

involving Leadership Act HIV/AIDS funds entered into with the recipient.

(c) This regulation applies to all recipients, including prime recipients and sub-recipients, unless they are exempted from the policy by statute.

### § 89.3 [Removed]

3. Remove § 89.3.

Dated: October 29, 2009.

**John Monahan,**

*Interim Director, Office of Global Health Affairs.*

Dated: October 29, 2009.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. E9-28127 Filed 11-19-09; 4:15 pm]

BILLING CODE P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R6-ES-2009-0080; 92210-1111-0000-B2]

### Endangered and Threatened Wildlife and Plants; Notice of Intent to Conduct a Status Review of Gunnison sage-grouse (*Centrocercus minimus*)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to conduct status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), under the authority of the Endangered Species Act of 1973, as amended (Act), give notice of our intent to conduct a status review of Gunnison sage-grouse (*Centrocercus minimus*). We conduct status reviews to determine whether the species should be listed as endangered or threatened under the Act. Through this notice, we encourage all interested parties to provide us information regarding Gunnison sage-grouse.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before December 23, 2009. After this date, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

**ADDRESSES:** You may submit information by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept faxed comments.

**FOR FURTHER INFORMATION CONTACT:** Al Pfister, Western Colorado Field Office; telephone (970) 243-2778, ext. 29. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Information Solicited

To ensure that the status review is based on the best available scientific and commercial information and to provide an opportunity to any interested parties to provide information for consideration, we are requesting information concerning Gunnison sage-grouse. We request information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, and any other interested party. We are seeking:

- (1) General information concerning the taxonomy, biology, ecology, genetics, and status of the Gunnison sage-grouse;
- (2) Specific information on the conservation status of Gunnison sage-grouse, including information on distribution, abundance, and population trends;
- (3) Specific information on threats to Gunnison sage-grouse, including: (i) The present or threatened destruction, modification, or curtailment of its habitat or range; (ii) overutilization for commercial, recreational, scientific, or educational purposes; (iii) disease or predation; (iv) the inadequacy of existing regulatory mechanisms; and (v) other natural or manmade factors affecting its continued existence; and
- (4) Specific information on conservation actions designed to improve Gunnison sage-grouse habitat or reduce threats to Gunnison sage-grouse and their habitat.

If you submit information, we request you support it with documentation such as data, maps, bibliographic references, methods used to gather and analyze the data, or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so.

Information and supporting documentation that we received and used in preparing this finding will be available for you to review by appointment during normal business hours at the U.S. Fish and Wildlife Service, Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Background

The sage-grouse (*Centrocercus* spp.) is the largest grouse in North America and was first described by Lewis and Clark in 1805 (Schroeder *et al.* 1999, p. 1). Sage-grouse are most easily identified by their large size; dark brown color; distinctive black bellies; long, pointed tails; and association with sagebrush habitats. They are dimorphic in size, with females being smaller. Both sexes have yellow-green eye combs, which are less prominent in females. Sage-grouse are known for their elaborate mating ritual where males congregate on strutting grounds called leks and "dance" to attract a mate. During the breeding season males have conspicuous filoplumes (specialized erectile feathers on the neck) and exhibit yellow-green apteria (fleshy bare patches of skin) on their breasts (Schroeder *et al.* 1999, pp. 2, 18).

For many years sage-grouse were considered a single species. Young *et al.* (2000, pp. 447-451) identified Gunnison sage-grouse (*Centrocercus minimus*) as a distinct species based on morphological (Hupp and Braun 1991, pp. 257-259; Young *et al.* 2000, pp. 447-448), genetic (Kahn *et al.* 1999, pp. 820-821; Oyler-McCance *et al.* 1999, pp. 1460-1462), and behavioral (Barber 1991, pp. 6-9; Young 1994; Young *et al.* 2000, p. 449-451) differences and geographical isolation.

Gunnison sage-grouse are smaller than greater sage-grouse (*C. urophasianus*), weighing approximately one-third less (Hupp and Braun 1991, p. 257; Young *et al.* 2000, p. 447). Their filoplumes are longer and give the appearance of a "ponytail" during the courtship display, unlike the filoplumes on greater sage-grouse. Gunnison sage-grouse retrices (tail feathers) have distinctive barring, unlike the mottled pattern on greater sage-grouse retrices (Young *et al.* 2000, p. 448). Gunnison sage-grouse mating displays are slower

than those of greater sage-grouse (Young *et al.* 2000, p. 449). Mating calls also are distinct. Gunnison sage-grouse “pop” their apteria nine times instead of twice like greater sage-grouse (Young *et al.* 2000, p. 449). Female Gunnison sage-grouse do not respond favorably when they hear playback of recorded male greater sage-grouse mating calls, and differences in courtship vocalizations are likely a barrier to mating between Gunnison and greater sage-grouse (Young 1994, p. 71).

DNA sequence information from mitochondrial and nuclear genomes indicates there is no gene flow between Gunnison and greater sage-grouse (Oyler-McCance *et al.* 1999, pp. 1460–1462; Young *et al.* 2000, p. 451). Based on these morphologic, behavioral, and genetic differences, the American Ornithologist’s Union (2000, pp. 849–850) accepted the Gunnison sage-grouse as a distinct species. The current ranges of the two species are not overlapping (Schroeder *et al.* 2004, p. 369). Additional species information can be found in the Final Listing Determination for the Gunnison sage-grouse (April 18, 2006; 71 FR 19954).

#### Previous Federal Actions

We have published a number of documents on Gunnison sage-grouse, and we describe our actions relevant to this notice below:

On January 18, 2000, we designated the Gunnison sage-grouse as a candidate species under the Act, with a listing priority of 5. However, Candidate Notices of Review are only published annually, and, therefore, the **Federal Register** notice regarding this decision was not published until December 28, 2000 (65 FR 82310). Candidate species are plants and animals for which the Service has sufficient information on their biological status and threats to propose them as endangered or threatened under the Act, but for which the development of a proposed listing regulation is precluded by other higher priority listing activities. A listing priority of 5 indicates the species faces high magnitude, nonimminent threats.

On January 26, 2000, American Lands Alliance, Biodiversity Legal Foundation, and others petitioned the Service to list the species (Webb 2000). In 2003, the U.S. District Court ruled that the species was designated as a candidate by the Service prior to receipt of the petition because the candidate form was signed on January 18, 2000, and that the determination that a species should be on the candidate list is equivalent to a 12-month finding (*American Lands Alliance v. Gale A. Norton*, C.A. No. 00–2339, D.D.C.).

Section 4(b)(3)(B) of the Act requires that for species on the candidate list for listing as threatened or endangered we conduct annual status reviews and make a determination of whether listing the candidate species is: (a) Not warranted, (b) warranted, or (c) warranted but precluded by other higher priority listing determinations. In the 2003 Candidate Notice of Review, we elevated the listing priority number for Gunnison sage-grouse from 5 to 2 (69 FR 24876), as the imminence of the threats had increased. In the 2004 and 2005 Candidate Notice of Reviews (69 FR 24876 and 70 FR 24870, respectively) we maintained the listing priority number for Gunnison sage-grouse as a 2.

Plaintiffs amended their complaint in May 2004 to allege that the Service’s warranted-but-precluded finding and decision not to emergency-list the Gunnison sage-grouse were in violation of the Act. The parties filed a stipulated settlement agreement with the court on November 14, 2005, which included a provision that the Service would make a proposed listing determination by March 31, 2006. On March 28, 2006, the plaintiffs agreed to a 1-week extension (April 7, 2006) for this determination.

In April 2005, the Colorado Division of Wildlife (CDOW) applied to the Service for an Enhancement of Survival Permit for the Gunnison sage-grouse pursuant to section 10(a)(1)(A) of the Act. The permit application included a proposed Candidate Conservation Agreement with Assurances (CCAA) between CDOW and the Service. The standard that a CCAA must meet is that the “benefits of the conservation measures implemented under a CCAA, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the species.” The CCAA, the permit application, and the Environmental Assessment were made available for public comment on July 6, 2005 (70 FR 38977). Public comments and other internal comments from the Service and CDOW were incorporated into revisions of the CCAA and Environmental Assessment and finalized in October 2006. The permit for the CCAA was signed on October 23, 2006. Landowners with eligible property in southwestern Colorado who wish to participate can voluntarily sign up under the CCAA and associated permit through a Certificate of Inclusion. These participants provide certain Gunnison sage-grouse habitat protection or enhancement measures on their lands. If the Gunnison sage-grouse is listed under the Act, the permit

authorizes incidental take of Gunnison sage-grouse due to otherwise lawful activities in accordance with the terms of the CCAA (*e.g.*, crop cultivation, crop harvesting, livestock grazing, farm equipment operation, commercial/residential development, etc.), as long as the participating landowner is performing activities identified in the Certificate of Inclusion. Three Certificates of Inclusion have been issued by the CDOW and Service to private landowners to date.

On April 11, 2006, the Service determined that listing the Gunnison sage-grouse as a threatened or endangered species was not warranted and published the final listing determination on April 18, 2006, in the **Federal Register** (71 FR 19954). Consequently, we removed Gunnison sage-grouse from the candidate species list at the time of the final listing determination. On November 14, 2006, Plaintiffs (the County of San Miguel, Colorado; Center for Biological Diversity; WildEarth Guardians; Public Employees for Environmental Responsibility; National Audubon Society; The Larch Company; Center for Native Ecosystems; Sinapu; Sagebrush Sea Campaign; Black Canyon Audubon Society; and Sheep Mountain Alliance) filed a Complaint for Declaratory and Injunctive relief, pursuant to the Act, and on October 24, 2007, filed an Amended Complaint for Declaratory and Injunctive relief, alleging that the 12-month finding on the Gunnison sage-grouse violated the Act. On August 18, 2009, a Stipulated Settlement Agreement and Order was filed with the court, with a June 30, 2010 date by which the Service shall submit to the **Federal Register** a 12-month finding, pursuant to 16 U.S.C. 1533(b)(3)(B), that listing the Gunnison sage-grouse under the Act is (a) warranted; (b) not warranted; or (c) warranted but precluded by higher priority listing actions. With this notice, we are initiating a new status review for the Gunnison sage-grouse.

#### References Cited

A complete list of all references is available upon request from the Field Supervisor (see **ADDRESSES**).

#### Author

The primary author of this document is Al Pfister, U.S. Fish and Wildlife Service, Western Colorado Field Office.

#### Authority

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

Dated: November 13, 2009.

**Sam D. Hamilton,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. E9-28047 Filed 11-20-09; 8:45 am]

**BILLING CODE 4310-55-P**