

**ENDANGERED SPECIES:****FWS seeks another 6 months for final decision on Gunnison sage grouse**

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The Fish and Wildlife Service is asking a federal court for a six-month delay in making a final determination whether to list the Gunnison sage grouse as an endangered species, a move that has drawn cheers from Colorado elected leaders who fear the listing could have significant economic impacts.

The service also said in the court filing that it could designate the grouse as threatened, rather than endangered as it proposed last year.

This is the third time in the past year that Fish and Wildlife has pushed back a final decision on the ground-dwelling bird found almost exclusively to southwest Colorado and southeast Utah. FWS first proposed listing the Gunnison sage grouse as endangered in January 2013.

The latest extension request comes exactly one week before Fish and Wildlife was required to make a final listing determination under the terms of a 2011 settlement agreement with WildEarth Guardians stemming from a backlog of species awaiting final listing decisions.

FWS requested the six-month extension in a formal court motion filed late yesterday in the U.S. District Court for the District of Columbia that is not opposed by WildEarth Guardians.

The latest extension would push the deadline back to Nov. 12 from May 12.

It is not clear when U.S. District Judge Emmet Sullivan will make a decision on the request.

WildEarth Guardians is not opposing the latest extension after Fish and Wildlife agreed to some extensive new mitigation measures that will be made in the interim, including increasing buffer zones around sage grouse breeding grounds, called leks, and deferring coal, oil and gas leasing, said Erik Molvar, a wildlife biologist with WildEarth Guardians.

The service has also agreed to update resource management plans across the Gunnison sage grouse's range in Colorado and Utah to include grouse conservation measures. "An overhaul of land management plans is badly needed to halt the species' decline and ensure recovery," Molvar said.

Fish and Wildlife also committed in the court motion not to request another deadline extension.

But in its court motion, attorneys representing the Interior Department and Fish and Wildlife state that the extension could lead to the service designating the grouse as threatened, and not endangered as proposed last year.

While the agencies continue "to diligently work on a final listing determination for the Gunnison sage-grouse," Interior and FWS state in the court motion that "new information received during the public comment period and the peer-review process" over the proposed listing decision could lead the service to "conclude that the Gunnison sage-grouse is not presently in danger of extinction throughout all or a significant portion of its range (endangered), but that it is likely to become endangered throughout all or a significant portion of its range in the foreseeable future (threatened)."

A threatened listing would allow the service to implement a special rule under Section 4(d) of the Endangered Species Act that would provide for regulatory flexibility for oil and gas firms, farmers and ranchers who enroll in approved, voluntary grouse conservation plans. It also could allow for the incidental killing or harming of grouse while carrying out conservation measures in the voluntary agreements.

Fish and Wildlife issued a statement saying it plans to propose a special rule to tailor the "take" prohibitions of the ESA to those necessary and advisable for conservation of the species.

"This time extension will allow for public engagement and comment on that special rule before a final listing determination," the service said in the statement.

Fish and Wildlife applied a special rule in its final decision in March to list the lesser prairie chicken as threatened and not endangered, prompting an angry response from some of the same environmental groups involved in the Gunnison sage grouse agreement.

WildEarth Guardians, Defenders of Wildlife and the Center for Biological Diversity last month filed a 60-day notice of intent to sue the Interior Department to force stronger protections for the bird found in Colorado, Kansas, New Mexico, Oklahoma and Texas, where its native grassland and prairie habitat has declined by 84 percent ([Greenwire](#), April 10).

Molvar made it clear that WildEarth Guardians believes the Gunnison sage grouse deserve an endangered listing, noting dwindling population counts.

Biologists with the Colorado Division of Wildlife have estimated there were 4,400 breeding Gunnison sage grouse in seven separate populations in the state -- with the majority in the Gunnison Basin, home to about 3,800 birds.

"Given the small population size of the Gunnison sage grouse, and the fact that only one population [group] that has more than a couple hundred birds, it's pretty clear to us this is a bird that's tittering on the brink of extinction, and it's obvious to us that an endangered, not a threatened, listing is appropriate," he said.

## **Cheers and jeers**

The decision to request an extension was cheered by Colorado Democratic Sens. Mark Udall and Michael Bennet, as well as Rep. Scott Tipton (R-Colo.), who called the extension request "good news for the state and local conservation efforts currently underway in Colorado to preserve the grouse."

The lawmakers said local government leaders, landowners and other stakeholders have collaborated to develop expanded grassroots efforts to preserve the ground-dwelling bird and its habitat.

The Bureau of Land Management partnered with Colorado as far back as 2005 to establish the Gunnison Sage-grouse Rangewide Conservation Plan, aimed at preserving the bird and its sagebrush steppe habitat. State and county officials also have worked with land trusts to purchase tens of thousands of acres of conservation easements, adopt county land-use restrictions and negotiate voluntary conservation agreements to protect the bird and its habitat.

Udall, Bennet and Tipton sent a [letter](#) last week to FWS Director Dan Ashe asking for a deadline extension to allow more time for "local communities to implement good-faith conservation efforts" for the grouse.

"This is an important issue for communities in western Colorado and it's essential that the agency work with people on the ground to validate and promote local conservation efforts," Bennet said in a statement. "Many of these landowners and local governments have done everything right to preserve the bird, and their work should be recognized in Fish and Wildlife's final decision."

That's why if a "final listing decision were forced now, it would have resulted in years of protracted and counterproductive litigation," Udall said in a statement.

"Today's actions are a win for Colorado and everyone working to save this bird," Udall added.

But the Center for Biological Diversity, which is a party to the settlement agreements with WildEarth Guardians, said the latest extension is a bad move for the grouse, which it says has needed ESA protections for years.

"The Gunnison sage grouse needed protection 14 years ago, not another six-month delay -- and certainly not a delay with the sole purpose of watering down protections," said Amy Atwood, the center's endangered species legal director, in a statement today. "It's well past time for Fish and Wildlife's foot-dragging to end. If the Gunnison sage grouse is to have any chance at survival, it needs firm protections immediately."

## **A long process**

FWS in late 2010 first ruled the Gunnison sage grouse deserves federal protection, but it stopped short of placing the bird on the endangered species list because of a backlog of other worthy species.

Rather, FWS placed the grouse on its list of "candidate species," where regulators review the bird's status every year and make listing changes as warranted, prompting the lawsuits from environmental groups -- and ultimately the 2011 settlement with WildEarth Guardians and CBD to address the backlog.

In January 2013, FWS first proposed listing the Gunnison sage grouse -- the smaller cousin of the greater sage grouse that covers a much larger 11-state range -- as endangered, and also announced that it intends to designate 1.7 million acres within the bird's range across 10 counties in southern Colorado and two counties in Utah as critical habitat for the bird.

As part of the deadline extension, Fish and Wildlife has committed to issue the critical habitat designation along with the endangered or threatened listing decision, an important concession to environmental groups that say the habitat designation is a critical tool to saving the grouse.

"Designation of critical habitat is imperative for Gunnison sage grouse survival, ensuring protection of sensitive breeding and nesting areas key to recovering these rare birds," Bethany Cotton, wildlife program director with WildEarth Guardians, said in a statement.

The 2011 settlement agreements between Fish and Wildlife and the environmental groups give the service the authority to trigger six-month extensions if the agency determines "that there is [a] substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the [final] listing determination [for the species]," according to the court motion.

Those settlement agreements also require Fish and Wildlife to make a final decision whether to list the greater sage grouse by September 2015.

That deadline is not affected by the latest extension, according to the court motion.

But the latest deadline extension request for the Gunnison sage grouse still rubs some environmentalists the wrong way.

Travis Bruner, executive director of the Western Watersheds Project, said in a statement that the latest extension request demonstrates that "political interests reign over conservation at the Service."

"Delaying protection for the bird and its habitat for another six months just to water down protections might suit political interests but it does not suit the sage grouse," he added.