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**Remarks prepared for the Sagebrush Ecosystem Council
January 8, 2014**

**By Fred Fulstone
FIM Corporation
Smith Nevada**

AB 461 Page 3—The secretary of the United States Department of Interior has invited eleven states that may be impacted by the listing of the Greater Sage Grouse as endangered or threatened including Nevada to develop state specific regulatory mechanisms to conserve the species and make such a listing unnecessary. To answer this statement we need immediate action which will show positive results as soon as possible.

To obtain immediate relief of the threatened sage hen this board must come up practical ways to control or remove predators which have been proven to be the main threats to the sage hen.

No.1—Read Dr. Peter Coates complete report on, "Greater Sage-grouse Nest Predators in the Virginia Mountains of Northwestern Nevada", dated September 2013. One sentence of his report, quote "over 80% of the loss of nesting and chicks was due to predation."

No.2—Read enclosed Exhibit 1, Federal Register, August 24, 2000/Proposed Rule. Lower right corner underlined, "up to 50 percent of all sage grouse mortality is caused by predation from both avian (e.g., hawks, eagles, and ravens) and ground (e.g. coyotes, badger, and ground squirrels) predation."

No.3—1. Now look at the "Endangered Species Act of 1973 and see that in Section 4 under the heading of "Determination of Endangered Species and Threatened Species Category. Sec.4(a) General—The Secretary of Interior shall by regulation promulgated in accordance with subsection (b.) determine whether a species is an endangered or threatened species because of any of the following factors.

[C] Disease or predation

[D] The inadequacy of existing regulatory mechanisms

—2. Now look at the same heading under (b) Basis for determination (1)(A) The secretary shall make determinations required by subsection (a)(1) solely on the basis of the best scientific and commercial data available to him after conducting a review of the Status of the species and often taking into account those efforts, if any being made by any state or foreign nation , or any political subdivision of a state or Foreign Nation to protect such species, whether by predator control, protection of

habitat and food supply, or any other conservation practices, within any area under its jurisdiction, or the high seas.

(B) In carrying out this section, the secretary shall give consideration to species which have been---(11)identified as in danger of extinction or likely to become so within the foreseeable future.

The most valuable device the Fish and Game has is the right to protect the sage grouse from other wildlife. This has not been addressed by the Council. It has been proven (by many studies) that other wildlife has been destroying the sage grouse. This problem should be addressed immediately, now before next spring's harvest of little birds. It can be done especially in the more vulnerable areas such as the Bi-State areas, and could prevent listing. The Fish and Game should contact the Wildlife Services immediately and ask for help. They are properly trained to do the job, Senator Harry Reid has already financed seven million dollars for the work. If we can get this done this winter, we can probably save many nests and little chicks for next summer. The predators are just waiting to come in this spring to prey on the new harvest. This could probably save many negative regulations on grazing and mining, which would help our economy. With a little help for the weather, we could have a big turnaround on Sage-grouse numbers.

Just to remind you the State of Nevada and our Federal Government has cut our Wildlife Service and predator control, that is money and on the ground work by ½ in the last few years. This is counterproductive.

If this basic problem of predator control is not solved our protein meat prices will sour in the coming years.

If the bird is listed it would be an economic disaster for the State of Nevada, mining, agriculture, recreation, oil drilling and hunting. All would be targeted and negatively affected.

A handwritten signature in cursive script that reads "Fred Lubstone". The signature is written in black ink and is positioned in the lower-left quadrant of the page.

0 Exhibit #1

and the finding is to be published promptly in the Federal Register. If we find that substantial information was presented, we are required to promptly commence a review of the status of the species involved, if one has not already been initiated under our internal candidate assessment process.

The processing of this petition conforms with our Listing Priority Guidance published in the Federal Register on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. The highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Second priority is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of this 90-day petition finding is a fourth priority, and is being completed in accordance with the current Listing Priority Guidance.

We have made a 90-day finding on a petition to list the western sage grouse (*Centrocercus urophasianus phaios*) in Washington. The petition, dated May 14, 1999, was submitted by the Northwest Ecosystem Alliance and the Biodiversity Legal Foundation, and was received by us on May 28, 1999. The petition requested the listing of western sage grouse in Washington as threatened or endangered. The letter clearly identified itself as a petition and contained the names, signatures, and addresses of the petitioners. Accompanying the petition was supporting information relating to the taxonomy, ecology, and past and present distribution of the species, as well as the threats faced by the western sage grouse in Washington.

The petitioners requested listing for the Washington population of western sage grouse and not the species rangewide. We consider this request appropriate because, although we do not base listing decisions on political subdivisions except international boundaries, we can consider a population of a vertebrate species or subspecies as a listable entity under the Act if the population is recognized as a distinct population segment (DPS) (61 FR 4722). We can also expand the scope of our review of petitions to the species rangewide, should expansion be appropriate based on our knowledge of the available information.

The information regarding the description and natural history of sage grouse, below, has been condensed from the following sources: Aldrich 1963, Johnsgard 1973, Connelly *et al.* 1988, Fischer *et al.* 1993, Drut 1994, Washington Department of Fish and Wildlife (WDFW) 1995, Washington Sage and Columbian Sage Grouse Workshop (WSCSGW) 1996 and 1998, and Schroeder *et al.* 1999a.

Sage grouse, also known as sage fowl, spine-tailed grouse, fool hen, cock-of-the-plains, and sage chicken, are gallinaceous (chicken-like, ground-nesting) birds, and are the largest North American grouse species. Adult males range in size from 68 to 76 centimeters (cm) (26 to 30 inches (in)) and weigh between 2 and 3 kilograms (kg) (4 and 7 pounds (lb)); adult females range in size from 48 to 58 cm (19 to 23 in) and weigh between 1 and 2 kg (2 and 4 lb). Males and females have dark grayish-brown body plumage with many small gray and white speckles, fleshy yellow combs over the eyes, long pointed tails, and dark-green toes. Males also have blackish chin and throat feathers, conspicuous phylloplumes (specialized erectile feathers) at the back of the head and neck, and white feathers around the neck and upper belly forming a ruff. During breeding displays, males also exhibit olive-green apteria (fleshy bare patches of skin) on their breasts.

Sage grouse depend on a variety of shrub steppe habitats throughout their life cycle, and are particularly tied to several species of sagebrush (*Artemisia* spp). Adult sage grouse rely on sagebrush throughout much of the year to provide roosting cover and food, and depend almost exclusively on sagebrush for food during the winter. If shrub cover is not available, they will roost in snow burrows. While average dispersal movements are generally less than 35 kilometers (km) (21 miles (mi)), sage grouse may disperse up to 160 km (100 mi) between seasonal use areas. Sage grouse also exhibit strong site fidelity (loyalty to a particular area), and are capable of dispersing over areas of unsuitable habitat.

A wide variety of forb (any herb plant that is not a grass) species are used as forage by adult sage grouse from spring to early fall, and hens require an abundance of forbs for pre-laying and nesting periods. An assortment of forb and insect species form important nutritional components for chicks during the early stages of development. Sage grouse typically seek out more mesic (moist) habitats that provide greater amounts of succulent forbs and insects during the summer and early fall. Winter habitat use varies based

upon snow accumulations and elevational gradients, and sage grouse likely choose winter habitats based upon forage availability.

During the spring breeding season, male sage grouse gather together and perform courtship displays on areas called leks, primarily during the morning hours just after dawn. Leks consist of patches of bare soil, short grass steppe, windswept ridges, exposed knolls, or other relatively open sites, and they are often surrounded by more dense shrub steppe cover, which is used for roosting or predator evasion during the breeding season. Leks range in size from less than 0.4 hectare (ha) (1 acre (ac)) to over 40 ha (100 ac), contain several to hundreds of males, and are usually situated in areas of high female use. Leks used over many consecutive years (historic leks) are typically larger than, and often surrounded by, smaller and less stable satellite leks. Males defend individual territories within leks and perform elaborate displays with their specialized plumage and vocalizations to attract females for mating. Relatively few, dominant males account for the majority of breeding on a given lek.

After mating, females may move a maximum distance of 36 km (22 mi) depending on the availability of suitable nesting habitat, and typically select nest sites under sagebrush cover. Nests are relatively simple and consist of scrapes on the ground, which are sometimes lined with feathers and vegetation. Clutch sizes range from 8 to 13 eggs, and nest success ranges from 10 to 83 percent. Chicks begin to fly at 2 to 3 weeks of age, and broods remain together for up to 12 weeks. juvenile mortality occurs during nesting and the chicks' flightless stage, and is due primarily to predation or severe weather conditions. Shrub canopy and grass cover provide concealment for sage grouse nests and young, and may be critical for reproductive success.

Sage grouse typically live between 1 and 4 years and have an annual mortality rate of roughly 50 to 55 percent, with females generally having a higher survival rate than males. Up to 50 percent of all sage grouse mortality is caused by predation, from both avian (e.g., hawks, eagles, and ravens) and ground (e.g., coyotes, badgers, and ground squirrels) predators.

Prior to European expansion into western North America, sage grouse (*Centrocercus urophasianus*) were believed to occur in 16 States and 3 Canadian provinces (Schroeder *et al.* 1999a), although their historic status in Kansas and Arizona is unclear (Colorado Sage Grouse Working Group

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page 1

Creative Thinking Helps Predator Control Programs

By AMY TRINIDAD

Sheep Industry News Editor

(July 1, 2013) Within the past year, two state governments passed legislation to assist livestock producers and sportsmen alike with predator issues – mainly with coyotes. Like many states, funding was the leading concern when it came to the predator damage control programs in Utah and South Dakota; however, state legislators teamed up with state agencies and producer groups in a grass roots effort to increase permanent, ongoing funding for these vital programs.

For a number of years, Utah has had a unique partnership with a number of local, county, state and federal agencies to ensure that the livestock industries as well as sportsmen have had adequate predator control. This partnership was between the U.S. Department of Agriculture's (USDA) Wildlife Services (WS), the Utah Department of Agriculture and Food, the Utah Division of Wildlife Resources (DWR) as well as a number of land owners.

"Through this partnership, funding has been the limiting factor," explains Sterling Brown, vice president of public policy for the Utah Farm Bureau Federation. "It is constantly a push-pull battle to gain additional funding for our state's growing demand."

With no to little increases from federal and state appropriations for predator control programs, the private sector was forced to contribute more money; however, it was not enough to meet the demand of the programs.

"In recent years, there has been a growing feeling that we need to be more aggressive in finding additional funding to meet the predator demands," says Brown, explaining that several rural Utah Farm Bureau members got together and developed an idea of increasing Utah hunting permits to raise more money for predator control programs. Over time, Utah Farm Bureau, sportsman groups and the legislature agreed to a \$5 increase.

"Hunters obviously have a lot at stake when it comes to predators. The deer population in recent years has declined for a number of reasons. One of those reasons is the increase in predators, particularly that of coyotes on the fawn populations," explains Brown. "The hunting community has been scrambling to find the best options to reduce predators and let the deer population increase."

This idea of increasing big game hunting permits gained traction in 2012 when Sen. David Hinkins from Orangeville sponsored S.B. 87 Predator Control Funding. This bill

called for an additional \$5 to be added to hunting licenses specifically for the Predator Control Restrict Account and used by the DWR to fund a predator control program of predatory animals. This fee is expected to generate \$600,000 for the coyote bounty program.

At the same time, another piece of legislation was passed by the Utah state legislature – S.B. 245 or the Mule Deer Protection Act – which allocates a total of \$750,000 of ongoing funding for the state’s predator control programs. As part of this funding, the DWR implemented a new predator control program that provides incentives for members of the public to remove coyotes. Participants in this program can receive \$50 for each properly documented coyote that is killed in Utah. Although this program is designed to benefit mule deer populations by targeting coyotes, it comes as a benefit to the livestock industry as livestock and deer share many of the same lands in Utah.

Sponsored by Sen. Ralph Okerlund of Monroe, Utah, this bill allocates \$250,000 to the DWR to combat predators that prey specifically on deer herds, \$250,000 to USDA/WS for aerial predator control and the remaining \$250,000 will be allocated to the Utah Department of Agricultural and Food to increase funding for the existing coyote bounty program.

According to John Shivik, mammals coordinator with the DWR, 6,724 coyotes have been turned in from September (the date when the agency starting payments) until mid-May which he says is in line with the DWR’s expectations.

“Based on the sheer magnitude of the number of coyotes checked in, the program is running rather smoothly,” says Shivik, explaining that it is too early to tell if the program is having any impact. The DWR will be looking at the locations of where the coyotes were killed and comparing that data with mule deer populations to see if progress is being made; however, Shivik says that will take a few years to sort out.

Talking about all the new funding for the state’s predator control programs, Brown says, “We feel like 2012 was a banner year to help sportsmen and livestock producers combat predators. So far we fill optimistic that we are on the right footing here and setting the stage of a brighter future for these groups.”

Those at the Utah Wool Growers Association concur. Matt Mickel, treasurer of the organization, says, “The Utah Wool Growers are thankful that the state legislature stepped up in good faith to help with our depredation issues from coyotes. We are thrilled to hear that many coyotes are being taken.”

Further to the northeast, members of the South Dakota state legislature this year passed an act to increase the surcharge on certain hunting licenses for predator control purposes, approve temporary funding provisions relating to predator control and to declare depredation an emergency.

"We are just being run over by coyotes and our predator boards were just flat out of money," relays Rep. Betty Olson of Prairie City, who operates a ranch with her husband and introduced the legislation.

In South Dakota, a combination of county government, state and USDA funds, in addition to private funds collected through predator districts, are used to help manage depredation. According to Max Matthews, president of the South Dakota Sheep Growers Association, funding for the animal damage control program in South Dakota was cut in 2007 which led to the elimination of the aerial hunting program and a couple trappers.

"This reduction to the animal damage control program could not have come at a worse time," he explains. "The mange that had been hitting the coyotes was on the decline. As a result, the coyote numbers across the state were increasing at an alarming rate. The state trappers had too much area to cover and not enough time allocated to the program to be able to manage the coyote population."

In the past few years, aerial hunting has returned to South Dakota through WS and although this has helped manage the coyote population, Matthews says their numbers are still increasing resulting in more dollars lost to the livestock industry.

This new legislation to help manage the coyote population, which was signed into law on March 25, went into effect on July 1 and increases the surcharge on certain hunting licenses from \$5 to \$6, in other words, raises the fee of hunting licenses by \$1. Olson explains that the original \$5 fee is deposited in a special fund known as the South Dakota sportsmen's access and landowner depredation fund which deals with situations like deer in hay fields and geese in corn fields. However, the additional dollar will only be used for animal damage control programs such as increasing aerial hunting and reimbursing trappers.

"Although the legislation was scheduled to go into effect July 1, livestock producers needed the help immediately so we wrote a cash transfer clause into the bill. We borrowed \$160,000 from the Department of Game, Fish and Parks to fill in the time gap," Olson explains.

These funds will be repaid with interest based on the cash flow fund rate no later than June 30, 2014.

"We figured with the new revenue coming in, it should more than cover the loan by next year in addition to funding the program," Olson relays, saying the program should bring in around \$200,000 a year.

"The increase in funding should return the animal damage control program back to where it was six years ago," explains Matthews. "Controlling the coyote population

to a manageable number can only be done through the funding of an effective animal damage control program. Without the funding, the predation to livestock and wildlife cannot be controlled.”

As was the case in Utah, this legislation was seen as favorable by a majority of the sportsmen’s groups. South Dakota had also seen a decrease in wildlife due to the number of predators.

Olson worked on a number of pieces of legislation to assist livestock producers this year including:

- **S.B. 205 adds the wolf to a list of predators in South Dakota as soon as they are taken off the endangered species list. Olson explains that the wolf is considered endangered in the western side of the state, but not in the eastern side. The Missouri River marks the dividing line. Therefore, as of July 1, wolves were considered predators on the east side of the Missouri River; however, they remain protected until delisted on the western side of the river.**
- **Due to the fact that local predator control districts are strapped for cash, H.B. 1168 authorizes county commissions to increase their predator-control levies on sheep and cattle; however, Olson says this legislation must be passed by 51 percent of the livestock producers in the district in order to take effect.**
- **H.B. 1167 restructures the policy advisory committee for animal damage control. As it stands currently only the animal damage control supervisor, the secretary of Game, Fish and Parks and the secretary of agriculture are the only three on this committee, which hadn’t been active since 2010. This bill that was passed adds a member from USDA/WS, the South Dakota Sheep Growers Association, the South Dakota Cattlemen Association, the South Dakota Stock Growers Association, the South Dakota Farmers Union, the South Dakota Farm Bureau and the South Dakota Wildlife Federation and requires the group to meet at least once per year.**
- **H.B. 1083 revised the crime of rustling to include sheep and goats.**

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USFWS Meeting of 12-3-13
Bridgeport, California
Fred Fulstone presentation

The one thing I have noticed at all of the Sagebrush Ecosystem Council, BLM, FS, and Bi-State meetings, is there is practically nothing said about predation on sage hen or predation and prey. Understanding the real depredation on sage hen is the most important [No.1] issue that should be considered and studied, if you are going to increase the sage hen numbers. Today we have coyotes, badgers, ground squirrels, hawks, eagles and ravens that will eat sage hen. Except in the years from 1950 to 1980 when we had an abundant use of trappers and a predation program that controlled the predators on the wildlife. Those years we had thousands of sage hen, deer, and other wildlife everywhere. Just look at NDOW's records. The U.S. Government's "Wildlife Service" in co-ordination with the State Government and sheep permittees, was the most important agency which controlled the predators [avian and ground], from 1950 to 1980, which in turn created thousands of wildlife during those years. The sheep producers were taxed then and are taxed now to help control the predators. At that time, I might mention, that there were many more livestock on the Federal ranges, and still ample habitat for the wildlife especially the sage hen. In 1972 government trappers were cut, and severe regulations were put on trapping. From 1980 up to now, sage hen numbers have leveled off. Government trappers just lately have been cut in half. This is counterproductive. Please look at the Federal Register paper included here number 51579. The following is what USFWS said about

predators in the year 2000. [Look at 51579 bottom right.] Most juvenile mortality occurs during nesting and the flightless chick stage, and is due primarily to predation, or severe weather conditions. Sage grouse typically live between 1 and 4 years and have an annual mortality rate of roughly 50 to 55%, with females generally having a higher survival rate than males. Up to 50% of all sage grouse mortality is caused by predation, from both avian [e.g. hawks, eagles, and ravens,] and ground [e.g., coyotes, badgers, and ground squirrels] predators. Improving all the meadows and habitat won't do any good because you won't have baby chicks to put there if you don't control predators, both avian and ground. I've noticed in the fish and game hatcheries that they have a wire netting cover over the bird hatchery until they can fly. They want to save the eggs and young birds from avian predators. On the open range predator removal is the most efficient management strategy to increase sage grouse numbers. Also, hunting permits should not be issued if the USFWS thinks they are at risk. Cal. And Nev. Fish and Game have continued to issue hunting permits even though they have said the birds[sage grouse] numbers were on the downward side.


Fred Fulstone

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Sage grouse, also known as sage fowl, spine-tailed grouse, fool hen, cock-of-the-plains, and sage chicken, are gallinaceous (chicken-like, ground-nesting) birds, and are the largest North American grouse species. Adult males range in size from 66 to 76 centimeters (cm) (26 to 30 inches (in)) and weigh between 2 and 3 kilograms (kg) (4 and 7 pounds (lb)); adult females range in size from 48 to 58 cm (19 to 23 in) and weigh between 1 and 2 kg (2 and 4 lb). Males and females have dark grayish-brown body plumage with many small gray and white speckles, fleshy yellow combs over the eyes, long pointed tails, and dark-green toes. Males also have blackish chin and throat feathers, conspicuous phylloplumes (specialized erectile feathers) at the back of the head and neck, and white feathers around the neck and upper belly forming a ruff. During breeding displays, males also exhibit olive-green apteria (fleshy bare patches of skin) on their breasts.

Sage grouse depend on a variety of shrub steppe habitats throughout their life cycle, and are particularly tied to several species of sagebrush (*Artemisia* spp.). Adult sage grouse rely on sagebrush throughout much of the year to provide roosting cover and food, and depend almost exclusively on sagebrush for food during the winter. If shrub cover is not available, they will roost in snow burrows. While average dispersal movements are generally less than 35 kilometers (km) (21 miles (mi)), sage grouse may disperse up to 160 km (100 mi) between seasonal use areas. Sage grouse also exhibit strong site fidelity (loyalty to a particular area), and are capable of dispersing over areas of unsuitable habitat.

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upon snow accumulations and elevational gradients, and sage grouse likely choose winter habitats based upon forage availability.

During the spring breeding season, male sage grouse gather together and perform courtship displays on areas called leks, primarily during the morning hours just after dawn. Leks consist of patches of bare soil, short grass steppe, windswept ridges, exposed knolls, or other relatively open sites, and they are often surrounded by more dense shrub steppe cover, which is used for roosting or predator evasion during the breeding season. Leks range in size from less than 0.4 hectare (ha) (1 acre (ac)) to over 40 ha (100 ac), contain several to hundreds of males, and are usually situated in areas of high female use. Leks used over many consecutive years (historic leks) are typically larger than, and often surrounded by, smaller and less stable satellite leks. Males defend individual territories within leks and perform elaborate displays with their specialized plumage and vocalizations to attract females for mating. Relatively few, dominant males account for the majority of breeding on a given lek.

After mating, females may move a maximum distance of 36 km (22 mi) depending on the availability of suitable nesting habitat, and typically select nest sites under sagebrush cover. Nests are relatively simple and consist of scrapes on the ground, which are sometimes lined with feathers and vegetation. Clutch sizes range from 6 to 13 eggs, and nest success ranges from 10 to 63 percent. Chicks begin to fly at 2 to 3 weeks of age, and broods remain together for up to 12 weeks. Most juvenile mortality occurs during nesting and the chicks' flightless stage, and is due primarily to predation or severe weather conditions. Shrub canopy and grass cover provide concealment for sage grouse nests and young, and may be critical for reproductive success.

Sage grouse typically live between 1 and 4 years and have an annual mortality rate of roughly 50 to 55 percent, with females generally having a higher survival rate than males. Up to 50 percent of all sage grouse mortality is caused by predation, from both avian (e.g., hawks, eagles, and ravens) and ground (e.g., coyotes, badgers, and ground squirrels) predators.

Prior to European expansion into western North America, sage grouse (*Centrocercus urophasianus*) were believed to occur in 16 States and 3 Canadian provinces (Schroeder *et al.* 1999a), although their historic status in Kansas and Arizona is unclear (Colorado Sage Grouse Working Group

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To governor Conrad

November 18, 2013
Submitted by Fred Fulstone

All the agencies are planning for management of what the Endangered Species act calls a Distinct Population Segment. As federal agencies, you are required to demonstrate that you are in compliance with the ESA by documenting that you are using the best available scientific and commercial data. You are also required to demonstrate how this bird is a DPS in accordance with the federal standards of discreteness and significance as defined by the ESA and subsequent policy. No proof of this. USFWS must do a nuclear DNA to clean this.

This bird is not endangered; there are thousands of them all over the Western United States. They are trying to make a big political deal out of this bird, just like they did by listing the Bighorn Sheep in the Sierras and removed all access to public lands. The sage grouse has already cost us four hundred million dollars and will cost us a billion or more.

Just think what good is this bird? It doesn't provide any of the basic needs of mankind.

All we have to do is to turn this sage hen situation over to the Wildlife Service, who would control the predators which would increase sage grouse numbers. It's been proven.

Please look at the Federal Register paper included here (dated August 24, 2000, third column underlined) page No. 51579. The following is what USFWS said about predators on sage grouse in the year 2000. It is still true today. Most juvenile mortality occurs during nesting and the flightless chick stage, and is due primarily to predation or severe weather conditions. Sage grouse typically lives between 1 and 4 years and have an annual mortality rate of roughly 50 to 55 percent with females generally having a higher survival rate than males. Up to 50 percent of all sage grouse mortality is caused by predation from both avian (e.g.

Hawks eagles and ravens) and ground (e.g. coyotes, badgers, and ground squirrels) predators.

A couple of days ago I was questioning a few of the people who live within a few feet of the big leks on the Desert Creek Area. They told me every spring, about hatching time the ravens and other avian predators swarm in by the hundreds for the big fiesta. They are flying over their houses morning and afternoon. Most of the people think the birds (sage grouse) are just holding their own, but need protection from predators. Some said the birds (sage grouse) come right into their patios and back yards. They think they are trying to get away from predators. They said they could hear their funny noises when they were matting on the leks. One girl said when her father lived there back in the 1970's there was thousands of sage hen. That was the time when we had good predator control, also we didn't have too many raven then.

If we list these birds it will be committing economical suicide for the west, 90 percent if public lands are located in 10 Western States.

If Ted Kock is forced to list the bird in the Bi-State area it will be destroying agriculture, mining, energy, and recreation in this area. This is discrimination and illegal. This whole thing is ridiculous, spending billions of dollars and time over a bird that gives no benefit to mankind. The Endangered Species Act must be repealed or amended or it will destroy the USA.

It was just said that Obama will have a National listing of Sage Hen of all 11 Western States.

and the finding is to be published promptly in the Federal Register. If we find that substantial information was presented, we are required to promptly commence a review of the status of the species involved, if one has not already been initiated under our internal candidate assessment process.

The processing of this petition conforms with our Listing Priority Guidance published in the Federal Register on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. The highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Second priority is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of this 90-day petition finding is a fourth priority, and is being completed in accordance with the current Listing Priority Guidance.

We have made a 90-day finding on a petition to list the western sage grouse (*Centrocercus urophasianus phaios*) in Washington. The petition, dated May 14, 1999, was submitted by the Northwest Ecosystem Alliance and the Biodiversity Legal Foundation, and was received by us on May 28, 1999. The petition requested the listing of western sage grouse in Washington as threatened or endangered. The letter clearly identified itself as a petition and contained the names, signatures, and addresses of the petitioners. Accompanying the petition was supporting information relating to the taxonomy, ecology, and past and present distribution of the species, as well as the threats faced by the western sage grouse in Washington.

The petitioners requested listing for the Washington population of western sage grouse and not the species range-wide. We consider this request appropriate because, although we do not base listing decisions on political subdivisions except international boundaries, we can consider a population of a vertebrate species or subspecies as a listable entity under the Act if the population is recognized as a distinct population segment (DPS) (61 FR 4722). We can also expand the scope of our review of petitions to the species range-wide, should expansion be appropriate based on our knowledge of the available information.

The information regarding the description and natural history of sage grouse, below, has been condensed from the following sources: Aldrich 1963, Johnsgard 1973, Connelly *et al.* 1988, Fischer *et al.* 1993, Drut 1994, Washington Department of Fish and Wildlife (WDFW) 1995, Washington Sage and Columbian Sage Grouse Workshop (WSCSGW) 1996 and 1998, and Schroeder *et al.* 1999a.

Sage grouse, also known as sage fowl, spine-tailed grouse, fool hen, cock-of-the-plains, and sage chicken, are gallinaceous (chicken-like, ground-nesting) birds, and are the largest North American grouse species. Adult males range in size from 66 to 76 centimeters (cm) (26 to 30 inches (in)) and weigh between 2 and 3 kilograms (kg) (4 and 7 pounds (lb)); adult females range in size from 48 to 58 cm (19 to 23 in) and weigh between 1 and 2 kg (2 and 4 lb). Males and females have dark grayish-brown body plumage with many small gray and white speckles, fleshy yellow combs over the eyes, long pointed tails, and dark-green toes. Males also have blackish chin and throat feathers, conspicuous phylloplumes (specialized erectile feathers) at the back of the head and neck, and white feathers around the neck and upper belly forming a ruff. During breeding displays, males also exhibit olive-green apteria (fleshy bare patches of skin) on their breasts.

Sage grouse depend on a variety of shrub steppe habitats throughout their life cycle, and are particularly tied to several species of sagebrush (*Artemisia* spp). Adult sage grouse rely on sagebrush throughout much of the year to provide roosting cover and food, and depend almost exclusively on sagebrush for food during the winter. If shrub cover is not available, they will roost in snow burrows. While average dispersal movements are generally less than 35 kilometers (km) (21 miles (mi)), sage grouse may disperse up to 160 km (100 mi) between seasonal use areas. Sage grouse also exhibit strong site fidelity (loyalty to a particular area), and are capable of dispersing over areas of unsuitable habitat.

A wide variety of forb (any herb plant that is not a grass) species are used as forage by adult sage grouse from spring to early fall, and hens require an abundance of forbs for pre-laying and nesting periods. An assortment of forb and insect species form important nutritional components for chicks during the early stages of development. Sage grouse typically seek out more mesic (moist) habitats that provide greater amounts of succulent forbs and insects during the summer and early fall. Winter habitat use varies based

upon snow accumulations and elevational gradients, and sage grouse likely choose winter habitats based upon forage availability.

During the spring breeding season, male sage grouse gather together and perform courtship displays on areas called leks, primarily during the morning hours just after dawn. Leks consist of patches of bare soil, short grass steppe, windswept ridges, exposed knolls, or other relatively open sites, and they are often surrounded by more dense shrub steppe cover, which is used for roosting or predator evasion during the breeding season. Leks range in size from less than 0.4 hectare (ha) (1 acre (ac)) to over 40 ha (100 ac), contain several to hundreds of males, and are usually situated in areas of high female use. Leks used over many consecutive years (historic leks) are typically larger than, and often surrounded by, smaller and less stable satellite leks. Males defend individual territories within leks and perform elaborate displays with their specialized plumage and vocalizations to attract females for mating. Relatively few, dominant males account for the majority of breeding on a given lek.

After mating, females may move a maximum distance of 36 km (22 mi) depending on the availability of suitable nesting habitat, and typically select nest sites under sagebrush cover. Nests are relatively simple and consist of scrapes on the ground, which are sometimes lined with feathers and vegetation. Clutch sizes range from 6 to 13 eggs, and nest success ranges from 10 to 63 percent. Chicks begin to fly at 2 to 3 weeks of age, and broods remain together for up to 12 weeks. Most juvenile mortality occurs during nesting and the chicks' flightless stage, and is due primarily to predation or severe weather conditions. Shrub canopy and grass cover provide concealment for sage grouse nests and young, and may be critical for reproductive success.

Sage grouse typically live between 1 and 4 years and have an annual mortality rate of roughly 50 to 55 percent, with females generally having a higher survival rate than males. Up to 50 percent of all sage grouse mortality is caused by predation, from both avian (e.g., hawks, eagles, and ravens) and ground (e.g., coyotes, badgers, and ground squirrels) predators.

Prior to European expansion into western North America, sage grouse (*Centrocercus urophasianus*) were believed to occur in 16 States and 3 Canadian provinces (Schroeder *et al.* 1999a), although their historic status in Kansas and Arizona is unclear (Colorado Sage Grouse Working Group

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April 28, 2004

TO: Director, U.S. Fish and Wildlife Service
Assistant Director, Endangered Species, USFWS
Regional Directors, USFV/S

FROM: Assistant Secretary for Fish and Wildlife and Parks

SUBJECT: Endangered Species Guidance Letter No. 2, Critical Habitat

Critical Habitat

A. Generally:

Habitat loss is one of the key factors in the decline of species to threatened or endangered status. Habitat is necessary for species to thrive and survive and not become extinct.

The Endangered Species Act sets up an essentially legal construct called critical habitat. This legal process should not be confused with the creation of actual habitat that can be observed and in which species can live. "Critical habitat" is a legal and administrative exercise that adds very little additional conservation benefit to a listed species. At the same time, it creates a tremendous social and economic disruption to the communities that are affected.

Although there are superior methods by which to conserve habitat for species, the designation of critical habitat must be founded on the best available science, an accurate assessment and characterization of existing management and protection measures, and a sound economic analysis. Where there is no data available, or the available data is flawed, speculation must not be substituted. In light of the limited value of critical habitat designations in conservation terms, and the significant costs to society at large, critical habitat designations must be no greater than the habitat identified as essential to the conservation of the species.

B. Important Points:

"Critical habitat" as defined in the Act, will be designated for each species at the time of the listing, except where not prudent or not determinable. Habitat, as that term is used in conservation biology, is indispensable to the continued existence of species. But, critical habitat designations are only a small element of our nation's conservation strategy and arguably, the most costly. Accordingly, designations should not detract from other conservation efforts that provide greater species benefits. The Service's critical habitat designations must be based on the best available data and accurate, complete

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economic analyses. [Economic analyses must be consistent with OMB guidelines. Further guidance on economic analysis is forthcoming.] Critical habitat designations must not be based on speculation or determinations that lack supporting data.

Do not designate critical habitat where existing management or protection measures adequately conserve essential habitat and those measures are likely to continue for the foreseeable future. Protected lands such as state and national parks, wildlife refuges, national forests, etc., are examples of areas that may not need special management or protection.

Designate unoccupied habitat only when occupied habitat is insufficient to provide the limited additional conservation benefit of critical habitat.

The information provided to the Secretary for the relative benefit assessment provided for under section 4(b) (2) of the Act, must be as rigorous as the biological analysis.

Areas covered by a completed Habitat Conservation Plan generally do not meet the definition of critical habitat in section 3(5) (A) for those species whose habitat is conserved by the HCP, whether or not the species is a "covered species" in the HCP.

Pending HCPs are to be considered for exclusion under section 4(b) (2).

Military lands covered by an Integrated Natural Resources Management Plan (INRMP) are not designated critical habitat if the INRMP provides a benefit for the species for which the critical habitat is proposed.

When considering other military lands for exclusion under section 4(b) (2), defer to the military's analysis of national security and military operational and training needs.

When considering state managed or tribal lands, defer to state and tribal assessment of management and protection measures in the absence of contrary evidence.

Working with landowners, local governments, states, and tribes on a voluntary partnership basis often provides conservation benefits superior to the designation of critical habitat.

The "precautionary principle" is not used as a scientific tool in our critical habitat designations. Policymakers may weigh precautionary approaches in the context of risk-based management decisions.

Complete and accurate administrative records are essential to the process of critical habitat designations.

Detailed guidance is contained in the Draft Interim Critical Habitat Guidance dated April 30, 2004. This guidance compiles, in a single document, instructions that have been applied on an ad hoc basis during the last two years. Staff should relay comments and suggestions through their supervisors as they use the guidance. The guidance will be revised based on staff and other comments, experience, and suggestions after there has been an opportunity to apply the guidance.

Supreme Court
Decision
by: Judge Scalia

Washington

PATRICIA PEAK KLINTBERG, Farm Journal Washington Editor

To cut taxes or not to cut



USDA analysis shows farmers pay capital gains taxes three times more often than other taxpayers and estate taxes six times more often

Paying for cuts is the kicker

The new found civility between Republicans and Democrats will be sorely tested by the debate about tax cuts and how to pay for them. Both parties acknowledge that estate and capital gains taxes create economic distortions in agriculture.

A USDA analysis shows farmers pay capital gains taxes three times more often than other taxpayers and estate taxes six times more often. Yet the administration proposes capital gains tax relief for home sales only—which is more gesture than substance since strategies already exist to avoid capital gains taxes on homes. Likewise, the proposed estate tax change just gives heirs extra time to pay off Uncle Sam.

However, there is increasing interest in a solution that both parties may embrace: indexing the estate tax exemption and capital gains taxes for inflation.

Consider that the \$600,000 estate tax exemption, effective since 1987, would be \$1 million today if it had been indexed. Look at what happens to the capital gains tax on an acre of land purchased in 1966 for \$158 and sold in 1996 for \$890: if indexed, the tax is \$47/acre, if not, it's \$205/acre, says USDA Chief Economist Keith Collins.

Indexing won't fly unless Congress can pay for it. Since discretionary federal spending amounts to about one-third of the total budget, it will be tough to scrape up enough to offset tax cuts. That's why there is talk of "correcting" the Consumer Price Index (CPI), thought to overstate inflation by 1.1%. Used to set cost-of-

living increases, a mere 1% cut in the CPI saves \$141 billion over five years.

Civil rights gripes breed more bureaucracy

It is hard to believe that a farmer seeking information about programs could be denied timely help at the county level. For farmers to whom this has happened, it is even harder to prove.

After listening to minority and low-income producers, Agriculture Secretary Dan Glickman is convinced "the structure by which we implement agricultural programs is not accountable." Yet his solution to federalize Farm Service Agency (FSA) employees so they are no longer accountable to farmer-elected county committees promises more bureaucracy, not more accountability.

He would appoint two members of each county committee to reflect racial and sexual diversity, and create civil rights complaint offices in every agency.

Meantime, USDA's own inspector general found the present civil rights office far from a model. It had 241 complaints backlogged. Of the 151 cases dealing with credit, 73 complain of being denied loans due to discrimination. Yet producers were dealing with then-federal Farmer's Home Administration employees.

Property rights victory

In a major victory for property rights advocates, the U.S. Supreme Court handed down a unanimous decision that landowners have the right to contest enforcement of the Environmental Species Act (ESA) if it causes

adverse economic impact.

The case involved a group of Oregon farmers and ranchers who sued the U.S. Fish and Wildlife Service after the agency diverted irrigation water to maintain minimum water levels for two species of fish, causing the farmers and ranchers to sustain crop and livestock losses. The Ninth Circuit Court of Appeals ruled against the landowners.

In the Supreme Court decision, Judge Antonin Scalia writes: "The obvious purpose of the requirement that each agency 'use the best scientific and commercial data available' is to ensure that the ESA not be implemented haphazardly on the basis of speculation or surmise. While this no doubt serves to advance the ESA's overall goal of species preservation, we think it readily apparent that another objective... is to avoid needless economic dislocation produced by agency officials pursuing their environmental objectives."

Limited CRP extension?

Rep. Jerry Moran (R., Kan.) proposed legislation to allow current Conservation Reserve Program (CRP) contractors who bid and are denied entry into the new CRP a one-year extension. He reasons that if producers don't know if they are in or out until June, preparing grass for wheat planting in September will be difficult.

USDA acknowledges the problem but may support an extension shorter than one year for winter crops only. The new lower rental rates would apply. *FJ*

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