

## State Regulatory Mechanisms

State agencies directly manage approximately 5 percent of the sage-grouse's current range (Table 1-2) and approximately 5 percent of the modeled breeding habitat distribution (Table 1-3). State laws and regulations provide the States with broad authorities to regulate and protect wildlife on all lands within the state and to conserve sage-grouse on state-owned lands. Further, by regulating specific threats, some state regulations may also address or help reduce threats to sage-grouse. Since 2010, all States except California have drafted, finalized, or implemented conservation plans for the sage-grouse, and 6 of the 10 plans have or would have regulatory mechanisms to address threats to the sage-grouse. Below we discuss general state wildlife regulations followed by a summary of conservation plans and regulatory mechanisms in each state. Within each threat chapter in the Impact Analysis Section, we discuss state regulations and conservation plans that address the subject threat.

### *General State Wildlife Regulations and Hunting and Noxious Weed Regulations*

In general, the States have broad authority to regulate and protect wildlife within their borders. All 11 states within the sage-grouse range have State wildlife laws and regulations that identify the need to conserve wildlife populations and habitats, including sage-grouse (Connelly *et al.* 2004, p. 2-22-11). For example, "wildlife and their environment" are to be protected, preserved, enhanced and managed in Colorado (Colorado Revised Statutes, Title 33, Article 1–101 in Connelly *et al.* 2004, p. 2-3). Wildlife laws and regulations in Oregon, Idaho, South Dakota, and California have similar provisions to protect, preserve, enhance, and manage

wildlife (Connelly *et al.* 2004, pp. 2-2 to 2-4, 2-6 to 2-8). Although these laws and regulations apply to all wildlife found in the state, including sage-grouse, they are general in nature and do not provide the states with specific direction or regulatory authority to reduce threats to sage-grouse. Additionally, the Governors of each state can change the interpretation and directions of these general state wildlife laws and regulations. Therefore, these regulations provide limited protection to sage-grouse and its habitat.

Except for Washington, all State wildlife agencies across the range of the species manage greater sage-grouse as resident native game birds (Connelly *et al.* 2004, p. 6-3). Where hunting is permitted, the States adjust harvest levels annually and may shorten or close the hunting season or reduce bag limits to respond to unexpected events that affect local populations, such as sudden population declines or outbreaks of West Nile Virus (WNV). As discussed in more detail under the Hunting section, 8 of the 11 States with sage-grouse had open hunting seasons for sage-grouse in 2014, with hunting prohibited in Washington, South Dakota, North Dakota, and Canada (Aldridge and Brigham 2003, p. 25; Connelly *et al.* 2004, p. 6-3; Stinson *et al.* 2004, p. 1). In 2014, Montana State closed hunting of sage-grouse across much of the State and reduced the length of the hunting season to respond to population decreases (CITE). South Dakota closed its hunting season for sage-grouse in 2013 and 2014.

Some state regulations require that landowners control noxious weeds on their property, but designations of noxious weeds and the development of noxious weed lists vary by State. For example, only five states list *Taeniatherum asperum* as a noxious, regulated

weed, but the grass is problematic in at least two additional states. Similarly, despite the proliferation of *Bromus tectorum* across the range of the sage-grouse, Colorado is the only western State that recognizes the grass as a noxious weed (USDA 2009; State of Colorado 2014, p. 2). Therefore, state regulations that address noxious weeds may help reduce impacts to sage-grouse in local areas, but large-scale control of the most problematic invasive plants is currently unfeasible and uncoordinated, while rehabilitation and restoration techniques are mostly unproven and experimental (CITE Pyke).

#### *Summary of State Conservation Plans and State Regulatory Mechanisms*

Since 2010, all States except California have developed conservation plans to guide, direct, and in some States, regulate the conservation of sage-grouse within each state. Table X-X summarizes the status of the state conservation plans and their corresponding regulatory mechanism, if any, in each State. The plans apply to a variety of landownership types within each state, such as all lands in Wyoming and Colorado, but only State lands in Washington and Idaho (Table X-X). Similarly, there is a diversity of completion, implementation, and regulatory mechanisms between the state plans. For instance, Utah and Wyoming are the only states who have completed and implemented their conservation plans, and both plans include regulatory mechanisms. Wyoming's plan applies to all lands in the state across approximately 15 million acres, but the regulatory mechanisms in Utah's plan apply only on Federal lands and it is completely voluntary on private lands. State plans in Colorado, South Dakota, and Washington are complete and being implemented, but the plans only provide conservation measures and recommendations and do not have specific regulatory mechanisms that address threats to sage-

grouse. Conversely, state plans in Idaho, Montana, and North Dakota are complete, with regulatory components in Idaho and Montana, but the plans have not been implemented. Finally, state plans in Oregon and Nevada would include regulatory mechanisms, but these plans are currently under revision.

**Table X-X. Summary of State Conservation Plans and Regulations: Applicable lands, implementation status, and regulatory components.**

MZ(s)	State	Applicable Lands	Acres Covered	State Plan Status	Regulatory Nature	Plan Specifics
I, II, IV	Wyoming	All lands	15,000,000 acres	Complete and Implemented	Regulatory	
II, III, IV	Utah	All lands within the Sage Grouse Management Areas (SGMAs)	7,500,000 acres	Complete and Implemented	Regulatory	Regulatory on Federal lands, but voluntary on private lands.
II, VII	Colorado	All lands	3,855,841 acres	Complete and Implemented	Non-Regulatory	
I	South Dakota	All lands	982,834 acres	Complete and Implemented	Non-Regulatory	
VI	Washington	State lands	4,864,020 acres	Complete and Implemented	Non-Regulatory	
IV	Idaho	State lands	2,400,000 acres	Complete, Not Implemented	Regulatory	
I, II, IV	Montana	State lands; private lands where a State authorization is required.	2,400,218 acres	Complete, Not Implemented	Regulatory	Could be 23,912,481 acres with Executive Order
I	North Dakota	All lands	416,000 acres	Complete, Not Implemented	Non-Regulatory	
II, IV, V	Nevada	All Sage-Grouse Management Area (SGMA) lands	48,627,071 acres	Incomplete, Not Implemented	Regulatory	BLM would be responsible for enforcement
IV, V	Oregon	All lands	15,000,000 acres	Incomplete, Not Implemented	Regulatory	
<b>TOTAL</b>			101,045,984 acres			

## *Wyoming State Regulations*

In 2011, the Governor of Wyoming updated and re-signed the 2008 Executive Order that mandates that all State lands within sage-grouse Core Population Areas receive special management (State of Wyoming 2008, entire). The Wyoming Governor's Sage-Grouse Implementation Team (SGIT) identified Core Population Areas in Wyoming, which are important breeding areas for sage-grouse with the most productive populations and habitats that meet all of the bird's life history needs. The SGIT is a broad stakeholder group with statutory authority from the Wyoming State Legislature to oversee the implementation of the Governor's Executive Order. The Executive Order mandated the protection of sage-grouse within and codified the boundaries of the Core Population Areas.

Using the Executive Order and the Core Population Areas as its foundation, Wyoming's Core Populations Area Strategy uses a proactive, avoidance and minimization approach to maintain a viable and connected set of sage-grouse populations in Wyoming. The Core Population Area strategy addresses habitat loss, habitat fragmentation, and the inadequacy of regulatory mechanisms. Wyoming's State Legislature adopted a joint resolution endorsing the Executive Order and the Core Populations Area Strategy in 2010. The 2011 Executive Order expires on August 18, 2015, at which time the Governor of Wyoming will reevaluate all of its provisions. The Service is collaborating with the SGIT and other entities to review and refine ongoing activities in the core areas, as well as the size and location of the Core Population Areas themselves to ensure that the integrity and purpose of Wyoming's Core Population Area strategy is maintained.

In addition to identifying Core Population Areas, the SGIT also recommended that stipulations should be placed on development activities to ensure that existing habitats within the Core Population Areas maintain their function. Accordingly, Wyoming's Executive Order uses occupancy, seasonal, noise, buffer, mitigation, and monitoring stipulations to permit development in Core Population Areas as long as it do not cause sage-grouse population declines in these areas. These stipulations guide and regulate development within the Core Population Areas to first avoid, then minimize, and if necessary, mitigate impacts to sage-grouse. These Core Area protections apply to 24 percent of all sage-grouse habitats in Wyoming, but account for approximately 83 percent of the total estimated sage-grouse breeding population in the State.

**Comment [Craig1]:** Checking with Mark 5-20-2015

Wyoming's Core Population Area strategy uses interagency coordination and a Density Disturbance Calculation Tool (DDCT) to monitor and track development and conservation activities across the Core Population Areas. This process helps determines whether a proposed development would fall within the Executive Order's thresholds and can proceed without impacting sage-grouse. Project proponents must first thoroughly describe their projects and any potential effects on sage-grouse from their activities before submitting their application for state or Federal permit. The DDCT spatially calculates both the average density of disruptive activities, the total surface disturbance area within the action area, and proximity to Core Population Areas and occupied leks. Proposed activities are then evaluated within the context of the maximum allowable disturbance to sage-grouse habitat within the assessment area. The DDCT improves the evaluation and siting of proposed projects, but if a project cannot meet the Executive Order's thresholds, the permitting agency

may deny the permit.

Wyoming's Executive Order also applies to all activities that require permits from Wyoming's Industrial Siting Council (ISC), including wind power developments on all lands regardless of ownership in the State of Wyoming. Developments that are not on State land and that do not reach a certain economic threshold, such that an ISC permit is not needed, will not be required to follow the stipulations of the Executive Order. The application of the Governor's order to the Wyoming ISC provides significant regulatory protection for sage-grouse from adverse effects associated with wind energy developments and other developments.

**Comment [Craig2]:** Mark is providing more here regarding the ISC permitting process. We expect this by Friday.

There is still some uncertainty regarding what protective stipulations will be applied to wind siting applications. The State of Wyoming has indicated that it will enforce the Executive Order where applicable, and on August 7, 2009, the Wyoming State Board of Land Commissioners voted to withdraw approximately 400,000 ha (approximately 1 million ac) of land within the sage-grouse core areas from potential wind development (State of Wyoming 2008, entire). The withdrawal order states that "there is no published research on the specific impacts of wind energy on sage-grouse," and further states that permitting for wind development should require data collection on the potential effects of wind on sage-grouse. This action demonstrates a significant action in the State of Wyoming to address future development activities in core areas.

Wyoming's executive order does allow oil and gas leases on State lands within core

areas, provided those developments adhere to required protective stipulations, which are consistent with published literature (e.g. 1 well pad per section). The Service believes that the core area strategy proposed by the State of Wyoming in Executive Order 2008-2, if implemented by all landowners via -regulatory mechanisms, would provide adequate protection for sage-grouse and their habitat in that State.

The protective measures associated with the Governor's order do not extend to lands located outside the identified core areas but that are still within occupied sage-grouse habitat. Where a siting permit is needed, the application is *de facto* applied to all landownerships as the Wyoming ISC cannot issue a permit without the protective stipulations in place. In non-core areas, the minimization measures would be implemented that are intended to maintain habitat conditions such that there is a 50 percent likelihood that leks will persist over time (WGFD 2009, pp. 30-35). This approach may result in adverse effects to sage-grouse and their habitats outside of the core areas (WGFD 2009, pp. 32-35).

Wyoming's state conservation plan and corresponding Executive Order are complete and have been implemented since 2008. The Executive Order regulates the conservation of sage-grouse on all lands in Wyoming across approximately 15 million acres and protects approximately 83 percent of the total estimated breeding population of sage-grouse. Through its existing regulatory mechanisms, Wyoming's plan reduces impacts to sage-grouse associated with agricultural conversion, infrastructure, energy development, mining, and the removal of sagebrush.

**Comment [Craig3]:** This is a placeholder: Mark is working on a narrative for why it works and why it is a regulatory.



### *Utah State Regulations*

Utah issued a final conservation plan for the sage-grouse on February 14, 2013, and the Governor of Utah's Executive Order mandated its implementation on February 25, 2015. Utah's conservation plan and Executive Order includes regulatory mechanisms that address impacts to sage-grouse associated with fire, infrastructure, noxious weeds, conifer encroachment, recreation, energy development, mining, and the removal of sagebrush. Utah's state conservation plan applies to all lands within the state's 11 Sage-Grouse Management Areas (SGMAs) across approximately 7.5 million acres.

Before the Governor issued his Executive Order, the regulatory mechanisms in Utah's conservation plan only applied to Federal and State lands within the SGMAs and were entirely voluntary on private, local government, and Utah's School and Institutional Trust Administration (SITLA) lands. Utah argues that it cannot successfully implement regulatory mechanisms on private lands, so the State instead relies on landowner incentives to reduce impacts to sage-grouse on private, local, and SITLA lands.

The Governor's Executive Order clarified several of the regulations in Utah's conservation plan and enforced their applicability for some activities on private and other lands. Most notably, the Executive Order includes a requirement that the Utah Division of Oil Gas and Mining (UDOGM) coordinate with the Utah Division of Wildlife Resources (UDWR) before issuing permits for energy development. The Executive Order further directs UDOGM to implement recommendations provided by UDWR that could require avoidance and minimization

measures on state and private lands consistent with the conservation plan. However, these measures are subject to the statutory requirements to protect rights on private property and avoid waste of the mineral resource. Additionally, the Executive Order requires that Utah State Parks, the State Department of Agriculture, Forestry, Fire and State Lands, and the Department of Transportation coordinate with the UDWR to ensure consistency with the state plan on projects that could impact sage-grouse or their habitat. This improves the ability of Utah's conservation plan to reduce impacts to sage-grouse associated with wildfire, development, agriculture, and recreation on lands other than just Federal and State lands within the SGMAs. The Executive Order also expedited the development and implementation of a conservation banking plan for Utah and prioritized fuels management and mitigation activities to further reduce impacts associated with wildfire and anthropogenic disturbance.

#### *Colorado State Regulations and Conservation Plan*

Colorado's state conservation plan is complete and has been implemented since 2008 on approximately 3,855,841 acres of all landownership types. Colorado's state plan is not regulatory, but is instead a voluntary conservation strategy developed to address and promote the conservation of sage-grouse in Colorado. Colorado's plan identifies risk factors and best management practices to minimize potential effects from a variety of activities, identifies key stakeholders, and estimates costs. For example, Colorado's state plan identifies responsible partners, conservation measures, and objectives for communication and coordination to address the threat of noxious weeds and annual grasses on all lands in

Colorado. The plan provides similar guidance to address impacts to sage-grouse from agricultural conversion, urbanization, conifer encroachment, and recreation. However, Colorado's plan is purely advisory without regulatory mechanisms.

In 2009, the Governor of Colorado signed into law new rules for the Colorado Oil and Gas Conservation Commission (COGCC), the entity responsible for permitting oil and gas well development in Colorado (COGCC 2009, entire). The rules apply to all lands in Colorado and require that permittees and operators determine whether their proposed development location overlaps with "sensitive wildlife habitat," or is within a Restricted Surface Occupancy (RSO) area. For sage-grouse, areas within 1 km (0.6 mi) of an active lek are designated as RSOs, and surface area occupancy will be avoided except in cases of economic or technical infeasibility (CDOW, 2009, p. 12). Areas within approximately 6.4 km (4 mi) of an active lek are considered sensitive wildlife habitat (CDOW, 2009, p. 13) and the project proponent is required to consult with Colorado Parks and Wildlife (CPW, formerly the Colorado Division of Wildlife, or CDOW) to identify measures to avoid impacts on wildlife resources, including sage-grouse, minimize the extent and severity of those impacts that cannot be avoided, and mitigate those effects that cannot be avoided or minimized (COGCC 2009, section 1202.a).

The 2009 Executive Order in Colorado directs the COGCC to consider CPW's recommendations in the permitting decision, although the COGCC maintains the final permitting and conditioning authority. Under these rules, applicants must consider the conservation needs of the sage-grouse, but the potential decisions, actions, exemptions, and

enforcement of conservation measures can vary by project. Further, the rules do not apply to preexisting drilling operations or previously approved but undeveloped leases.

#### *South Dakota State Conservation Plan*

South Dakota completed and began implementing its state conservation plan in 2014. South Dakota's plan applies to all lands in the state across approximately 982,834 acres. South Dakota's plan is a voluntary conservation strategy without regulatory mechanisms.

#### *Washington State Conservation Plan*

Washington completed and began implementing its state conservation plan in 2004. The plan applies to approximately 4,864,020 acres of state lands managed by the Washington Department of Fish and Wildlife, or approximately 15 percent of MZ VI. The Washington plan is a voluntary conservation strategy that provides valuable guidance, direction, and conservation measures to help reduce impacts to sage-grouse from a variety of potential threats. However, the plan applies only to State-managed lands and it lacks regulatory mechanisms.

#### *Idaho State Conservation Plan*

Completed in 2015, Idaho's state conservation plan encourages the conservation of sage-grouse on approximately 2.4 million acres of State endowment trust lands. In April 2015, the State Land Board approved and accepted the conservation plan so that it can be

implemented on state lands. If implemented, Idaho's conservation plan would include some regulatory mechanisms, but the plan is mostly cooperative or voluntary in nature. Federal lands largely surround the state lands, so the effectiveness of Idaho's conservation plan depends largely on landscape scale management actions that are largely dictated by the adjoining Federal land manager.

#### *Montana State Conservation Plan*

Montana completed a voluntary conservation plan in 2005, which was replaced by the Governor of Montana's Executive Order Creating the Montana Sage Grouse Oversight Team and the Montana Sage Grouse Habitat Conservation Program in September 2014. However, Montana has not fully implemented its conservation program and compliance with the Executive Order is not yet mandatory for State agencies or on State Lands. The Governor is expected to issue a second Executive Order in 2015 that will mandate that all State agencies adhere to the procedures and stipulations in the Executive Order in conjunction with permitting or other authorizations, during consultation, or while providing technical, financial, or other assistance for non-regulated activities. By September 2015 the State Land Board is expected to vote on the adoption and application of the program and Executive Order to State Trust Lands, including the adoption of measures to address sagebrush removal, agricultural conversion, and grazing. The Montana State Legislature recently passed, and the Governor signed, staff funding measures that would help implement the conservation program established by the Executive Order. However, until the Governor mandates compliance with the Executive Order (expected via issuance of the second

Executive Order) and the State Land Board approves the application of the Executive Order on State Trust Lands, Montana's conservation program has not been fully implemented.

#### *North Dakota State Conservation Plan*

North Dakota completed its state conservation for sage-grouse in March 2015, but the plan has not been implemented. North Dakota's conservation plan would apply to approximately 416,000 acres of all landownership types in the state. The plan would be entirely voluntary and its implementation would rely on partner-led efforts. North Dakota's plan focuses on the successful translocation of sage-grouse into the state to address isolated subpopulations and to slow a downward population trend.

#### *Nevada State Conservation Plan*

On September 26, 2008, the Governor of Nevada signed an Executive Order calling for the preservation and protection of sage-grouse habitat in the State of Nevada. The Executive Order directs the Nevada Department of Wildlife to work with state and Federal agencies and the interested public to implement Nevada's conservation plan for sage-grouse. The Executive Order also directs other State agencies to coordinate with the NDOW in these efforts. Although directed specifically at sage-grouse conservation, the Executive Order is broadly worded and does not outline specific measures that will be undertaken to reduce threats and ensure the conservation of sage-grouse in Nevada.

In June 2013, Nevada's State Legislature approved the Governor's Sagebrush Ecosystem Council, a group that worked to revise and complete Nevada's state plan so that it would avoid, minimize, and mitigate impacts to sage-grouse and their habitats from development activities. The plan revisions would also address wildfire and invasive plants. The Sagebrush Ecosystem Council finalized and approved Nevada's conservation plan in March 2015. If implemented, Nevada's plan would cover all lands within Sage-Grouse Management Areas (SGMAs) across approximately 48,627,071 acres. Although Nevada's plan would include some regulatory components, such as a requirement that project proponents consult with the SETT to avoid, minimize, and mitigate potential impacts to sage-grouse from their activities, the BLM would be responsible for enforcing this regulation.

#### *Oregon State Conservation Plan*

Originally released in 2011, Oregon is revising its state conservation plan for sage-grouse and the plan has not been implemented. Oregon's conservation plan would apply to approximately 15 million acres of all landownership types and would include regulatory mechanisms, such as disturbance caps and adaptive management triggers, to reduce impacts to sage-grouse in the State. Although the plan would include helpful regulatory mechanisms, they have yet to be finalized into a complete plan.

#### *California State Regulations*

California recognizes sage-grouse as a State-species of special concern that should be

considered during the State's environmental review process. The California Environmental Quality Act (CEQA)(Public Resources Code sections 21000–21177) requires that State agencies, local governments, and special districts consider impacts to species of concern from their proposed project. The California Environmental Quality Act (CEQA) requires that project proponents fully disclose potential impacts to the environment from their projects in the State of California. Similar to the National Environmental Policy Act (NEPA), if a project could “reduce the number or restrict the range of a rare or endangered plant or animal,” the CEQA guidelines require that project proponents find a significant impact (CEQA Section 15065). Under these guidelines sage-grouse receive the same protections as a State-listed species. However, the lead State agency for the proposed project has the discretion to decide whether to require mitigation for resource impacts, or to determine that other considerations, such as social or economic factors, make mitigation infeasible (CEQA Section 21002). Therefore, the State may approve projects that cause significant environmental damage, such as destruction of endangered species, their habitat, or their continued existence, without requiring mitigation. Therefore, CEQA's ability to protect listed species depends on the discretion of the involved agency, so the regulation's ability to reduce potential threats to sage-grouse is limited.