either:
 - (1) appreciably reduce the likelihood of survival and recovery in the wild of any listed species; or
 - (2) directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species.

Before revoking a permit for either of the last two reasons, the FWS, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third party acquisition of an interest in the property.

17.0 Other Measures

- A. Remedies. No party shall be liable in monetary damages for any breach of this Safe Harbor Agreement, any performance or failure to perform an obligation under this SHA or any other cause of action arising from this SHA.
- B. Dispute Resolution. The Parties agree to work together in good faith to resolve any disputes using dispute resolution procedures agreed upon by all Parties.

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- C. **Succession and Transfer.** As provided in 50 CFR 13.25, if a Cooperator transfers his or her interest in the enrolled lands to another non-federal entity, the new owner has the option to accept the original Cooperators responsibilities and assurances. Upon agreement, the Service will regard the new owner or manager as having the same rights and responsibilities with respect to the enrolled lands as the original Cooperator for the remainder of the term of the agreement.
- D. **Availability of Funds.** Implementation of this Agreement is subject to the requirement of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under the Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.
- E. **No Third-Party Beneficiaries.** This Agreement does not create any new right or interest in any member of the public as third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to these Parties shall remain as imposed under existing law.
- F. **Notices and Reports**
Any notices and reports, including monitoring and annual reports required by this Agreement shall be delivered to the persons listed below, as appropriate:

Black-footed Recovery Coordinator
U.S. Fish and Wildlife Service
P.O. Box 190
Wellington, CO 80549
(970) 897-2730

Regional Director, Region 6
U.S. Fish and Wildlife Service
134 Union Blvd
Lakewood, Colorado 80228

Regional Director, Region 2
U.S. Fish and Wildlife Service
PO Box 1306
Albuquerque, New Mexico 87103-1306

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17.0 References

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18.0 Signatures

In witness whereof, the service Hereto has executed this Safe Harbor Agreement to be in effect as of the date that the permit referenced in 8.0 8 above is issued.

Acting Regional Director, Region 6, Denver **DATE**
U.S. Fish and Wildlife Service

Regional Director, Region 2, Albuquerque **DATE**
U.S. Fish and Wildlife Service

Black-Footed Ferret Recovery Coordinator, **DATE**
U.S. Fish and Wildlife Service

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Certificate of Inclusion Black-footed Ferret Programmatic Safe Harbor Agreement # []

This certifies that the lands described as follows [description of enrolled lands covered by the Safe Harbor permit] owned by [name of Cooperator] is included within the scope of Permit Number [permit number], held by the U.S. Fish and Wildlife Service, Black-Footed Ferret Recovery Coordinator, issued on [date] and expiring on [date] under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(A). The Permit authorizes incidental take of black-footed ferrets from certain activities by participating landowners (Cooperators) as part of the Black-footed Ferret Programmatic Safe Harbor Agreement (Ageement) to reintroduce and establish new populations of the black-footed ferret. Pursuant to the Permit, this Certificate of Inclusion authorizes incidental take of the black-footed ferret that may result from any otherwise lawful activity on the above described lands, subject to the terms and conditions of the Permit, the Reintroduction Plan and the Agreement. This Certificate of Inclusion becomes binding upon the Cooperator upon the date of the last signature below and expires [X] years after that date. The appended Reintroduction Plan is incorporated as part of this Certificate of Inclusion for the enrolled lands.

COOPERATOR

DATE

BLACK-FOOTED FERRET RECOVERY COORDINATOR

DATE

OTHER PARTY (OPTIONAL)

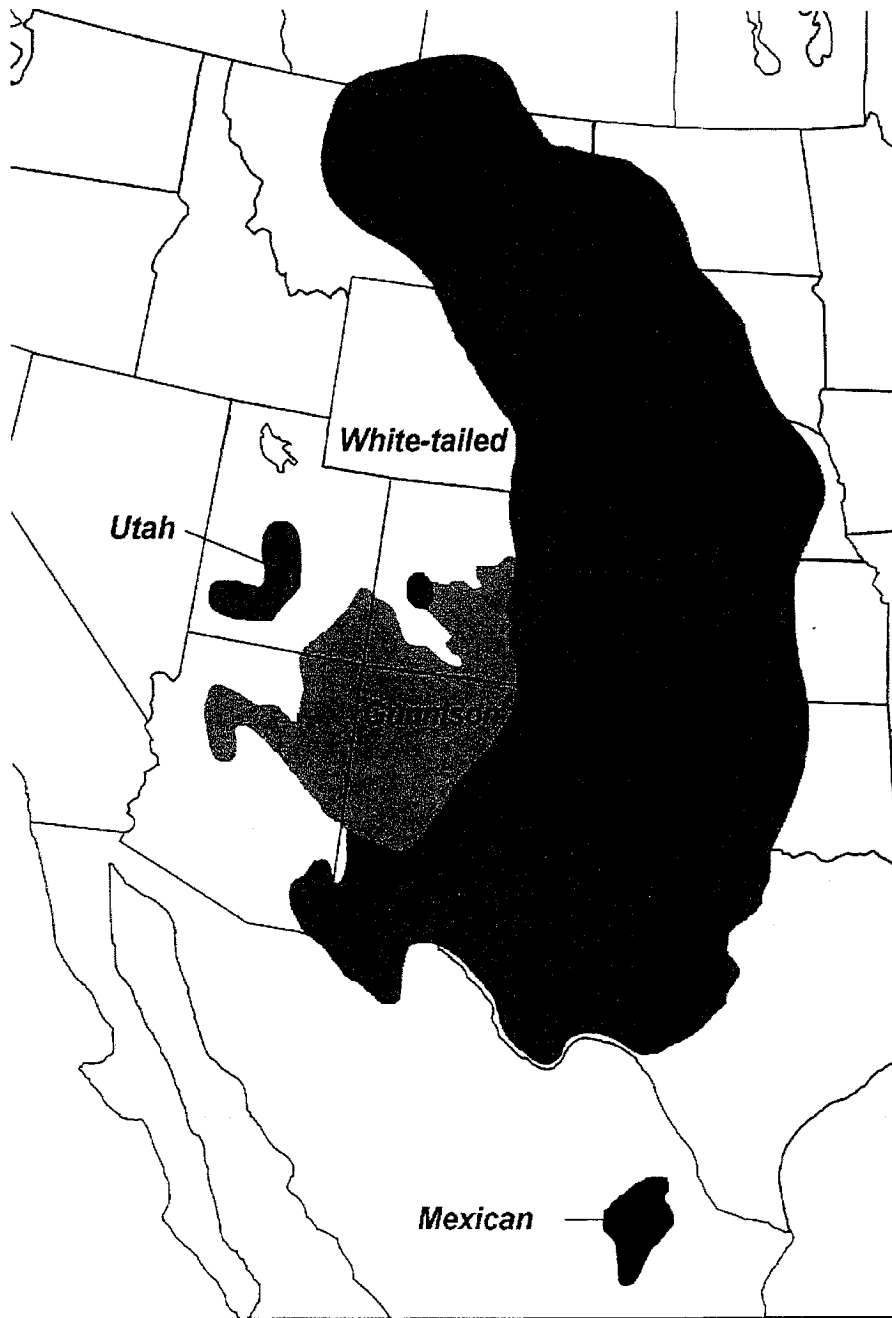
DATE

OTHER PARTY (OPTIONAL)

DATE

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APPENDIX A
Historical Range of Prairie Dogs and Black-footed Ferrets



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APPENDIX B Black-footed Ferret Site-Specific Reintroduction Plan TEMPLATE

Cooperators Name:

Insert Cooperator Name

Certificate of Inclusion (COI)#:

Insert COI #

- 1.0 Legal description and map of enrolled lands:** *Include a written legal description and a map showing the Conservation Zone and the Management Zone as discussed in section 7.0 of the Safe Harbor Agreement.*
- 2.0 Baseline for the Covered Species:** *Include the number of black-footed ferrets on the lands at time of enrollment.*
- 3.0 Current land use:** *Include a description of current grazing practices on the land such as what livestock, stocking rates, time and timing of grazing.*
- 4.0 Conservation Activities:**
 - A. Black-footed Ferret Reintroduction and Management: Upon signature by all Parties, the enrolled lands will be eligible to receive black-footed ferrets. This will be carried out by the Permittee (BFFRC) or designee. Up to 20 ferrets will be released within the Conservation Zone identified on the enrolled lands in the fall. This process will be undertaken after 6:00 pm local time over the course of 3 days. **[Include additional specific information as necessary]** You will be notified 30 days prior to release activities.*
 - B. Disease Management: Upon signature by all Parties, the enrolled lands will be eligible for disease management activities. These activities will be carried out by the Permittee (BFFRC) or Designee. Disease management activities will include applying approximately 5 grams of Deltamethrin™ (MSDS attached) into prairie dog burrows within the Conservation Zone and the Management Zone if prairie dogs are present. This is typically applied with ATVs or by foot depending on topography. Applications can take several days to several weeks depending on acreage treated and size of work crews. Alternative oral vaccine baits could be distributed from ATVs or possibly aurally onto a prairie dog colony no more than once per year after emergence of the young. **[Include additional specific information as necessary]** You will be notified 30 day prior to any disease management activities.*
 - C. Prairie Dog Management: Upon signature by all Parties, the enrolled lands will be eligible to receive assistance in prairie dog management. This will be carried out by the Permittee (or Designee)/Wildlife Services. Prairie dog management may include non-lethal and lethal control of prairie dogs only within the management zone where identified on the Plan Map to keep specific lands free of prairie dogs. **[Include additional specific information as necessary]** You will be notified 30 days prior to any prairie dog management activities.*

**All conservation activities will be coordinated with the Cooperator. Every effort will be made to minimize conflicts with Cooperator's use of the lands. Only in emergency situations will the Permittee request access in less than 30 days.*