

## 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; Threatened Status for the Bi-State Distinct Population Segment of Greater Sage-Grouse and Designation of Critical Habitat**

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

**ACTION:** Proposed rule; reopening of comment periods.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are reopening the comment period on our October 28, 2013, proposed rules to list the Bi-State distinct population segment (DPS) of greater sage-grouse (*Centrocercus urophasianus*) as threatened under the Endangered Species Act (Act) and to designate critical habitat for that DPS. We are reopening the proposed rules' comment periods for 60 days to give all interested parties an additional opportunity to comment on the proposed rules. 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 publish a final listing determination for the DPS in the **Federal Register** on or before October 1, 2019.

**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 June 11, 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 Rules link to locate this document. 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: BPHC; 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:**

Carolyn Swed, 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**

Please refer to the October 28, 2013, proposed listing rule (78 FR 64358) and the 2015 Species Report (Service 2015) for information about taxonomy, habitat (sagebrush ecosystem), seasonal habitat selection, life-history characteristics, home range, life expectancy and survival rates, historical and current range distribution, population estimates and lek (sage-grouse breeding complex) counts, population trends, and land ownership information of the Bi-State DPS of greater sage-grouse. Please also refer to our March 23, 2010, notice of 12-month petition findings (75 FR 13910) for the greater sage-grouse for a detailed evaluation of the Bi-State DPS under our DPS policy. For a detailed summary of previous public comment periods for the proposed listing with a section 4(d) rule and the proposed critical habitat designation for the Bi-State DPS of greater sage-grouse, please see the Previous Federal Actions section of our 2015 withdrawal of those proposed rules (80 FR 22828; April 23, 2015).

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 the proposed rules to list the Bi-State DPS as a threatened species with a section 4(d) rule and to designate critical habitat for the DPS. 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. As the result of the court order, the April 23, 2015, withdrawal was vacated and remanded 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). Therefore, this document notifies the public that we are reopening 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). We also announce that we are initiating a new status review of the Bi-State DPS, to determine whether it meets the definition of an endangered or threatened species under the Act. Any listing determination we make must be made based on the best available information.

**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 also request new information regarding the Bi-State DPS that has become available since the

publication of the proposed rules to inform the status review.

We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The Bi-State DPS's biology, distribution, population size and trend, including:

- (a) Habitat requirements for feeding, breeding, and sheltering;
- (b) Genetics and taxonomy;
- (c) Historical and current range, including distribution patterns; and
- (d) Historical and current population levels, and current and projected trends.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1533(a)(1)), 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; or
- (e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this Bi-State DPS and existing regulations that may be addressing those threats.

(4) Information on current habitat conditions, including, but not limited to, quality of upland and meadow or riparian sites, presence and abundance of annual invasive grasses and weeds or other increasing plants (*e.g.*, conifer trees), and recovery of previously burned sites. This information may include larger landscape-scale assessments or smaller site-specific investigations.

(5) Application of the Bi-State Action Plan of March 15, 2012, to our determination of status under section 4(a)(1) of the Act, particularly comments or information to help us assess the certainty that the plan will be effective in conserving the Bi-State DPS of greater sage-grouse and will be implemented.

(6) Information concerning whether it would be appropriate to include in the 4(d) rule a provision for take of the Bi-State DPS of greater sage-grouse in accordance with applicable State law for educational or scientific purposes, the enhancement of propagation or survival of the DPS, zoological exhibition, and

other conservation purposes consistent with the Act.

(7) Whether the Service should include in the scope of the proposed 4(d) rule the incidental take of sage-grouse within the Bi-State DPS if the take results from other agricultural activities not subject to the Sage Grouse Initiative or the Bi-state Action Plan, if those activities are compatible with the conservation of the Bi-State DPS.

(8) Past and ongoing conservation measures for the Bi-State DPS, its habitat, or both.

(9) Any new or updated information relative to our 2013 proposed designation of critical habitat for the Bi-State DPS.

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), during the initial comment period or on any of the subsequent comment periods in 2013 and 2014, 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.

Our final determinations will take into consideration all written comments and any additional information we receive during all comment periods. The final decisions may differ from the proposed rules, based on our review of all information we receive during the rulemaking proceeding. If we receive significant new scientific information, we may need to reopen the public comment period so that the public can comment on the new information.

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.

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), during the initial comment period or on any of the subsequent comment periods in 2013 and 2014, 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.

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 this public comment period (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: March 17, 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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