

FWS Takes a Mulligan on Greater Sage-Grouse Listing



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Effectively restarting a contentious listing process, on April 12, 2019, the United States Fish and Wildlife Service [reopened public comment](#) on 2013 proposed rules [listing the Bi-State distinct population segment of greater sage-grouse as threatened with a 4\(d\) rule](#) and [designating critical habitat under the Endangered Species Act \(ESA\)](#). The Service also announced it is initiating a new status review of the Sage-Grouse to determine whether it is endangered or threatened. Potentially affecting mining, utility, agriculture, energy, and other interests, this do-over is the first step towards much-needed certainty on the Sage-Grouse's status under the ESA. The public comment periods close June 11, 2019.

This saga dates back several years. On October 28, 2013, the Service published two proposed rules:

1. Listing the Sage-Grouse as threatened, but providing 4(d) rule exemptions from the take prohibition for certain conservation activities.
2. Designating Sage-Grouse critical habitat along the California and Nevada border.

Eighteen months later, the Service withdrew them, concluding that extensive multi-stakeholder and multi-agency efforts to conserve the Sage-Grouse were working in

lieu of ESA listing. Environmental groups successfully sued, requiring the Service to reverse course and re-propose the rules it previously withdrew.

Now, the Service is again accepting public comment on the 2013 proposed rules and initiating a new status review to determine whether the Sage-Grouse meets the definition of an endangered or threatened species. With a nod to the listing decision's long history, the Service asks the public to provide any newly available information about the species, its habitat, and threats (or the lack thereof). The Service also requests information related to the success of Sage-Grouse conservation efforts and public comment on whether the 4(d) rule should exempt additional activities from the take prohibition.

While this redo will require affected project-proponents to again make certain the Service has the best available information as it makes the Sage-Grouse listing decision, this years-long process may soon reach an end. As mandated by court order, the Service states that it will publish a final listing decision for the Sage-Grouse by October 1, 2019. Whether this date actually brings closure remains to be seen, as the latest proposal is also reevaluating the status of the species and alludes to the potential for additional public comment periods in response to any "significant new scientific information" received.

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