The Listing Process

Under the listing process outlined in the Endangered Species Act, the Service uses the best scientific and commercial data available to determine is a species should be proposed for listing as threatened or endangered using the listing factors in section 4 of the ESA. A species is considered as "endangered" when it is in danger of extinction throughout all or a significant portion of its range and a "threatened" species is one that is likely to become endangered in the foreseeable future danger of extinction throughout all or a significant portion of its range.

The listing factors are:

1. the present or threatened destruction, modification, or curtailment of the species' habitat or range; **Significant threat for sage grouse which are landscape scale species, requiring large expanses of sagebrush.**
    1. **Fire** is a primary cause of large-scale losses of habitat, and are often followed by **invasive species** which can infiltrate after fire events.
    2. **Energy development** can degrade and fragment habitat, even when mitigation measures are implemented. Energy development is expected to increase over the next 20 years.
    3. **Habitat conversion** due to agricultural conversion, urbanization and grazing
2. overutilization for commercial, recreational, scientific, or educational purposes;
3. disease or predation;
4. the inadequacy of existing regulatory mechanisms;
    1. Many federal and state agencies do not have regulatory protection for sage grouse and their habitats in place. Protective measures designed to conserve habitat and reduce continued habitat fragmentation will be needed to reduce this threat. Such efforts should be developed with State Wildlife Agencies and be consistent with the 2006 Greater Sage grouse Rangewide Conservation Strategy jointly developed by WAFWA, USFWS, BLM and USFS. The Oregon Strategy needs only slight modification to address this threat factor.
5. other natural or manmade factors affecting the species' continued existence.

Greater sage grouse Listing Determination

In March 2010, the USFWS determined that protection of the greater sage-grouse under the ESA was warranted due, in part, to the threats briefly outlined above. Population projections suggest the population will decline across the species' range and extirpation is anticipated in some areas affected by energy development and increased wildlife frequency within the next 30 to 100 years. The resulting landscape will consist of scattered sage grouse populations across its range with minimal connectivity, thus placing the species at increasing risk. If current trends persist, many local populations may disappear in the next several decades, with the remaining fragmented population vulnerable to extinction. Consequently, the Service identified the sage grouse as a candidate species for listing with a priority number of 8.

Candidate Species, Assessments and Review Process

Candidate species are plant and animal species for which the Service has enough information on their biological status and threats to propose them as endangered or threatened under the

Endangered Species Act but not enough resources to go through a regulatory rule-making at this time.

Identification of candidate species and the factors influencing their status, and the assignment of listing priority numbers, assists us and our partners in identifying and prioritizing conservation efforts that are most likely to be effective in removing the need for listing. We assign a listing priority number to a species based on evaluating the magnitude and immediacy of threats to it, as well as its taxonomic distinctiveness. This number is a key factor in the Service's decisions about proceeding with a formal proposal to list a species. Listing priority numbers range from 1 to 12; a species with a listing priority of 1 would have the highest priority for listing.

Currently, there are 249 species on the candidate list, 166 of which have a listing priority number higher than 8. The Service is currently responding to litigation regarding our candidate list and the length of time species spend there before being listed. From 1996-2007, forty-three species have been removed from the candidate list because of conservation actions. In 2001 the Swift fox was removed, due, in part to10 State wildlife agencies that contributed to conservation efforts; most of the other species had smaller ranges.

The Service will review the status of the sage grouse annually, as it does with all candidate species, to update their status and determine if they can be removed from the candidate list or if their listing priority should change, either in response to conservation actions being implemented or increasing threats. The annually updated assessments of individual species also are the basis for a summary document, the Candidate Notice of Review (CNOR). The CNOR is published in the Federal Register to provide our partners with an updated list of candidate species.

Unless conservation measures are implemented that address the threats to the sage grouse, the Service will propose the species for listing when funding and workload priorities allow, or in response to litigation which often emerges in these situations. A Notice of Intent to Sue has also been filed with the Service regarding the candidate status of the sage grouse.

Conducting assessments and making decisions to elevate or remove species from candidate status requires careful analysis and documentation of the best available scientific information regarding a species and factors influencing its status, as well as the known effects of ongoing conservation efforts.

We evaluate how conservation efforts have removed or reduced threats to the species. At the time we make our decision on whether to elevate a species to candidate status, or remove a species from candidate status, some of these conservation efforts may have been planned but not yet implemented, or have been implemented but not yet demonstrated whether they are effective in reducing or removing threats to a species. We evaluate some efforts using our Policy for the Evaluation of Conservation Efforts When Making Listing Decisions (PECE) 2003. PECE was developed to provide a set of consistent standards for evaluating individual conservation efforts to identify those for which there is a high level of certainty of implementation and effectiveness in removing threats to a species.

The CNOR provides an opportunity to submit information or comments on current candidate species or on species that the Service should assess to determine if they should become a candidate species.

Intro and Summary

The U.S. Fish and Wildlife Service (Service) appreciates the opportunity to comment on the Oregon Sage Grouse Conservation Strategy.

Oregon Department of Fish and Wildlife (ODFW) is to be commended for undertaking development of the Strategy; for seeking a balance between conservation of sage grouse and critical renewable energy and economic development needs; and for providing leadership to keep decision-making for as many of these management issues as possible with Oregon stakeholders.

Due to the dedicated efforts of ODFW staff and its collaborators, the Strategy in its current form goes a long way towards achieving many of these goals with potential for affecting positive outcomes with respect to the future ESA listing status of sage grouse in Oregon. However, there are a few issues related to the substance and implementation of the Strategy that the Service feels need to be strengthened in order to realize these positive outcomes.

Background on the Listing Process

In March 2010, the USFWS determined that protection of the greater sage-grouse under the ESA was warranted. If current trends persist, many local populations may disappear in the next several decades, with the remaining fragmented population vulnerable to extinction. Consequently, the Service identified the sage grouse as a candidate species. The sage grouse is now a candidate species, with a warranted but precluded status.

As a result, the greater sage-grouse is now on the list of species that are candidates for Endangered Species Act Protection. The Service will review the status of the species annually, as it does with all candidate species, and will propose the species for protection when funding and workload priorities for other listing actions allow, or in response to litigation which often emerges in these situations. It is reasonable to assume that critical decisions regarding the listing status of sage grouse will be subject to reassessment. A Notice of Intent to Sue has also been filed with the Service regarding the candidate status of the sage grouse.

1

<u>Listing Criteria and Policy for Evaluating Conservation Efforts (PECE)</u>

A species is added to the list when it is determined to be endangered or threatened due to any of the following 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. the natural or manmade factors affecting its survival

The PECE identifies certain criteria that the Service will use in determining whether a future or recently implemented conservation effort (such as the Oregon Strategy) makes listing that species

unnecessary. The PECE requires that the effort is certain to be implemented and sufficiently effective. Criteria include identification of explicit conservation objectives and dates for achieving them, steps necessary to implement the efforts, standards for measuring progress, and whether the applicable entity has the authority and resources to implement the effort.

DRAFT

U.S. Fish and Wildlife Service Perspectives on Oregon Sage Grouse Conservation Strategy

Summary and Talking Points

- The U.S. Fish and Wildlife Service (Service) appreciates the opportunity to comment on the Oregon Sage Grouse Conservation Strategy (Strategy). Oregon's relatively robust sage-grouse populations and large areas of unfragmented habitat represent an opportunity for the state to provide leadership in proactive sage-grouse recovery throughout its range.

- The Strategy is a commendable body of work that reflects the most current scientific information. There are numerous areas of common ground between the Strategy and various policy and regulatory issues guiding both the Service's listing decisions and positions on renewable energy development. These include Endangered Species Act (ESA) listing criteria; Policy for Evaluating Conservation Efforts (PECE); Wind Energy Federal Advisory Committee Recommendations (FAC); and Secretarial Order 3285 relating to environmentally responsible renewable energy production.

- This common ground means the Strategy has much potential to positively affect future ESA considerations for sage grouse in Oregon, and to support appropriate renewable energy development in the state. However, the Service has identified a few fundamental areas in which improvements to the Strategy would increase the potential that desired outcomes might be realized. Very broadly these are:

    1. Developing regulatory mechanisms to assure consistent and comprehensive implementation of the Strategy across all land ownerships and jurisdictions;

    2. Clarifying conservation goals, performance standards, and measures for achieving maintenance and enhancement of populations and habitats, especially with respect to some regional populations which appear to be less stable or declining; and

    3. Developing a substantive and procedural framework for guiding, directing, evaluating, and tracking the types, amounts, and locations of mitigation that would apply to various impacts.

- The Strategy is an important foundation for guiding sage-grouse conservation in the state. With stronger provisions in these areas, the Strategy could help reduce the regulatory impacts of a future ESA listing in Oregon. It could also obviate the need for listing altogether if implemented in conjunction with similar plans in other states. Even in light of a listing, this Strategy, with some modifications, could allow for rule-making, agreements, or recovery planning that would essentially defer to the Strategy for compliance with the Act in the state.

- Such improvements would also reduce regulatory and procedural delays and conflicts associated with economic development—especially renewable energy projects—by providing predictability and interagency consistency related to siting, review, and mitigation.

- The Service will re-assess the candidate status of the sage grouse on an annual basis. During this process, the Service will evaluate any new information that may indicate if the threats to sage grouse have increased or decreased over the past 12 months, i.e., has there been a large reduction in habitat due to fire? Conservation measures that help reduce threats to sage grouse are also taken into account. The Service uses this annual review to rank species for listing; therefore, significant negative change in the status of the species can accelerate the timeframe in which it may be listed. On the other hand, the implementation of conservation measures may eliminate the need to list.

DRAFT

U.S. Fish and Wildlife Service Perspectives on Oregon Sage Grouse Conservation Strategy

Narrative Statement

Intro and Summary

The U.S. Fish and Wildlife Service (Service) appreciates the opportunity to comment on the Oregon Sage Grouse Conservation Strategy.

Oregon Department of Fish and Wildlife (ODFW) is to be commended for undertaking development of the Strategy; for seeking a balance between conservation of sage grouse and critical renewable energy and economic development needs; and for providing leadership to keep decision-making for as many of these management issues as possible with Oregon stakeholders.

Due to the dedicated efforts of ODFW staff and its collaborators, the Strategy in its current form goes a long way towards achieving many of these goals with potential for affecting positive outcomes with respect to the future ESA listing status of sage grouse in Oregon. However, there are a few issues related to the substance and implementation of the Strategy that the Service feels need to be strengthened in order to realize these positive outcomes.

Background on the Listing Process

In March 2010, the USFWS determined that protection of the greater sage-grouse under the ESA was warranted. If current trends persist, many local populations may disappear in the next several decades, with the remaining fragmented population vulnerable to extinction. Consequently, the Service identified the sage grouse as a candidate species. Candidate species are plant and animal species for which the Service has enough information on their biological status and threats to propose them as endangered or threatened under the Endangered Species Act but not enough resources to go through a regulatory rule-making at this time. The sage grouse will be proposed for listing when workload and funding permits. The sage grouse is now a candidate species, with a warranted but precluded status.

As a result, the greater sage-grouse is now on the list of species that are candidates for Endangered Species Act Protection. The Service will review the status of the species annually, as it does with all candidate species, and will propose the species for protection when funding and workload priorities for other listing actions allow, or in response to litigation which often emerges in these situations. It is reasonable to assume that critical decisions regarding the listing status of sage grouse will be subject to reassessment. A Notice of Intent to Sue has also been filed with the Service regarding the candidate status of the sage grouse.

<u>Listing Criteria and Policy for Evaluating Conservation Efforts (PECE)</u>

A species is added to the list when it is determined to be endangered or threatened due to any of the following factors:

6. the present or threatened destruction, modification, or curtailment of its habitat or range;

7. overutilization for commercial, recreational, scientific, or educational purposes;
8. disease or predation;
9. the inadequacy of existing regulatory mechanisms; or
10. the natural or manmade factors affecting its survival

The PECE identifies certain criteria that the Service will use in determining whether a future or recently implemented conservation effort (such as the Oregon Strategy) makes listing that species unnecessary. The PECE requires that the effort is certain to be implemented and sufficiently effective. Criteria include identification of explicit conservation objectives and dates for achieving them, steps necessary to implement the efforts, standards for measuring progress, and whether the applicable entity has the authority and resources to implement the effort.

Implications of Strategy for Listing in Oregon

Implementation of an adequate Oregon sage grouse conservation plan could significantly influence these upcoming decisions. If implemented in conjunction with robust plans in others states in the range of the species, a listing might be avoided. However, even if other states do not adopt adequate plans and the species becomes listed across its range, a robust strategy in Oregon may influence how that listing is implemented in the state.

There are also opportunities for providing assurances prior to listing that if adequate strategies are adopted, additional regulatory requirements will not be imposed if the species is eventually listed. These are Candidate Conservation Agreements and Candidate Conservation Agreements with Assurances. Service is currently working with the Bureau of Land Management (BLM), ODFW, and Oregon Cattleman's Association on both of these in Oregon for grazing activities.

Should the species be listed, there are various mechanisms for relying on state plans for compliance with the Act, either through rule-making at the time of listing, through rules and agreements after listing, or through the recovery planning process. These include incorporation of state plans into 4(d) rules, habitat conservation plans (HCPs), or recovery plan strategies.

Service Perspectives on the Oregon Fish and Wildlife Strategy

At this time, the Service cannot offer a formal position about how the Strategy might specifically affect the types of listing decisions and processes noted above. However, we can offer our overall perspectives on the relationship of the strategy to the biological, policy, and regulatory issues associated both with listing, which is both a significant priority for the Department and the Administration and also one of the primary factors cited in the decline of sage grouse.

The perspectives that follow reflect our interest in promoting sage-grouse conservation while balancing competing social and economic needs. We offer them with the hope of increasing the likelihood that the Strategy will achieve its similar underlying conservation, regulatory and economic development goals.

<u>Viability of Sage Grouse Core Area-Based Approaches</u>

The Service is supportive of core area-based conservation strategies. We view the implementation of Wyoming's core area approach as a positive development. Montana has also developed a core

area strategy to help focus its sage-grouse management plan and conservation strategies, and the BLM is attempting to develop a national core area strategy. Our view is that such approaches, if based on sound biology and data, can contribute to the conservation and recovery of sage grouse.

- We support the use of core areas as a sound approach in Oregon's Strategy. It addresses many of the most significant threats to sage-grouse populations and habitat in the state.

- We are support the sound scientific information used to develop the core area approach of the Strategy, including: a comprehensive review of the best available information and research; a statewide assessment of the status of sage grouse and their habitats; and the identification of knowledge gaps that need to be addressed through additional efforts.

- The Service is concerned about whether the proposed Strategy will address the issue of the inadequacy of existing regulatory. As clearly stated by ODFW and within the Strategy itself, its measures and recommendations are voluntary in nature. With a few exceptions (such as large wind projects under EFSC jurisdiction) implementation and enforcement will largely reside with the discretion of the counties for nonfederal lands, and with the BLM for Federal lands. The regulatory framework that would lead to consistent and comprehensive implementation of the Strategy is not apparent and thus would not address the listing factor of "inadequacy of existing regulatory mechanisms." This is an area in which Oregon's Strategy differs from Wyoming's in that there is formal direction from the Wyoming Governor and regulatory entities that its strategy will be implemented by all agencies and jurisdictions. Efforts to strengthen this aspect of Oregon's Strategy could focus on increasing the regulatory authority of ODFW's Mitigation Policy (of which the Strategy is a component); subjecting all wind projects, regardless of size, to Oregon EFSC jurisdiction; formally incorporating the Strategy into BLM Resource Management Plans; or some combination of these.

- Oregon's sage-grouse represent some of the more robust populations in the range of the species. This makes them very important to the range-wide listing determination and recovery status of the species. The components of the plan described in most detail are those focused on minimizing ongoing adverse impacts to the species. Conservation goals, performance standards, and measures that would result in maintenance and enhancement of habitat and populations are less explicit. This ambiguity is particularly notable with respect to some regional populations, such as Prineville and Baker Valley, which appear to be less stable or declining. The Strategy should clearly define how it will reverse such declines. Efforts to strengthen this aspect of Oregon's Strategy could focus on providing greater certainty and specificity regarding targets for and methods of maintaining and enhancing statewide populations and habitats, including increasing proposed protections for less stable local populations.

- Mitigation to offset the effect of unavoidable impacts is a critical emphasis of the Strategy. However, the Strategy does not include discussion about the types of appropriate mitigation or about the considerable scientific uncertainty associated with the efficacy of some actions that might be proposed for mitigation. Nor does it include a substantive and procedural framework for guiding, directing, evaluating, and tracking the types, amounts, and locations of mitigation that would apply to various impacts. The state of Montana is currently developing an off-site mitigation and compensation system in support of its Management Plan and core area strategy

DRAFT

for sage-grouse. Such a framework of tools, rules, and protocols is critical to guide landowners and energy project developers, avoid project-related delays and conflicts, and provide transparency and credibility necessary for public support of the Strategy. It will also be critical to guide voluntary conservation efforts that occur under the auspices of the Strategy. If such a framework is not developed, mitigation may occur in an uncoordinated manner not conducive to species conservation, or regulators, funders, habitat providers, and project developers may remain skeptical about actively engaging in mitigation.

- While the Strategy does not directly address all recommended stages of a tiered, iterative process to assess site-specific conditions, neither does it appear to present any inherent obstacles to such a process. However, the Service does suggest that the Strategy could be improved by including specific methods and metrics for these processes. Doing so would increase consistency with the FAC recommendations, better inform adaptive reassessment of specific areas in which development should be avoided and conservation investments should be focused, and improve the overall effectiveness of and support for the Strategy.

Conclusion and Recommendations

Oregon contains some of the most robust sage-grouse populations and some of the least fragmented habitat remaining in the range of the species. This makes them very important to the range wide listing and recovery status of the species, and heightens the need to ensure that ongoing threats do not reduce the size, distribution, or viability of these populations.

ODFW's Strategy and the concept of core areas uses the best available scientific information to address many of the most significant threats to the status of sage-grouse populations and habitat in Oregon. There is much consistency between it and various policy and regulatory issues guiding the Service's listing decisions and positions on renewable energy development. Accordingly, the Strategy has substantial potential for affecting positive outcomes with respect to the future ESA listing status of sage grouse in Oregon, and for supporting appropriate renewable energy development in the state.

However, the Service has identified a few fundamental areas in which improvements to the Strategy will be necessary to increase the potential that desired outcomes are realized. Very broadly these are:

1. Developing regulatory mechanisms to assure consistent and comprehensive implementation of the Strategy across all land ownerships and jurisdictions; efforts to strengthen this aspect of the Strategy should focus on: increasing the regulatory authority of ODFW's Mitigation Policy; subjecting all wind projects, regardless of size, to Oregon EFSC jurisdiction; and formally incorporating the Strategy into BLM Resource Management Plans;

2. Clarifying conservation goals, performance standards, and measures for achieving maintenance and enhancement of populations and habitats, especially with respect to some regional populations which appear to be less stable or declining; efforts to strengthen this aspect of the Strategy should focus on providing greater certainty and specificity regarding targets for and methods of maintaining and enhancing statewide populations and habitats, including increasing proposed protections for less stable local populations; and

3. Developing a substantive and procedural framework for guiding, directing, evaluating, and tracking the types, amounts, and locations of mitigation that would apply to various impacts; the Strategy should include tools, rules, and protocols to— ensure mitigation and voluntary actions occur in a manner conducive to species conservation; minimize uncertainty that could limit developer willingness to engage in mitigation or that could discourage responsibly sited renewable energy projects; and, create transparency and credibility necessary for public support of the Strategy.

With stronger provisions in these areas, the Strategy could serve as a foundation for reducing the regulatory impacts of a future ESA listing in Oregon—either by obviating the need for a listing (if implemented in conjunction with similar plans in other states) or, even in light of a listing, by allowing for rule-making, agreements, or recovery planning that would essentially defer to the Strategy for compliance with the Act in the state. Such improvements would also reduce regulatory and procedural delays and conflicts associated with economic development by providing predictability and interagency consistency related to review, permitting, and mitigation.

Finally, while the issues and suggestions identified by the Service are significant, they are not intended to influence the Commission to reject or defer adoption of the Strategy. Instead, adoption and implementation of the Strategy should be viewed as an important foundation for improving sage-grouse conservation in the state. The Service is prepared to work with the Commission, ODFW, renewable energy companies, the counties, and other stakeholders to address these recommendations.

DRAFT