

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS-R8-ES-2018-0106 and FWS-R8-ES-2018-0107; 4500030113]

RINs 1018-BD87 and 1018-BD88

Endangered and Threatened Wildlife and Plants; 6-Month Extension of Final Determination on the Proposed Threatened Status for the Bi-State Distinct Population Segment of Greater Sage-Grouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment periods.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the final determination of whether to list the Bi-State distinct population segment (DPS) of greater sage-grouse (*Centrocercus urophasianus*) as threatened under the Endangered Species Act (Act). We are taking this action to extend the final determination based on substantial disagreement regarding the sufficiency and accuracy of the available data relevant to the proposed listing, making it necessary to solicit additional information. Therefore, along with this announcement to extend the final determination, we are also reopening, for an additional 30 days, the comment periods for the proposed rule to list the species and the proposed rule to designate critical habitat for the species. Comments previously submitted need not be resubmitted as they are already incorporated into the public record and will be fully considered in the final rules. We will submit a final listing determination to the **Federal Register** on or before April 1, 2020.

DATES: The comment periods on the proposed rules that published October 28, 2013 (78 FR 64358 and 78 FR 64328), are reopened. We will accept comments received or postmarked on or before October 31, 2019.

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter either FWS-R8-ES-2018-0106, which is the docket number for the proposed listing determination and section 4(d) rule, or FWS-R8-ES-2018-0107, which is the docket number for the proposed critical habitat designation. Then click on the Search

button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. Please ensure you have located the correct document before submitting your comments. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-deliver to: Public Comments Processing, Attn: [enter appropriate docket number: Docket No. FWS-R8-ES-2018-0106 for the proposed listing determination and section 4(d) rule, or Docket No. FWS-R8-ES-2018-0107 for the proposed critical habitat designation], U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

FOR FURTHER INFORMATION CONTACT: Lee Ann Carranza, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Reno Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; telephone 775-861-6300. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2013, we published in the **Federal Register** (78 FR 64358) a proposed rule to list the Bi-State DPS of greater sage-grouse in California and Nevada as a threatened species under the Act (16 U.S.C. 1531 *et seq.*), with a rule issued under section 4(d) of the Act. On the same day, we published in the **Federal Register** (78 FR 64328) a proposed rule to designate critical habitat for the Bi-State DPS of greater sage-grouse. On April 23, 2015, we published in the **Federal Register** (80 FR 22828) a withdrawal of both these proposed rules. This decision was based on our conclusion that the threats to the DPS as identified in the proposed listing rule were no longer as significant as believed at the time of publication of the proposed listing rule, and that conservation plans were ameliorating threats to the DPS. Thus, we concluded that the Bi-State DPS did not meet the definition of an endangered or a threatened species throughout all or a significant portion of its range.

On March 9, 2016, Desert Survivors, the Center for Biological Diversity,

WildEarth Guardians, and Western Watershed Project filed suit in the U.S. District Court for the Northern District of California. The suit challenged the withdrawal of the proposal to list the Bi-State DPS. On May 5, 2018, the court issued a decision that vacated and remanded the April 23, 2015, withdrawal decision to the Service for further consideration consistent with the order.

The court's action returns the process to the proposed rule stage, and the status of the Bi-State DPS has effectively reverted to that of a proposed species for the purposes of consultation under section 7 of the Act; it also reinstates the proposed 4(d) rule, as well as the proposed critical habitat designation for the Bi-State DPS (78 FR 64328; October 28, 2013). In accordance with the 2018 court order, on April 12, 2019 (84 FR 14909), we reopened the comment periods on the October 28, 2013, proposed rules to list the Bi-State DPS as threatened with a section 4(d) rule (78 FR 64358), and the proposed critical habitat designation for the DPS (78 FR 65328). The reopened comment periods closed on June 11, 2019.

This 6-Month Extension

The 2018 court order set an October 1, 2019 deadline for the Service to issues its final listing determination, unless, and as consistent with section 4(b)(6) of the Act and its implementing regulations at 50 CFR 424.17(a)(1)(iv), the Service finds that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination. Under such circumstance, the deadline will be extended to April 1, 2020.

Since the October 28, 2013, publication of the proposed rules, there has been ongoing disagreement regarding the interpretation and accuracy of the best available information pertaining to the Bi-State DPS' population abundance, trend, and distribution across the six population management units through time. In particular, there has been substantial disagreement regarding the application of new population models from 2018 and 2019, and how results from these models should be interpreted in regards to the status of the species. The substantial nature of this disagreement on the current status of the species became evident during the recently reopened comment period where differing interpretations of the existing population data, in addition to new and emerging population data, were discussed by commenters. Disagreement was also evident regarding the availability of certain scientific research

products at different stages of completion for use in the ongoing species assessment. Some of the confusion can be due to the difference between the findings of preliminary and final research. Since preliminary research findings pertaining to apparent population abundance and trends are often presented at local area working group meetings, confusion or disagreement among commenters could depend on the timing of their participation. It is evident in phone calls and comment letters we received that analysis or interpretation of population abundance and trend data vary between Federal, State, and local governmental agencies; the public; and peer reviewers.

We find that there is substantial scientific disagreement about population abundance and trend data relevant to our listing determination. Therefore, in consideration of these disagreements, we have determined that a 6-month extension of the final determination of whether to list the Bi-State DPS of greater sage-grouse as threatened under the Act is necessary, and we are hereby extending the final determination for 6 months in order to solicit and consider additional information that will help to clarify these issues and to fully analyze data that are relevant to our final listing determination. With this 6-month extension, we will make a final determination on the proposed rule no later than April 1, 2020.

Information Requested

We will accept written comments and information during this reopened comment period on our October 28, 2013, proposed rules to list the Bi-State DPS as threatened with a section 4(d) rule (78 FR 64358), and the proposed critical habitat designation for the DPS (78 FR 65328). We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal be as accurate as possible and based on the best available scientific and commercial data.

In consideration of the scientific disagreements about certain data, we are particularly interested in new information and comments regarding the Bi-State DPS's biology, distribution, population size and trend, including:

- (1) Habitat requirements for feeding, breeding, and sheltering;
- (2) Genetics and taxonomy;
- (3) Historical and current range, including distribution patterns; and
- (4) Historical and current population levels, and current and projected trends.

If you submitted comments or information on the October 28, 2013, proposed rule to list the Bi-State DPS as threatened with a section 4(d) rule (78 FR 64358), or on the October 28, 2013, proposed rule to designate critical habitat for the DPS (78 FR 65328), either during the initial comment period or on any of the subsequent comment periods in 2013, 2014, or 2019, please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of our final determinations.

You may submit your comments and materials concerning the proposed rules by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire

comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive will be available for public inspection on <http://www.regulations.gov> under Docket No. FWS-R8-ES-2018-0106 for the proposed listing determination and section 4(d) rule, and Docket No. FWS-R8-ES-2018-0107 for the proposed

critical habitat designation. Supporting documentation we used in preparing the proposed rules is available for public inspection on <http://www.regulations.gov> under Docket No. FWS-R8-ES-2013-0072 for the

proposed listing determination and section 4(d) rule, or Docket No. FWS-R8-ES-2013-0042 for the proposed critical habitat designation, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Reno Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rules on <http://www.regulations.gov> under Docket No. FWS-R8-ES-2013-0072 for the proposed listing determination and section 4(d) rule, or Docket No. FWS-R8-ES-2013-0042 for the proposed critical habitat designation, or by mail from the Reno Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Please note that the 2013 dockets contain documents and other information related to the proposed rules, as well as the comments received and the proposed rules themselves, while the 2018 dockets are the correct dockets for submission of comments during these reopened public comment periods (see **DATES**, above).

Authors

The primary author of this document is the Service's Reno Fish and Wildlife Office in Reno, Nevada, in coordination with the Service's Pacific Southwest Regional Office in Sacramento, California.

Authority

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), is the authority for this action.

Dated: September 4, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

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