



ENDANGERED SPECIES: FWS issues guidance to properly mitigate impacts to sage grouse habitat

Scott Streater,
E&E reporter
Friday, September 5, 2014

The Fish and Wildlife Service, which has drawn criticism for not being transparent about how it will judge ongoing efforts by states and federal agencies to protect the greater sage grouse, has released an expansive guidance document to help policymakers across the bird's range devise mitigation strategies to help keep it off the endangered list.

The grouse mitigation framework released late yesterday is aimed at encouraging federal agencies and state governments to implement effective mitigation strategies when grouse habitat is disturbed, and it lays out "some of the factors" Fish and Wildlife will use in determining whether these mitigation practices are "reducing threats to sage-grouse."

FWS is evaluating the status of the sage grouse and must decide whether to propose listing the bird for protection under the Endangered Species Act by September 2015. One of the key factors Fish and Wildlife uses in evaluating whether to list any species is a determination of whether the regulations,

projects and programs in place are adequate to protect and restore the species from a host of identified threats without a federal threatened or endangered listing.

But the service makes clear in the mitigation framework document that it "recommends an avoidance first strategy be employed for all identified sage-grouse habitat," especially priority habitat or "other areas of habitat identified as important to sage-grouse populations" across its Western range.

"There is no one right or correct design for a mitigation program," according to the framework. "Rather, our hope in providing this guidance is that it will encourage consistency across the range and help our many partners develop mitigation processes that simultaneously conserve sage-grouse while maintaining or enhancing economic opportunities throughout the sage-grouse range. Mitigation processes should be fair, implementable, fully compensatory, and effective for sage-grouse."

The framework is also designed to create incentives to devise appropriate mitigation measures now, before any listing decision, by assuring federal and state governments that they will receive credit for these actions if the

ground-dwelling bird is ultimately listed as threatened or endangered, said Kathy Holler, an FWS biologist in Portland, Ore., working on sage grouse issues.

Holler said some stakeholders have been “hesitant to do these things now, because they are afraid it won’t get counted if [the grouse] is listed later on.”

She said taking these steps now could result in “pre-listing mitigation credits” that could reduce future regulatory burdens on state governments and federal agencies if the greater sage grouse is ultimately listed.

Developing these mitigation programs now, she added, could also help to avoid an ESA listing altogether.

But reaction to the framework was decidedly mixed from the many stakeholders who would be affected by any listing decision.

Randi Spivak, director of the Center for Biological Diversity’s public lands program, credited Fish and Wildlife for setting down “the rules by which all must play in matters pertaining to sage grouse.”

She also noted, “One fair aspect is that the framework gives credits for measures that are truly additional to be taken into account in a listing decision.”

But Spivak added that the framework “has significant weaknesses” and that it’s not enough for FWS to simply state in the document that avoidance of impact is always the preferred strategy in prime grouse habitat.

She said the framework should have included some sort of direction or recommendation

for identifying “an impartial referee” that would “ensure that land managers, regulators and development interests truly exhaust all opportunities for avoidance” before affecting grouse habitat.

“The framework needs to have quantifiable standards for accountability. You can’t have mitigation without accountability,” she said.

There’s also not enough detail about effective mitigation strategies in the framework, said Mark Salvo, director of federal lands conservation for Defenders of Wildlife.

Salvo said in an email that while Defenders concurs with FWS that it’s preferable to “promote compensatory mitigation” prior to impacts, he added that “the document is unclear what that mitigation might be.” He said the framework needed to include more examples of the types of mitigation projects that would work to help the grouse and its dwindling habitat.

“As the Service has recognized in the framework, the first goal of any conservation strategy must be to avoid further habitat loss and degradation,” Salvo said in the email. “This is especially true for sage grouse. Mitigation, while an important form of conservation, isn’t effective where management strategies fail, first and foremost, to protect key sage-grouse habitat.”

The oil and gas industry, which would be significantly affected by any listing decision for the grouse, rejected the framework entirely.

That’s because the mitigation framework is based on faulty science, said Kathleen Sgamma, vice president of government and

public affairs for the Denver-based Western Energy Alliance.

Specifically, Sgamma pointed to a 2013 FWS-commissioned report by a conservation objectives team (COT) composed of state and service officials that outlined rangewide sage grouse conservation objectives, including the identification of priority areas of conservation where grouse protection efforts should be focused.

“We have documented extensively the problems with the COT report -- how it doesn’t meet FWS’s own standards, not to mention basic scientific integrity standards -- yet FWS continues to push policies based on it,” Sgamma said in an emailed statement. “In effect, FWS is telling states, localities, landowners, conservation groups and others trying to implement on-the-ground measures to protect sage grouse that unless it follows FWS’ one-size-fits-all policies, those real conservation efforts will be ignored.”

Ongoing debate

The framework document is the latest in a years long debate over the sage grouse and whether the bird truly needs federal protection.

Fish and Wildlife in 2010 ruled that the greater sage grouse deserves federal protection but that other species took higher priority amid limited resources and placed the bird on a candidate list of species that may be given protections in the future.

Since that time, federal and state leaders have launched what the service acknowledges is an unprecedented effort to save the

greater sage grouse, fearing that an ESA listing would cripple the energy, farming and ranching industries across the West.

But the new guidance for mitigation comes as Fish and Wildlife’s sage grouse evaluation process -- and the Endangered Species Act in general -- have been under increased scrutiny.

Western leaders and energy industry officials have complained for some time that they want more information on the criteria FWS will use to determine whether the conservation measures and policies implemented and in place are enough to protect the grouse and keep it off the endangered species list.

Republicans in July pushed ESA reform legislation through the House aimed at making the process more transparent. Among other things, H.R. 4315 would require federal agencies to publicly release all data used to make listing decisions (E&E Daily, July 30).

The bill is not expected to be approved by the Democratic majority in the Senate.

But Montana Sen. John Walsh (D) in July introduced a bill, S. 2575, that among other things is designed to improve transparency in the federal review process of determining whether the grouse should be listed under ESA (E&E Daily, July 11).

One aim of Walsh’s bill is for states and local landowners to know exactly what criteria Fish and Wildlife will use to determine whether the bird should be listed, allowing states and landowners to tailor conservation efforts to keep the bird off the ESA list.

The bill -- co-sponsored by Sens. Jon Tester (D-Mont.) and Mark Udall (D-Colo.) -- also would require that the Interior Department make "recommendations to Congress for legislative actions that could provide certainty to farmers, ranchers, developers and small businesses and could assist in the conservation of the greater sage-grouse."

Walsh's office said in announcing the bill this summer that it was attempting to push Interior "to lay its cards on the table by making clear the metrics it will use to make a listing decision about the sage grouse." And Udall said in July that the bill "holds the U.S. Fish and Wildlife Service accountable and requires that it approach any Endangered Species Act listing transparently."

The mitigation framework document is meant to address some of those concerns.

"Generally, while mitigation programs can be flexible to accommodate social and economic considerations, it is important that program elements are based on sound science and are linked to conservation objectives in a transparent manner," according to the framework.

Fish and Wildlife, according to the document, "expects mitigation approaches across the range to be flexible and innovative in how unavoidable impacts from development are mitigated," but they should strive to meet a number of goals and objectives.

Among the goals is that they should be "designed to result in net overall positive outcomes for sage-grouse," and that they "should provide economic incentives for private landowners and industry to conserve and restore" grouse and grouse habitat.

"Compensatory mitigation should only be considered if efforts to avoid and minimize the direct effects, indirect effects, and cumulative impacts of a development project have been exhausted or are not possible," according to the framework.