

Committee on Natural Resources

Rob Bishop, Chairman
Hearing Memo

May 15, 2015

To: All Natural Resources Committee Members

From: Majority Full Committee Staff—Rob Gordon, Michael Freeman

Hearing: Oversight Hearing on “*Empowering State Management of Greater Sage Grouse*”

The Committee on Natural Resources will hold a hearing on “*Empowering State Management of Greater Sage Grouse*,” on **Tuesday, May 19, 2015 in 1324 Longworth at 10:00 a.m.**

Policy Overview

- Currently, the Fish and Wildlife Service (FWS) is in the process of determining whether the Greater Sage-Grouse (“GrSG”) demands full protection under the Endangered Species Act (ESA). Following multiple lawsuits, in 2010, FWS determined that listing the species is warranted, but precluded and has been managing it as a candidate species.
- In 2011, as part of a “mega-settlement” with the WildEarth Guardians, the FWS agreed to review the status of hundreds of candidate species, including the GrSG. FWS is facing a court-ordered September 30, 2015 deadline to make such a determination.
- The Bureau of Land Management (BLM) and the U.S. Forest Service are currently updating 98 land use plan amendments with new guidance and restrictions related to the GrSG. The BLM has indicated its intent to finalize these by the end of May.
- In response to then Secretary Salazar’s invitation in December 2011 to do so, Western states have been developing and implementing state management plans and policies intended to conserve GrSG and protect its habitat.¹
- To date, the FWS has only endorsed one plan- the Wyoming state management plan.
- One of the factors that the FWS must consider in its decision to list a species is the adequacy of regulatory mechanisms currently protecting the species. As a result, the adequacy of all state management plans is therefore an important part of the listing determination. Western governors have raised concerns that the federal agencies’ coordination with their states for GrSG conservation has been “ineffectual” and “treated more as an afterthought.”²

¹ <http://www.doi.gov/news/pressreleases/Salazar-Mead-Reaffirm-Commitment-toward-Development-of-Landscape-Level-Greater-Sage-Grouse-Conservation-Strategy-in-the-West.cfm>

² <http://westgov.org/news/298-news-2014/800-western-governors-concerned-federal-work-with-states-on-sage>

Witnesses Invited

Ms. Kathleen Clarke

(Former Director, Bureau of Land Management, 2001-2006)
Director, Utah Public Lands Policy Coordinating Office
State of Utah
Salt Lake City, UT

Mr. Dustin Miller

Administrator, Idaho Office of Species Conservation
State of Idaho
Boise, ID

Mr. John Swartout

Senior Policy Advisor
Office of Governor John Hickenlooper
State of Colorado
Denver, CO

Dr. Ed Arnett

Senior Scientist
Theodore Roosevelt Conservation Partnership
Loveland, CO

Background

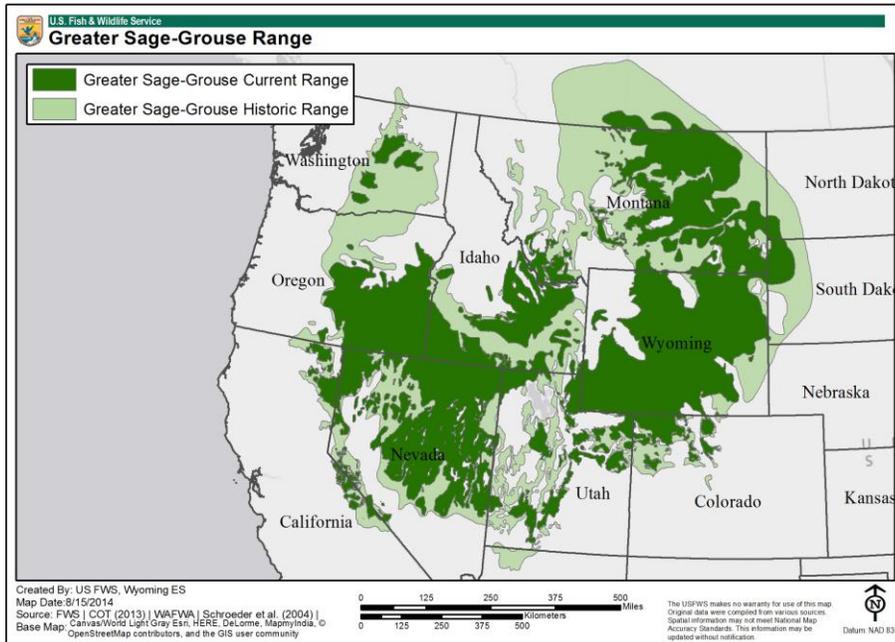
Currently, there are approximately 200,000 to 500,000 sage grouse spread throughout 165 million acres in 11 western states, including Montana, Idaho, Utah, Nevada, Colorado, Wyoming, Oregon, Washington, North Dakota, South Dakota and California.³ 64 percent of the species' range is managed by the Bureau of Land Management (BLM), the U.S. Forest Service (USFS), and other federal agencies, 31 percent is privately owned, and 5 percent is managed by states.⁴ Population estimates vary widely because there is no single range-wide survey methodology.⁵ The statistics that we do have are generated primarily by state wildlife agencies.

Sage grouse inhabit large, treeless areas known as sagebrush steppe or sagebrush shrublands. Males and females have dark grayish brown plumage with many small gray and white speckles. Adult male sage grouse range in length from 26 to 30 inches and weigh between 4 and 7 pounds. Adult females are smaller, ranging in length from 19 to 23 inches and weighing between 2 and 4 pounds.

³ U.S. Fish and Wildlife Service, The Greater-sage grouse, Facts and Figures, available at: http://www.fws.gov/greatersagegrouse/factsheets/GreaterSageGrouseCanon_FINAL.pdf

⁴ *Id.*

⁵ *Id.*



From 1999 to 2003, the Fish and Wildlife Service (FWS) received 8 petitions to list the GrSG across some or all of its range. These petitions started a process which ended in March 2010, when the FWS found that listing was “warranted, but precluded” under the ESA. That decision was subsequently challenged in federal court, and on September 9, 2011, the FWS entered in a

settlement with the plaintiffs in which it agreed to determine whether to list the GrSG by September 30, 2015.

Threats to GrSG

According to the FWS, the primary threats to GrSG populations are habitat loss due to wildfire, invasive species, and infrastructure development.⁶ Catastrophic wildfires destroy thousands of acres of sagebrush, destroying habitat and allowing invasive plant species such as cheatgrass to thrive in the burned out areas and prevent the regrowth of sagebrush. Encroachment by pinion juniper is also a significant threat to sage grouse because it provides a perch from which predators, such as golden eagles and ravens, can locate sage grouse and their nesting areas. Infrastructure development, roads, energy development, and other economic activities can affect habitat, and variations in weather and moisture patterns play a significant role in GrSG population numbers from year to year.



⁶ 12-Month Findings for Petitions to List the Greater Sage Grouse (*Centrocercus urophasianus*) as Threatened or Endangered, 75 Fed. Reg. 13910 at 13924, 13927-28, 13931 (March 23, 2010).

Federal and State Planning Coordination

In December 2011, then Secretary Ken Salazar invited western states to submit management plans in an effort to establish conservation measures which would negate the need for federal protection. In response to Secretary Salazar's invitation, western states invested millions of dollars and countless human and time resources developing and implementing conservation plans and regulations to protect the GrSG. To date, however, only Wyoming's management plan has been endorsed by the FWS. In fact, FWS Director Dan Ashe has even gone so far to say that other state plans "don't exist."⁷

States have expressed bipartisan frustration about the apparent reluctance of the FWS to acknowledge their efforts to protect GrSG, and many have called the federal efforts a "one size fits all" approach.⁸ Recently, this lack of cooperation was felt in Colorado with regard to the listing of the Gunnison Sage-grouse. Colorado representatives decried the decision as uprooting state and local efforts. Senator Michael Bennet said that the FWS "pulled the rug out" from under communities dedicated to saving grouse.⁹ Former Senator Mark Udall shared that sentiment, stating that official protection "threatens to unravel much of the grassroots and science-based progress Colorado has made preserving the Gunnison sage grouse."¹⁰ States are now concerned that the rug will again be pulled out from under them, and this time on a much larger scale. States have voiced concerns that their good faith efforts were rejected without much consideration.¹¹

Recent developments in the federal land planning process have also raised concerns. Because much of GrSG habitat is located on federal land, the BLM and USFS, in coordination with the FWS, began a process to amend resource management plans across the west in 2011. While westerners understand that these plans will play a significant role in the FWS' understanding of regulatory mechanisms to protect the species, and therefore must be robust, many worry that the guidance in these updated plans may be overly restrictive and preclude or delay multiple use activities on private lands across the region. Senator Lisa Murkowski has recently stated that "[w]hile the threat of an Endangered Species Act listing looms, there are significant fears that regulations put in place to preserve sage grouse habitat are perhaps even more restrictive and provide less certainty in the permitting process than in an ESA listing."¹²

⁷ <http://www.naturalgasintel.com/articles/102234-sage-grouse-debate-comes-home-to-roost-in-senate-committee>

⁸ <http://www.washingtontimes.com/blog/inside-politics/2013/nov/25/colo-gov-interior-bureaucrats-biased-species-issue/>

⁹ Bruce Finley, *Gunnison Sage Grouse Gets Federal Protection to Prevent Extinction*, The Denver Post, November 12, 2014, available at: http://www.denverpost.com/environment/ci_26922049/gunnison-sage-grouse-get-federal-protection-prevent-extinction

¹⁰ *Id.*

¹¹ Amy Joi O'Donoghue, *Gov. Gary Herbert: Threat of sage grouse endangered species listing is real, could cost Utah billions*, Deseret News, February 18, 2014, available at: <http://www.deseretnews.com/article/865596744/Gov-Gary-Herbert-Threat-of-sage-grouse-endangered-species-listing-is-real-could-cost-Utah.html?pg=all>.

¹² Phil Taylor, *BLM director faces bipartisan heat for sage grouse plans*, available at: <http://www.eenews.net/greenwire/2015/05/13/stories/1060018506>

In October 2014, the FWS suggested that additional restrictions in certain high-value habitat areas on federal land were required to avoid listing the GrSG.¹³ These additional restrictions were described as GrSG “strongholds”, and would essentially prevent any surface occupancy on approximately 16.5 million acres across several states. These new restrictions were seen by some as a sudden departure from years of cooperative efforts. Wyoming Governor Mead, whose state is the only one with an approved sage grouse management plan, stated in a letter to FWS Director Ashe that “[t]he designation of super-core areas or other layered restrictions will challenge and erode the partnerships built over the past eight years... [i]t is a mistake to sacrifice this great collaborative effort to meet an academic exercise in mapping.”¹⁴ States have legitimate concerns that these restrictions will appear in the final versions of resource management plans, essentially shutting down economic development in 16.5 million acres of federal land.

State Efforts

While the debate over the federal planning process continues, states, local governments, and private entities have been pursuing conservation strategies of their own for years. Utah, Nevada, Montana, Idaho, Washington, Oregon, and Wyoming have comprehensive management strategies that address the particular threats in each of the states.¹⁵

Utah’s Conservation Strategy for Greater Sage-Grouse focuses on four major threats: wildfires, pinion juniper encroachment, urbanization, and oil and gas development. Nevada’s Greater Sage Grouse Conservation Plan develops policies to address anthropogenic disturbances, wildfire, invasive species, livestock grazing, and pinion juniper encroachment.

Idaho’s strategy involves designating sage grouse habitat into three distinct management zones: Core Habitat, Important Habitat, and General Habitat, each with differing regulatory restrictions. Colorado has been investing in sage grouse habitat and conservation easements for years, spending upwards of \$9 million for the benefit of sage grouse.

Colorado also employs robust GrSG rules for oil and natural gas development. And in addition to its management plan and an executive order on GrSG, Montana recently passed legislation creating a task force dedicated to managing sage grouse.¹⁶ Other states and local governments have additional initiatives and policies dedicated to addressing threats to sage grouse, and much of the impetus for this hearing is to fully record these significant state efforts in protecting this species.

¹³ Memorandum from Director Dan Ashe to the Director of the BLM and Chief of the USFS, *Greater Sage-Grouse: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes*, October 27, 2014; available at: http://www.eenews.net/assets/2015/02/10/document_gw_01.pdf.

¹⁴ Phil Taylor, *FWS urges protection of 16.5 million acres for sage grouse*, Greenwire, February 10, 2015, available at: <http://www.eenews.net/stories/1060013185> (subscription required).

¹⁵ See generally: https://wildlife.utah.gov/uplandgame/sage-grouse/pdf/greater_sage_grouse_plan.pdf;
<http://sagebrushco.nv.gov/>; <http://fwp.mt.gov/fishAndWildlife/management/sageGrouse/>;
<http://species.idaho.gov/list/sagegrouse.html>;
http://wdfw.wa.gov/conservation/research/projects/grouse/greater_sage-grouse/;
<http://www.dfw.state.or.us/wildlife/sagegrouse/>;

¹⁶ <http://leg.mt.gov/bills/2015/billpdf/SB0261.pdf>

Other Federal Efforts

In addition to state efforts, the National Resources Conservation Service's ("NRCS") Sage-Grouse Initiative ("SGI") has restored 4.4 million acres through a voluntary, incentive-based program.¹⁷ Since 2010, the SGI has worked with more than a 1000 ranches and invested almost 300 million dollars towards protecting GrSG. NRCS partners have added another \$128 million. NRCS projects include thousands of acres of pinion juniper removal and general habitat recovery.

Hearing Summary

As the deadline for the sage grouse listing determination approaches, it is important to provide a full picture of all conservation efforts currently working to protect the bird. The purpose of this hearing is to examine the efforts of states in this regard, to give states the opportunity to explain how their role as wildlife managers, and to support true cooperation between the federal agencies and state and local governments.

¹⁷ *Outcomes in Conservation*, Sage Grouse Initiative, available at: http://www.sagegrouseinitiative.com/wp-content/uploads/2015/02/NRCS_SGI_Report.pdf