

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: April 18, 2008.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R1-ES-2008-0050; 1111 FY07 MO-B2]

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Western Sage-Grouse (*Centrocercus urophasianus phaios*) as Threatened or Endangered**

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

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the western sage-grouse (*Centrocercus urophasianus phaios*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the western sage-grouse may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing the species is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this species. We will initiate a determination on critical habitat for this species if and when we initiate a listing action.

**DATES:** To allow us adequate time to conduct this review, we request that information be submitted on or before June 27, 2008.

**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: FWS-R1-ES-2008-0050; 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 e-mail or faxes. We will post all information received at <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

#### **FOR FURTHER INFORMATION CONTACT:**

Project Manager, Oregon Fish and Wildlife Office, by mail (see **ADDRESSES**), telephone (503-231-6179), or facsimile (503-231-6195). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Information Solicited**

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the western sage-grouse. We request any additional information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties on the status of the western sage-grouse, including:

(1) Information regarding the taxonomic validity of western sage-grouse as a subspecies of the greater sage-grouse (e.g., based on morphological, behavioral, geographic, genetic, or other diagnostic factors), either as petitioned or along another geographic boundary;

(2) Information regarding the significance, if any, of recent genetic studies on the taxonomic classification of the western sage-grouse, such as the conclusion of Benedict *et al.* (2003, p. 309) that studies of mitochondrial DNA do not support the subspecies delineation, or the potential significance, if any, of the distribution of the unique haplotypes or populations clusters identified by Oyler-McCance *et al.*, 2005;

(3) Information as to the identity and text of the document that the petitioner references in support of behavioral differences in sage-grouse and cites on page 7 of the petition as "US Fish and Wildlife Service 1998, p. 1 of attachment entitled "Sage Grouse"—(Candidate Conservation?)." We have been unable to determine what document the petitioner is referring to, and the petitioner has not responded to our requests to clarify the reference;

(4) Information regarding the historical and current population status, distribution, and trends of western sage-grouse; its biology and ecology; and habitat selection;

(5) Information on the effects of potential threat factors relevant to western sage-grouse that are the basis for a listing determination under Section 4(a) of the Act, which are: (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; and (e) other natural or manmade factors affecting its continued existence; and

(6) Information on management programs for the conservation of the western sage-grouse.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made "solely on the basis of the best scientific and commercial data available." Based on the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy 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. We will post all hardcopy submissions on <http://www.regulations.gov>.

Information and materials we receive will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

## Background

For more information on the biology, habitat, and range of the western sage-grouse, please refer to the "Species Information" section in our previous 90-day finding published in the **Federal Register** on February 7, 2003 (68 FR 6500).

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a status review of the species.

We received a petition, dated January 24, 2002, from the Institute for Wildlife Protection, requesting that the western sage-grouse (*Centrocercus urophasianus phaios*), occurring from northern California through Oregon and Washington, as well as any western sage-grouse that still occur in parts of Idaho, be listed under the Act. The petitioner excluded the Mono Basin area population in California and northwest Nevada since they already had petitioned this population as a distinct population segment (DPS) for emergency listing. The petitioner also requested that the Service include the Washington DPS in this petition, even though this DPS was already recognized by the Service as a candidate for listing under the Act, based on a 12-month petition finding in which we found that listing the DPS was warranted but precluded by other higher priority listing actions (66 FR 22984, May 7, 2001).

The January 24, 2002, petition clearly identified itself as such and included the requisite identification information as required in 50 CFR 424.14(a).

Accompanying the petition was information related to the taxonomy, life history, demographics, movements, habitats, threats, and the past and present distribution of western sage-grouse.

We began processing the petition October 30, 2002, and our finding was published on February 7, 2003 (68 FR 6500). We found that the petition did not present substantial information indicating that the petitioned action may be warranted, because there was insufficient evidence that the western sage-grouse is a valid subspecies or DPS, and therefore does not constitute a listable entity under the Act. On the same day our finding was published, we received a 60-day Notice of Intent (NOI) to sue from the petition, alleging that our negative 90-day finding violated the Act.

The petitioner filed a court complaint on June 6, 2003, challenging the merits of the 90-day finding. On August 10, 2004, the U.S. District Court for the Western District of Washington ruled in favor of the Service (*Institute for Wildlife Protection v. Norton*, No. C03-1251P), and the petitioner filed an appeal on November 24, 2004. The United States Court of Appeals for the Ninth Circuit issued a memorandum opinion and order on March 3, 2006, remanding the matter for a new 90-day finding. (*Institute for Wildlife Protection v. Norton*, 174 Fed. Appx. 363.) The Court rejected the Service's conclusion that the petition did not present substantial information indicating that the western sage-grouse may be a valid subspecies, but upheld the Service's determination that the petition did not present substantial information indicating that the population may constitute a DPS.

## Finding

In accordance with the remand, we have reconsidered the information presented in the petition. Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations is limited to the determination of whether the information meets the "substantial scientific and commercial information" threshold, which is interpreted in our regulations as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14). Information we currently have raises significant questions about whether the western sage-grouse is a valid subspecies and thus a listable entity under the Act. Nevertheless, and particularly in light of some uncertainty

regarding the potential significance of most recent genetic evidence regarding the validity of a western subspecies, we find that the petition presents substantial scientific or commercial information, sufficient to meet the minimal "reasonable person" standard in our regulations for a 90-day finding as described above, indicating that listing the western sage-grouse as threatened or endangered may be warranted. Therefore, we are initiating a status review of the western sage-grouse to determine if listing it is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding the western sage-grouse.

It is important to note that the "substantial information" standard for a 90-day finding is in contrast to the Act's "best scientific and commercial data" standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding will also be positive.

The Service is already in the process of conducting a status review of the greater sage-grouse across the entire range of the species (73 FR 10218, February 26, 2008), and elsewhere in today's **Federal Register** we are publishing a notice that extends our request for information on that status review to June 27, 2008. In today's **Federal Register** we also are publishing a separate notice of a 90-day finding and initiation of a status review for the Mono Basin population of the greater sage-grouse. Consequently, at this time the Service has formally initiated three status reviews involving the greater sage-grouse, and the respective notices in today's **Federal Register** each request that information be submitted by June 27, 2008, for each status review. Information submitted for any one of these status reviews that is relevant to the others need not be submitted more than once. Because the status review of the greater sage-grouse that we initiated on February 26, 2008 (73 FR 10218) covers the entire range of the species, it encompasses the Mono Basin population of the greater sage-grouse and the western subspecies of the greater sage-grouse. It is our intention to

address the taxonomy and status of the western sage-grouse, including relevant information received in response to this notice, within the rangewide status review of the greater sage-grouse. Further, because the three status reviews are somewhat interrelated, we anticipate that any interrelated aspects will be taken into account in our ultimate decisions.

If we determine that listing the western sage-grouse is warranted, we intend to propose critical habitat to the maximum extent prudent and determinable at the time we prepare a proposed listing rule.

#### References Cited

A complete list of all references cited herein is available, upon request from the Oregon Fish and Wildlife Office (see **ADDRESSES**).

#### Author

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authority

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

Dated: April 18, 2008.

**Kenneth Stansell,**

*Acting Director, Fish and Wildlife Service.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R6-ES-2008-0022; 1111 FY07 MO-B2]

#### Endangered and Threatened Wildlife and Plants; Initiation of Status Review for the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered

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

**ACTION:** Notice; initiation of status review and solicitation of new information; extension of period for submitting information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the extension of the period for submitting information that is pertinent to our status review of the greater sage-grouse (*Centrocercus urophasianus*). The extension will provide the public and Federal, State, and local agencies with

an additional opportunity to submit information for the status review. Information previously submitted need not be resubmitted; it already has been incorporated into the public record and will be fully considered in the status review.

**DATES:** To allow us adequate time to conduct this review, we request that information be submitted on or before June 27, 2008.

**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: FWS-R6-ES-2008-0022; 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 e-mail or faxes. We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

**FOR FURTHER INFORMATION CONTACT:** The U.S. Fish and Wildlife Service's Wyoming Ecological Services Field Office, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009; telephone 307-772-2374. People who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Information Solicited

To ensure that the status review is complete and based on the best scientific and commercial information available, we are soliciting information concerning the status of the greater sage-grouse. Information submitted prior to January 12, 2005, will be considered and need not be resubmitted. New information submitted since the initiation of the current status review on February 26, 2008 (73 FR 10218) need not be resubmitted. We request information from the public, governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties on the status of the greater sage-grouse throughout its range, including:

- (1) Information regarding the species' historical and current population status, distribution, and trends; its biology and ecology; and habitat selection.
- (2) Information on the effects of potential threat factors that are the basis

for a listing determination under section 4(a) of the Act, which are:

- (a) The present or threatened destruction, modification, or curtailment of the species' 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.

(3) Information on management programs for the conservation of the greater sage-grouse.

Please note that submissions merely stating support of or opposition to any potential decisions based on the status review without providing relevant information, although noted, will not be considered, because section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available." We intend to use the status review as the basis for determining whether listing the species is warranted, not warranted, or warranted but precluded.

You may submit information concerning this status review by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

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

Information and materials we receive will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Wyoming Ecological Services Field Office, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009; telephone 307-772-2374.

#### Background

On February 26, 2008, we announced the initiation of a status review for the greater sage-grouse (*Centrocercus urophasianus*), and requested that