U. S. Fish & Wildlife Service

Nevada Fish and Wildlife Office

Conserving the biological diversity of the Great Basin, eastern Sierra, and Mojave Desert

Extension of the Public Comment Period for Proposed Listing, Special 4(d) Rule, and Critical Habitat Bi-State Distinct Population Segment of Greater Sage-Grouse

Frequently Asked Questions

Why is the U.S. Fish and Wildlife Service (Service) extending the public comment period for 60 days?

The 60-day public comment period on the Service's October 28, 2013 proposals to list the Bi-State Distinct Population Segment (DPS) of greater sage grouse (*Centrocercus urophasianus*) as threatened with a special 4(d) rule and to designate critical habitat was scheduled to end on December 27 2013. On December 19, 2013, the Service extended this public comment period by 45 days until February 10, 2014.

The Service received additional significant interest in further extending the comment period. Because of that interest and because the Service wants to have the best available information in making the final determination, we are now reopening the public comment period for an additional 60 days to ensure the public has adequate opportunity to submit comments. The comment period will now end on June 7, 2014.

What is the purpose of the public comment period?

The purpose of the public comment period is to collect information and comments from the public, and local, state, federal and tribal agencies for each of the following rules:

1) A proposed rule to add the Bi-State DPS of greater sage-grouse to the Endangered Species List with a special 4(d) rule; and

2) A proposed rule to designate 1,868,017 acres as critical habitat.

Is the Service planning on holding public hearings for these proposals?

Yes, the Service is holding two public hearings, one in California, one in Nevada.

Tuesday, April 29, 2014 6 to 9 p.m.

Carson Valley Inn
Valley Ballroom
1627 U.S. Highway 395 North
Minden, NV 89423

Wednesday, April 30, 2014 6 to 9 p.m.

Tri-County Fairgrounds
Home Economics Building
Sierra Street & Fair Drive
Bishop, CA 93514

What is the Bi-State Distinct Population Segment (DPS) of greater sage-grouse and where does it occur?

The Bi-State DPS of greater sage-grouse, formerly known as the Mono Basin area population of greater sage-grouse, includes sage-grouse that occur in portions of Carson City, Lyon, Mineral, Esmeralda and Douglas Counties in Nevada. It also includes sage-grouse in portions of Alpine, Inyo and Mono Counties in California.

Why did the U. S. Fish and Wildlife Service determine that the Bi-State greater sage-grouse population is a Distinct Population Segment (DPS)?

The Bi-State greater sage-grouse population qualifies as a DPS because genetic analysis shows it has been separated from other greater sage-grouse for thousands and perhaps tens of thousands of years and is discrete. It is significant to the remainder of the greater sage-grouse population because of these genetic differences**.**

The Service and the National Oceanic and Atmospheric Administration–National Marine Fisheries Service developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) (61 FR 4722), to help determine what constitutes a DPS. The DPS Policy identifies three elements to be considered in a decision regarding the status of a possible DPS. These elements include (1) the discreteness of the population segment in relation to the remainder of the species to which it belongs; and (2) the significance of the population segment to the species to which it belongs. If a population satisfies the above two elements, it is a DPS and then the third element is applied: (3) the population segment's conservation status in relation to the Endangered Species Act (ESA) standards for listing, delisting or reclassification (is the population segment threatened or endangered). Our policy further recognizes it may be appropriate to assign different classifications (i.e., threatened or endangered) to different DPSs of the same vertebrate taxon.

What is the Service's determination regarding the status of Bi-State DPS of the greater sage-grouse?

After evaluating the best available scientific information regarding the Bi-State DPS of greater sage-grouse, including an analysis of the threats to the species and its habitat, the Service has determined that protection under the ESA is warranted, and the species is proposed for listing as threatened. If the Service finalizes the rule as proposed, it would extend the ESA's protections to this species.

What is the purpose of the special rule? What will it do?

The special rule will increase flexibility in implementing actions that will help conserve sage grouse. For example, any actions consistent with the Bi-State Sage Grouse Local Area Working Group Action Plan will be recognized as helping to conserve sage-grouse, and will not require additional regulatory review to ensure they would not jeopardize the species**.**

The proposed 4(d) special rule provides that any "take" (an ESA term meaning harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect) of the Bi-State DPS of greater sage-grouse incidental to agricultural activities that are included within a conservation plan developed by the NRCS for private agricultural lands and consistent with NRCS's Sage Grouse Initiative (SGI), as specified in this proposed rule, is not a prohibited action under the ESA.

What threat analysis did the Service complete in making this determination?

Under the ESA, the Service can determine that a species is endangered or threatened based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

We have determined that the primary threats to the Bi-State DPS of greater sage-grouse are urbanization and habitat conversion (Factor A); infrastructure (Factors A and E); mining (Factors A and E); renewable energy development and associated infrastructure (Factors A and E); non-native and native invasive species (e.g., cheatgrass, pinyon-juniper encroachment) (Factors A and E); wildfires and altered fire regimes (Factors A and E), and small population size and population structure (Factor E). Other threats impacting the DPS are climate change, including drought (Factors A and E); recreation (Factors A and E); disease and predation (Factor B); and inadequacy of existing regulatory mechanisms (Factor D).

The DPS is experiencing multiple, interacting impacts (i.e., synergistic effects) to sage-grouse populations and sagebrush habitats that are ongoing (and expected to continue into the future) in many areas throughout the species' range.

Bi-State DPS of greater sage-grouse occur as small, local populations that are relatively isolated from each other. Small populations are inherently at greater risk than larger populations from events such as disease epidemics, or environmental catastrophes. Together, the Bodie and South Mono PMUs (which harbor the two stronghold populations), located mainly in California, represent less than 20 percent of the historical range for the Bi-State DPS.

Why did the Service make a determination on the Bi-State DPS of greater sage-grouse?

The Service received two petitions to list the Bi-State DPS of greater sage-grouse, one from the Institute for Wildlife Protection (dated December 28, 2001), and the other from the Stanford Law School Environmental Law Clinic (dated November 10, 2005) on behalf of the Sagebrush Sea Campaign, Western Watersheds Project, Center for Biological Diversity, and Christians Caring for Creation. A series of standard actions by the Service was taken in response to the petitions, which included publication (in 2006) of a 90-day finding that these petitions did not present substantial scientific or commercial information indicating that the petitioned actions were warranted.

Legal challenges were filed in response to this finding, and the Service subsequently voluntarily remanded its 90-day finding. Based on reevaluation, the Service published a 90-day finding on April 29, 2008, concluding the petitions presented substantial scientific or commercial information indicating that listing this population may be warranted, initiated an in-depth status review, and made a "warranted but precluded" 12-month finding, placing the species on the ESA Candidate List.

What is being done to conserve the Bi-State DPS of greater sage-grouse?

The Service acknowledges its state, federal and local working group partners as well as private landowners for their ongoing and proposed conservation efforts across the range of the Bi-State DPS of greater sage-grouse. A Bi-State Local Area Working Group has been meeting regularly to discuss projects, issues, and opportunities, and developed a Local Area Working Group Action Plan in 2004. In 2012, the Bi-State Action Plan was finalized. Similar in nature to the 2004 Plan, it updated the current understanding of the population and apparent stressors and includes a series of actions needed to alleviate impacts. Signatories to this plan include the Bureau of Land Management, U.S. Forest Service, Natural Resource Conservation Service, U.S. Geological Survey and the Service, and the plan was vetted through participants associated with the 2004 Plan.

While the 2012 Action Plan remains non-regulatory, it provides a general strategic path forward toward conservation and affords a degree of confidence in implementation among stakeholders. It will also serve as a good framework for development of a species recovery plan.

Does the proposed listing of the Bi-State DPS of greater sage-grouse mean that the wider ranging greater sage-grouse will also be proposed for listing?

No. The Service's decision on the Bi-State DPS of greater sage-grouse is unique to this DPS. Based on the best available scientific and commercial information, it was proposed for protection as a separate entity and will have no bearing on the future evaluation of the wider-ranging population of greater sage-grouse.

There is still time to make conservation progress prior to the 2015 settlement date for the wider-ranging greater sage-grouse. Our proposed listing of the Bi-State DPS of greater sage-grouse should not deter implementation of actions for either the Bi-State DPS of greater sage-grouse or the wider-ranging greater sage-grouse.

What activities could be affected by the proposed listing and proposed critical habitat?

If a species is proposed for listing, under Section 7(a)(4) of the ESA, federal agencies are required to confer with the Service on any actions that are likely to jeopardize the continued existence of Bi-State greater sage-grouse or destroy or adversely modify proposed critical habitat. Also, if there is a project with a federal nexus (authorized, funded, or carried out by a federal agency) on non-federal lands, conferencing with the Service may be required. Federal agencies may also request conferencing with the Service on any program or activity that may affect a proposed species or proposed critical habitat.

What is the Service's determination regarding critical habitat for the Bi-State DPS of greater sage-grouse?

As part of the listing proposal, the Service has identified 1,868,017 acres of proposed critical habitat. This habitat is encompassed within federal, state, tribal, and private lands on four separate units in in Carson City, Douglas, Lyon, Mineral and Esmeralda Counties in Nevada, and in Alpine, Mono, and Inyo Counties in California. Consistent with the definition of "critical habitat," the four units are the specific areas within the geographical area occupied by the species at the time of listing on which are found those physical and biological features essential to the conservation of the species. Land ownership in the four units is: 86 percent federal; 1 percent state; 9 percent private; 2 percent tribal; and 2 percent local.

What is critical habitat?

"Critical habitat" is a term in the ESA that identifies geographic areas of particular importance to the conservation of a threatened or endangered species. The ESA defines "conservation" as the actions leading towards the eventual recovery of a species to the point where it is no longer threatened or endangered.

The ESA requires federal agencies to consult with the Service on any of their actions that may affect designated critical habitat. The Service can then recommend ways to minimize any adverse effects. It imposes no requirements on state or private actions on state or private lands where no federal funding, permits, or approvals are required.

Does a critical habitat designation mean an area is considered a wildlife refuge or sanctuary?

No. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve or other conservation area. It does not allow government or public access to private lands.

Will the Bi-State DPS of greater sage-grouse only be protected in places where critical habitat is designated?

No. All other protections afforded by the ESA apply both on and off designated critical habitat. Listed species, both inside and outside critical habitat, are protected from "take" (e.g., shooting, killing, trapping, and collecting). "Take" can be intentional or incidental. And "take" includes harming and harassing individual animals. However, take may be allowed with a permit from the Service.

How was critical habitat determined for the Bi-State DPS of greater sage-grouse?

The Service used the best available science and reviewed all available information pertaining to the habitat requirements of the species. In determining which lands to include in the critical habitat proposal, we identified the physical or biological features essential to the conservation of this species. First, we identified sagebrush plant communities that contain herbaceous vegetation consisting of a diversity and abundance of forbs, insects, and grasses that fulfill all of the seasonal dietary requirements of the Bi-State DPS of greater sage-grouse. Second, we identified non-sagebrush habitats located adjacent to sagebrush plant communities used by the Bi-State DPS of greater sage-grouse for foraging during seasonally dry periods. These habitats are generally more mesic (containing moderate amounts of moisture) than surrounding habitat, and include wet meadows, riparian areas, and irrigated pastures.

Does everything within the critical habitat boundary get treated as critical habitat?

No. The Service cannot map critical habitat in sufficient detail to exclude all developed areas and other lands unlikely to contain "primary constituent elements" essential for sage-grouse conservation. Within the critical habitat boundaries, only lands containing some or all of the primary constituent elements are designated as critical habitat. Existing man-made features and structures within critical habitat, such as buildings; roads; residential landscaping; residential, commercial, and industrial developments; and other features, do not contain the primary constituent elements. Therefore, these areas are not critical habitat and are specifically excluded from the designation.

In addition, we are not including 13,397 acres of land within the proposed critical habitat designation because the Department of Defense, Hawthorne Army Depot, has a completed, Service-approved Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

What are Primary Constituent Elements (PCEs)?

According to 50 CFR 424.12(b), the Service is required to identify the physical or biological features essential to the conservation of the Bi-State DPS of greater sage-grouse in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, the Service determined that the primary constituent elements specific to the Bi-State DPS of greater sage-grouse are:

PCE 1: Areas with vegetation composed primarily of sagebrush plant communities of sufficient size and configuration to encompass all seasonal habitats for a given population of greater sage-grouse, or facilitate movements within and among populations.

PCE 2: Breeding habitat composed of sagebrush plant communities with structural characteristics within the ranges described below. Habitat structure values are average values.

Vegetation Variable	Amount of Occurrence in the Habitat
Sagebrush Canopy Cover	>20 percent
Non-sagebrush Canopy Cover	>20 percent
Total Shrub Canopy Cover	>40 percent
Sagebrush Height	>30 cm (12 in)
Perennial Grass Cover	No less than 5 percent but >10 percent if total shrub cover <25 percent
Annual Grass Cover	<5 percent
Forb Cover	>10 percent
Grass/Forb Height	>18 cm (7 in)

PCE 3: Brood-rearing habitat composed of sagebrush plant communities and alternative, mesic habitats used primarily in the summer-late fall season. These sites include, but are not limited to: riparian communities, springs, seeps, mesic meadows, and irrigated hay pastures with structural characteristics within the ranges described below.

Vegetation Variable	Amount of Occurrence in the Habitat
Sagebrush Canopy Cover	10 - 25 percent
Total Shrub Canopy Cover	14 - 25 percent
Sagebrush Height	> 30 cm (12 in)
Perennial Grass Cover	> 7 percent
Perennial Forb Availability	> 5 species present
Forb Cover	> 7 percent
Grass/Forb Height	18 cm (7 in)
Meadow Edge (ratio perimeter to area)	> 0.015
Species Richness	> 5 species

PCE 4: Winter habitat composed of sagebrush plant communities with sagebrush canopy cover greater than 10 percent and sagebrush height of greater than 25 cm (9.8 in) above snow level.

Is an economic analysis being prepared for the proposed critical habitat designation?

Yes. The Service is preparing an analysis of the economic impacts of the proposed critical habitat designations and related factors and will announce the availability of the draft economic analysis as soon as it is completed. At that time, the Service will seek additional public review and comment.

How can I find out more information about the proposals?

Information about the proposals is available on the web at http://www.fws.gov/Nevada or at http://www.regulations.gov , or by calling the U.S. Fish and Wildlife at 775-861-6300.

Additionally, the public is invited to attend public hearings April 29 and April 30, 2014 at the following locations and times:

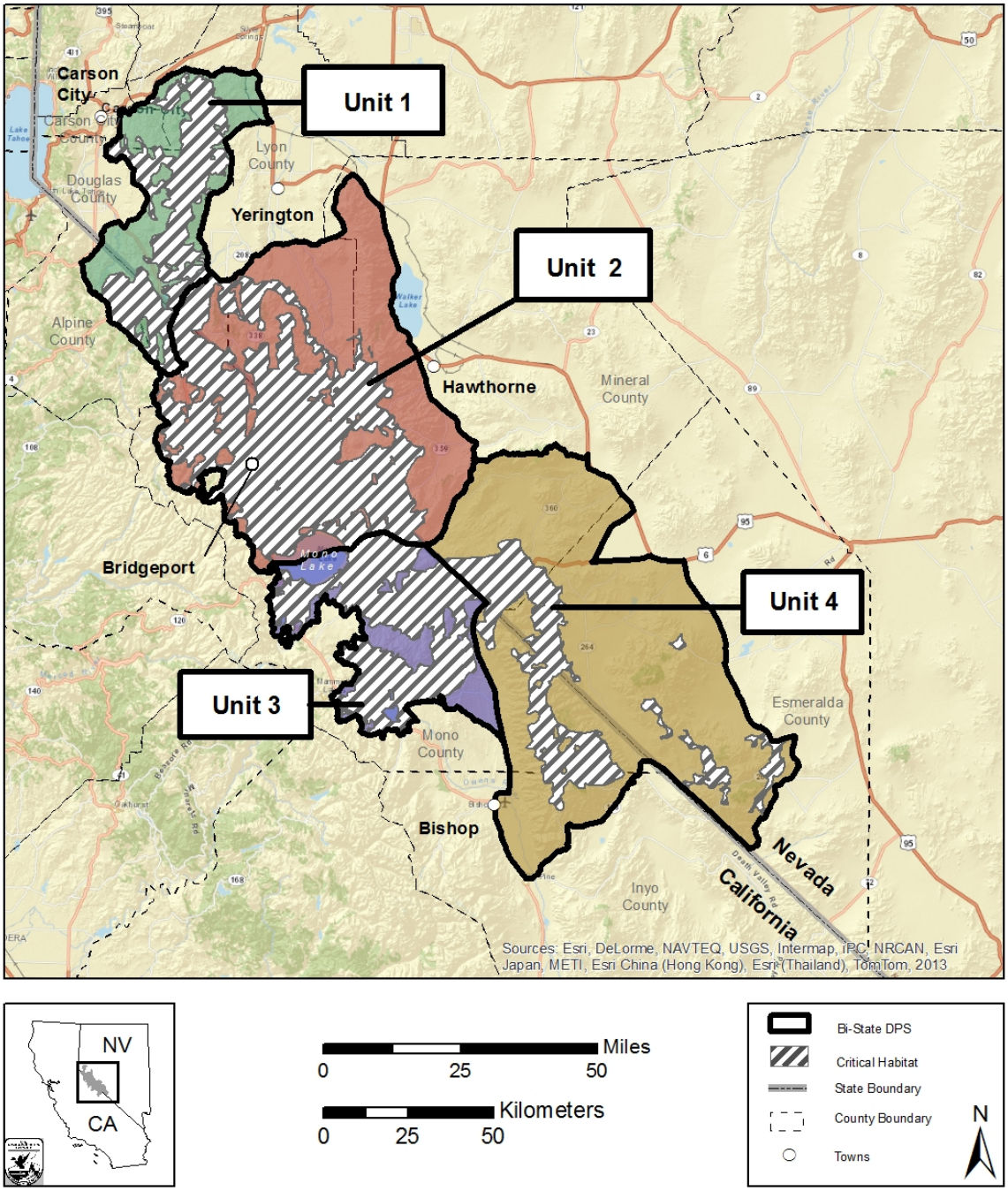
6 to 9 p.m.
Carson Valley Inn
Valley Ballroom
1627 U.S. Highway 395 North
Minden, NV 89423

April 30, 2014
6 to 9 p.m.
Tri-County Fairgrounds, Home Economics Building
Sierra Street and Fair Drive
Bishop, CA 93514

How can I provide comments on the proposals?

Scientific information regarding these proposals will be accepted until June 7, 2014, and may be submitted by one of the following methods:

- Electronically, via the Federal eRulemaking Portal, at http://www.regulations.gov. In the Search box, enter FWS–R8–ES–2013–0042 and FWS-R8-ES-2013-0072, which are the docket numbers for these rulemakings. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

- Hard copy, via U.S. mail or hand delivery, to: Public Comments Processing, Attn: FWS–R8–ES–2013–0042 and FWS-R8-ES-2013-0072; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

Index Map: Critical Habitat for Bi-State Distinct Population Segment (DPS) of Greater Sage-Grouse; Alpine, Inyo, and Mono Counties, California; and Carson City, Douglas, Esmeralda, Lyon, and Mineral Counties, Nevada