(vi) Sensitive security information, as defined at 49 U.S.C. 40119 and 49 CFR 15.5.

(3) Nothing in this section shall be interpreted as preventing the Administrator from releasing to the respondent information in addition to that which is contained in the releasable portion of the EIR. Likewise, nothing in this section shall be interpreted as preventing the Administrator from releasing to the respondent a copy of the EIR prior to the issuance of the Administrator’s complaint.

Deborah A.P. Hersman,
Acting Chairman.

[FR Doc. 2013–22633 Filed 9–18–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service

50 CFR Part 17


RIN 1018–AZ20; RIN 1018–AX71


AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period; announcement of public hearings; notice of availability of supplementary documents.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment periods on our January 11, 2013, proposed rules to list the Gunnison sage-grouse (Centrocercus minimus) as endangered and to designate critical habitat for the species under the Endangered Species Act of 1973, as amended (Act). For the proposed designation of critical habitat for the Gunnison sage-grouse, we also announce the availability of a draft economic analysis (DEA), a draft environmental assessment (EA), and an amended required determinations section. In addition, we announce two public informational sessions and public hearings for both the proposed listing and proposed critical habitat, and we provide information on several conservation efforts that may be considered in our final determinations. We are reopening the comment periods to allow all interested parties an additional opportunity to comment on the proposed listing and the proposed designation of critical habitat, and to comment on the proposed critical habitat’s associated DEA, draft EA, and amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rules.

DATES: Comment submission: We will consider comments received or postmarked on or before October 19, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see ADDRESSES section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public informational sessions and public hearings: We will hold two public informational sessions followed by public hearings on the following dates:

- October 7, 2013, from 4:00–9:00 p.m., including an information session from 4:00–5:00 p.m., a break, and a public hearing from 6:00–9:00 p.m.; and
- October 8, 2013, from 4:00–9:00 p.m., including an information session from 4:00–5:00 p.m., a break, and a public hearing from 6:00–9:00 p.m.

See the ADDRESSES section, below, for information on where these public informational sessions and public hearings will be held.

ADDRESSES: Document availability: You may obtain copies of the January 11, 2013, proposed rules on the Internet at http://www.regulations.gov or by contacting the Western Colorado Field Office, as soon as possible (see FOR FURTHER INFORMATION CONTACT).

FOR FURTHER INFORMATION CONTACT: Patty Gelatt, Western Colorado Supervisor, Western Colorado Field Office, as soon as possible (see FOR FURTHER INFORMATION CONTACT).

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on our January 11, 2013, proposed rules to list the Gunnison sage-grouse that published in the Federal Register on January 11, 2013 (78 FR 2456); (2) our proposed designation of critical habitat for the Gunnison sage-grouse that published in the Federal Register on January 11, 2013 (78 FR 2460).
The species and its habitat.

We request comments specifically on the critical habitat designation and draft EA under Docket No. FWS–R6–ES–2012–0111.

We request comments specifically on the critical habitat designation under Docket No. FWS–R6–ES–2011–0108.

We request comments specifically on the critical habitat designation and draft EA under Docket No. FWS–R6–ES–2011–0111.

We are particularly interested in comments concerning:

1. The species’ biology, range, and population trends, including:
   a. Habitat requirements for feeding, breeding, and sheltering.
   b. Genetics and taxonomy.
   c. Historical and current range, including distribution patterns.
   d. Historical and current population levels, and current and projected trends; and
   e. Past and ongoing conservation measures for the species, its habitat, or both.

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. 1531 et seq.), 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 species.

4. Existing regulations that may be addressing threats to this species.

5. Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

6. Any information on the biological or ecological requirements of the species and ongoing conservation measures for the species and its habitat.

7. Why we should or should not designate habitat as “critical habitat” under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threats outweighs the benefit of designation such that the designation of critical habitat is not prudent.

8. With respect to the proposed designation of critical habitat, specific information on:
   a. The amount and distribution of Gunnison sage-grouse habitat;
   b. What may constitute physical or biological features essential to the conservation of the species’ within the geographical range currently occupied by the species;
   c. Where these features are currently found;
   d. Whether any of these features may require special management considerations or protection;
   e. What areas, that were occupied at the time of listing (or, in this case, are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

9. Land use designations and current or planned activities in the areas occupied by the species or proposed to be designated as critical habitat, and possible impacts of these activities on this species and proposed critical habitat.

10. Information on the projected and reasonably likely impacts of climate change on the Gunnison sage-grouse and proposed critical habitat.

11. With respect to the proposed designation of critical habitat, any foreseeable economic, national security, or other relevant impacts that may result from designating any areas that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

12. Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and particularly whether the benefits of potentially excluding any specific area outweigh the benefits of including that area as set forth in section 4(b)(2) of the Act. For instance, should the proposed designation exclude properties currently enrolled in the Gunnison sage-grouse collective conservation agreement with assurances, properties under conservation easement, or properties held by conservation organizations, and why?

13. Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

14. Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

15. The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

We are also interested in comments concerning the topics raised in our July 19, 2013, Federal Register notice (78 FR 43123) announcing the extension of the timeline for issuing final determinations on the listing and critical habitat for the Gunnison sage-grouse due to scientific disagreement, which include:

1. Whether we have appropriately interpreted the scientific studies cited in the proposed rule, and whether there is additional scientific information we may have overlooked;

2. Gunnison sage-grouse population trends in each population area;

3. The scope and effectiveness of regulatory mechanisms enacted by Gunnison County to address threats to the Gunnison sage-grouse;

4. Projections for future residential development and human population growth within the Gunnison sage-grouse’s range in the Gunnison Basin, including portions of Gunnison and Saguache Counties; and

5. What constitutes historical habitat and important current habitat for the species.

If you submitted comments or information on the proposed listing rule (78 FR 2486) or proposed designation of critical habitat (78 FR 2540) during their initial comment period from January 11, 2013, to April 2, 2013, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determinations. Similarly, if you have already submitted comments or information on either proposed rule in response to the July 19, 2013, announcement of extension of the timeline for making final determinations due to scientific disagreement (78 FR 43123), please do not resubmit them. We will incorporate them into the
public record as part of this comment period, and we will fully consider them in the preparation of our final determinations. Our final determinations concerning listing and critical habitat will take into consideration all written comments and any additional information we receive during all comment periods. On the basis of public comments, we may, during the development of our final determination, revise our proposed listing and/or find that areas proposed as critical habitat are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rules, DEA, draft EA, or amended required determinations section by one of the methods listed in the ADDRESSES section. We request that you send comments only by the methods described in the ADDRESSES section.

If you submit a comment via http://www.regulations.gov, your entire comment—including any personal identifying information—will be posted on the Web site. 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. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rules, DEA, draft EA, an amended required determinations section will be available for public inspection on http://www.regulations.gov at Docket No. FWS–R6–ES–2012–0108 and Docket No. FWS–R6–ES–2011–0111, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Western Colorado Field Office (see FOR FURTHER INFORMATION CONTACT).

You may obtain copies of the proposed listing rule on the Internet at http://www.regulations.gov at Docket Number FWS–R6–ES–2012–0108, and the proposed designation of critical habitat, DEA, and draft EA on the Internet at http://www.regulations.gov at Docket No. FWS–R6–ES–2011–0111. Alternatively, you may obtain a copy of either proposed rule, the draft economic analysis, or the draft environmental assessment by mail from the Western Colorado Field Office (see FOR FURTHER INFORMATION CONTACT).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Gunnison sage-grouse and several ongoing conservation efforts for the Gunnison sage-grouse in the remainder of this document. For more information on the Gunnison sage-grouse and its habitat, or additional information on previous Federal actions concerning the Gunnison sage-grouse prior to January 11, 2013, refer to the proposed listing rule published in the Federal Register on January 11, 2013 (78 FR 2486), which is available online at http://www.regulations.gov (at Docket Number FWS–R6–ES–2012–0108) or from the Western Colorado Field Office (see FOR FURTHER INFORMATION CONTACT).

Previous Federal Actions

On January 11, 2013, we published a proposed rule to list the Gunnison sage-grouse as endangered (78 FR 2486) and a proposed rule to designate critical habitat for the Gunnison sage-grouse (78 FR 2540). We proposed to designate as critical habitat approximately 1,704,227 acres (689,675 hectares) in seven units located in Chaffee, Delta, Dolores, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, and San Miguel Counties in Colorado, and in Grand and San Juan Counties in Utah. Those proposals initially had a 60-day comment period, ending March 12, 2013, but we extended the comment period by an additional 21 days, through April 2, 2013 (78 FR 15925, March 13, 2013). On July 19, 2013, we published a document announcing that we were extending the timeline for making final determinations on both proposed rules by 6 months due to scientific disagreement, and we reopened the public comment period to seek additional information to clarify the issues in question (78 FR 43123). In accordance with that July 19, 2013, publication, we will submit for publication in the Federal Register a final listing determination and a final critical habitat designation for Gunnison sage-grouse on or before March 31, 2014.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule to designate critical habitat for the Gunnison sage-grouse is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, unless we determine, based on the best scientific and commercial data available, that the failure to designate such areas as critical habitat will result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat. In the case of the Gunnison sage-grouse, the benefits of critical habitat include public awareness of the presence of the species and the importance of habitat protection, and, where a Federal action will occur, increased habitat protection for the Gunnison sage-grouse due to protection from adverse modification or destruction of critical habitat. In practice, Federal actions typically occur primarily on Federal lands or for projects undertaken by Federal agencies. When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the potential for alternative actions or special management or implementation of a management plan.
We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designation, which is available for review and comment (see ADDRESSES).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Gunnison sage-grouse. The DEA describes the economic impacts of all potential conservation efforts for the Gunnison sage-grouse; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, considering protections already in place or proposed for the species (e.g., under the proposed Federal listing and other existing Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs.

Most courts have held that the Service only needs to consider the incremental impacts imposed by the critical habitat designation over and above those impacts imposed as a result of listing the species. For example, the Ninth Circuit Court of Appeals reached this conclusion twice within the last few years, and the U.S. Supreme Court declined to hear any further appeal from those rulings. (See Ariz. Cattle Growers’ Ass’n v. Salazar, 606 F.3d 116, 9th Cir. 2010) cert. denied, 179 L. Ed. 2d 300, 2011 U.S. LEXIS 1362, 79 U.S.L.W. 3475 (2011).) However, the prevailing court decisions in the Tenth Circuit Court of Appeals do not allow the incremental analysis approach. Instead, the Tenth Circuit requires that the Service consider both the baseline economic impacts imposed due to listing the species and the additional incremental economic impacts imposed by designating critical habitat. (See New Mexico Cattle Growers Ass’n v. FWS, 248 F.3d 1277 (10th Cir. 2001).) The basis for the Tenth Circuit’s New Mexico Cattle Growers decision in 2001 was its conclusion that the regulatory definitions of “jeopardy” and “adverse modification” were virtually identical, with the result, according to the court, that doing only an incremental analysis rendered meaningless the requirement to consider the impacts of critical habitat designation, as there were no incremental impacts to consider (New Mexico Cattle Growers Ass’n v. FWS, 248 F.3d 1283–85). Subsequently, the Service adopted a different definition of “adverse modification,” which has led the Ninth Circuit to conclude that the premise underlying the Tenth Circuit’s New Mexico Cattle Growers decision is no longer valid and that the Service may employ incremental analysis in determining the economic impacts of a critical habitat designation (Ariz. Cattle Growers Ass’n v. Salazar, 606 F.3d 1160, 1173 (9th Cir. 2010). Consistent with this view, on August 24, 2012, the Service proposed revisions to its regulations for impact analyses of critical habitat that clarify that it is appropriate to consider the impacts of designation on an incremental basis notwithstanding the New Mexico Cattle Growers decision (77 FR 51503).

However, the proposed rule incorporating the incremental impact approach has not been finalized as of the date of the DEA or this notice. Therefore, this DEA analysis looks at baseline impacts incurred due to the listing of the species, and forecasts both baseline and incremental impacts likely to occur if we propose critical habitat designation. For a further description of the methodology of the analysis, see Chapter 2, “FRAMEWORK FOR THE ANALYSIS,” of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Gunnison sage-grouse over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

The DEA quantifies economic impacts of Gunnison sage-grouse conservation efforts associated with the following categories of activity: (1) Livestock grazing; (2) agriculture and water management; (3) mineral and fossil fuel extraction; (4) residential and related development; (5) renewable energy development; (6) recreation; and (7) transportation activities.

The DEA summarizes the total impacts likely to occur if all of the units proposed are designated as critical habitat. Absent the designation of critical habitat, conservation efforts benefiting the sage-grouse and its habitat would be undertaken due to the listing under the Act (if finalized) and existing management strategies. We forecast baseline impacts of $9.7 million (in present value terms over 20 years), assuming a discount rate of 7 percent. If we assume the social rate of time preference is 3 percent, forecast baseline impacts are $12 million (in present value terms over 20 years). Quantified incremental impacts anticipated to result solely from this proposed critical habitat designation are $3.8 million (present value over 20 years), assuming a 7 percent discount rate, or $4.7 million (present value over 20 years), assuming a discount rate of 3 percent. The Service believes that impacts forecasted in the DEA are based on several conservative assumptions, more likely to overstate than underestimate actual impacts, and that the more likely result would be lower impacts.

The DEA presents baseline (Table 1) and incremental (Table 2) results across proposed critical habitat units. The largest share of baseline impacts are attributed to the Crawford and Gunnison Basin units, while the largest share of incremental costs is attributed to the Monticello-Dove Creek unit. In the baseline, the largest category of impacts is associated with transportation projects (forecast to be $6.1 million in present value over 20 years, discounted at 7 percent). These costs are borne by Federal and State agencies, and include the cost of species monitoring and management as well as administrative impacts of consultation. The largest share of incremental impacts is also associated with transportation activities (forecast to be $1.6 million in present value over 20 years, discounted to 7 percent), followed by livestock grazing (forecast to be $1.2 million in present value over 20 years, discounted...
at 7 percent) and mineral and fossil fuel extraction (forecast to be $1.1 million in present value over 20 years, discounted at 7 percent). Incremental transportation impacts consist solely of administrative costs, and are associated with consideration of adverse modification in programmatic consultations for Federal agencies and informal consultations for Colorado and Utah State Department of

Transportation projects on non-Federal lands. Impacts associated with livestock grazing consist primarily of potential restrictions on grazing activities on federal lands in unoccupied habitat. These costs would be borne by private ranchers. We believe overall these costs represent a conservative estimate of potential impacts, more likely to overstate than underestimate costs, and that actual impacts are likely to be less. Impacts associated with mineral and fossil fuel extraction consist entirely of administrative impacts associated with section 7 consultations for future well pad construction in unoccupied habitat. The analysis considers potential impacts to all proposed areas including Tribal lands. See the DEA for a more detailed discussion of these results.

TABLE 1—FORECAST BASELINE IMPACTS BY UNIT, 2013–2032

<table>
<thead>
<tr>
<th>Unit</th>
<th>Present value</th>
<th>Annualized</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monticello-Dove Creek</td>
<td>$1,800,000</td>
<td>$160,000</td>
</tr>
<tr>
<td>Piñon Mesa</td>
<td>1,700,000</td>
<td>150,000</td>
</tr>
<tr>
<td>San Miguel Basin</td>
<td>770,000</td>
<td>68,000</td>
</tr>
<tr>
<td>Cerro Summit-Cimarron-Sims Mesa</td>
<td>320,000</td>
<td>29,000</td>
</tr>
<tr>
<td>Crawford</td>
<td>2,300,000</td>
<td>200,000</td>
</tr>
<tr>
<td>Gunnison Basin</td>
<td>2,200,000</td>
<td>190,000</td>
</tr>
<tr>
<td>Poncha Pass</td>
<td>630,000</td>
<td>55,000</td>
</tr>
<tr>
<td>Total</td>
<td>9,700,000</td>
<td>850,000</td>
</tr>
</tbody>
</table>

Note: Entries may not sum to totals reported due to rounding. Estimates are rounded to two significant digits.

TABLE 2—FORECAST INCREMENTAL IMPACTS BY UNIT, 2013–2032

<table>
<thead>
<tr>
<th>Unit</th>
<th>Present value</th>
<th>Annualized</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monticello-Dove Creek</td>
<td>$1,700,000</td>
<td>$150,000</td>
</tr>
<tr>
<td>Piñon Mesa</td>
<td>610,000</td>
<td>53,000</td>
</tr>
<tr>
<td>San Miguel Basin</td>
<td>480,000</td>
<td>42,000</td>
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<tr>
<td>Cerro Summit-Cimarron-Sims Mesa</td>
<td>120,000</td>
<td>10,000</td>
</tr>
<tr>
<td>Crawford</td>
<td>710,000</td>
<td>63,000</td>
</tr>
<tr>
<td>Gunnison Basin</td>
<td>170,000</td>
<td>15,000</td>
</tr>
<tr>
<td>Poncha Pass</td>
<td>29,000</td>
<td>2,500</td>
</tr>
<tr>
<td>Total</td>
<td>3,800,000</td>
<td>340,000</td>
</tr>
</tbody>
</table>

Note: Entries may not sum to totals reported due to rounding. Estimates are rounded to two significant digits.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rules, the draft EA, and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Ongoing, Landscape-Level Conservation Efforts

Since the January 11, 2013, publication of the proposed rule to list the Gunnison sage-grouse as endangered (78 FR 2486) and the proposed rule to designate critical habitat for the Gunnison sage-grouse (78 FR 2540), several ongoing, landscape-level conservation efforts have been finalized or are under development for the species. We anticipate completion of several of these conservation efforts prior to the final determinations on whether to list the Gunnison sage-grouse and designate critical habitat. If completed, these efforts will be considered in the Service’s final determination on whether to list the Gunnison sage-grouse under the Act. Each of these efforts is expected to provide benefits to Gunnison sage-grouse and its habitat, and provide greater certainty regarding future regulation for the participating stakeholders. The primary conservation efforts that have been finalized or are occurring at this time include:

1. Gunnison Basin candidate conservation agreement (CCA) between the Service and the Bureau of Land Management (BLM), U.S. Forest Service, and National Park Service. Pursuant to section 7 of the Act, conferencing for the CCA was completed on July 30, 2013;
2. Design of private land conservation programs and practices administered by the Natural Resources Conservation Service (NRCS) to benefit Gunnison sage-grouse. Pursuant to section 7 of the Act, a conference for this action is ongoing with NRCS;
3. The Service and Farm Service Agency are coordinating to identify funding and programs on private lands that might benefit Gunnison sage-grouse and its habitat. For example, FSA administers the Conservation Reserve Program (CRP) on private lands to re-establish valuable land cover to help improve water quality, prevent soil erosion, and reduce loss of wildlife habitat. A conference pursuant to section 7 of the Act for FSA actions in Gunnison sage-grouse range is pending;
4. Coordination with the BLM regarding resource management plans and interim management for Gunnison sage-grouse conservation. The BLM issued an Instruction Memorandum for...
Gunnison sage-grouse habitat management on July 16, 2013;
(5) County-level agreements, planning, and coordination. All of the
Counties within the range of the
Gunnison sage-grouse have entered into
a Conservation Agreement for the
species;
(6) Conservation planning and
coordination with the Ute Mountain Ute
Tribe for lands owned by the Tribe in
the Gunnison Basin; and
(7) Continued enrollment of private
lands in the candidate conservation
agreement with assurances (CCAA)
program for Gunnison sage-grouse. The
CCAA pertains to non-Federal lands in
Colorado that are occupied by Gunnison
sage-grouse, and lands that provide
potential habitat that may be occupied
by the species in the future.

Required Determinations—Amended

In our January 11, 2013, proposed
critical habitat rule (78 FR 2540), we
indicated that we would defer our
determination of compliance with
several statutes and executive orders
until the information concerning
potential economic impacts of the
designation and potential effects on
landowners and stakeholders became
available in the DEA. We have now
made use of the DEA data to make
determinations. In this document, we
affirm the information in our proposed
rule concerning Executive Orders
(E.O.s) 12866 and 13563 (Regulatory
Planning and Review), E.O. 12630
(Takings), E.O. 13132 (Federalism), E.O.
12988 (Civil Justice Reform), the
Unfunded Mandates Reform Act (2
U.S.C. 1501 et seq.), and the Paperwork
Reduction Act of 1995 (44 U.S.C. 3501
et seq.). However, based on the DEA
data, we are amending our required
determinations concerning the
Regulatory Flexibility Act (5 U.S.C. 601
et seq.), the National Environmental
Policy Act (42 U.S.C. 4321 et seq.), E.O.
12311 (Energy, Supply, Distribution,
and Use), and the President’s
memorandum of April 29, 1994,
“Government-to-Government Relations
with Native American Tribal
Governments” (59 FR 22951).

Regulatory Flexibility Act (5 U.S.C. 601
et seq.)

Under the Regulatory Flexibility Act
(RFA; 5 U.S.C. 601 et seq.), as amended
by the Small Business Regulatory
Enforcement Fairness Act of 1996
(SBREFA; 5 U.S.C. 801 et seq.),
whenever an agency is required to
publish a notice of rulemaking for any
proposed or final rule, it must prepare
and make available for public comment
a regulatory flexibility analysis that
describes the effects of the rule on small
entities (i.e., small businesses, small
organizations, and small government
jurisdictions). However, no regulatory
flexibility analysis is required if the
head of the agency certifies the rule will
not have a significant economic impact
on a substantial number of small
entities. The SBREFA amended the RFA
to require Federal agencies to provide a
certification statement of the factual
basis for certifying that the rule will
not have a significant economic impact
on a substantial number of small
entities. Based on our DEA of the proposed
designation, we provide our analysis for
determining whether the proposed rule
would result in a significant economic
impact on a substantial number of small
entities. Based on comments we receive,
we may revise this determination as part
of our final rulemaking.

According to the Small Business
Administration, small entities include
small organizations such as
independent nonprofit organizations;
small governmental jurisdictions,
including school boards and city and
town governments that serve fewer than
50,000 residents; and small businesses
(13 CFR 121.201). Small businesses
include manufacturing and mining
concerns with fewer than 50
employees, wholesale trade entities
with fewer than 100 employees, retail
and service businesses with less than $5
million in annual sales, general and
heavy construction businesses with less
than $27.5 million in annual business,
special trade contractors doing less than
$11.5 million in annual business, and
agricultural businesses with annual
sales less than $750,000. To determine
if potential economic impacts to these
small entities are significant, we
considered the types of activities that
might trigger regulatory impacts under
this designation as well as types of
project modifications that may result.
In general, the term “significant
economic impact” is meant to apply to a
typical small business firm’s business
operations.

To determine if the proposed
designation of critical habitat for the
Gunnison sage-grouse would affect a
substantial number of small entities, we
considered the number of small entities
affected within particular types of
economic activities, such as livestock
grazing, agriculture and water
management, mineral and fossil fuel
taxtion, residential and related
development, and renewable energy
development. In order to determine
whether it is appropriate for our agency
to certify that the proposed rule would
not have a significant economic impact
on a substantial number of small
entities, we considered each industry or
category individually. In estimating the
numbers of small entities potentially
affected, we also considered whether
their activities have any Federal
involvement. Critical habitat
designation will not affect activities that
do not have any Federal involvement;
designation of critical habitat only
affects activities conducted, funded,
permitted, or authorized by Federal
agencies. If we finalize the proposed
listing for the Gunnison sage-grouse, in
areas where the species is present,
Federal agencies will already be
required to consult with us under
section 7 of the Act on activities they
fund, permit, or implement that may
affect the species. If we finalize this
proposed critical habitat designation,
consultations to avoid the destruction or
adverse modification of critical habitat
would be incorporated into the existing
consultation process.

In the DEA, we evaluated the
potential economic effects on small
entities resulting from implementation
of conservation actions related to the
proposed designation of critical habitat
for the Gunnison sage-grouse. This
analysis of impacts relies on the
estimated incremental impacts resulting
from the proposed critical habitat
designation. The incremental impacts of
the rulemaking are most relevant for this
analysis because they reflect costs that
may be avoided or reduced based on
decisions regarding the composition of
the Final Rule. We anticipate that at
most 63 small entities could be affected
by livestock grazing consultations at an
average cost of $7,500 each,
representing approximately 1.8 percent
of average annual revenues. One small
entity could be affected by agriculture
and water management consultations at
a cost of $880 within a single year,
representing an unknown percentage
of annual revenues. Five to nine small
entities could be affected by oil and gas
extraction consultations per year, at a
cost of $2,600 each in unoccupied
habitat, representing approximately 0.04
percent of annual revenues, or a cost of
$880 each in occupied habitat,
representing 0.01 percent of annual
revenues. In addition, one small entity
could be affected by a consultation for
exploratory potash extraction in a single
year at a cost of $2,600, representing 0.5
percent of annual revenues. Up to three
small entities per year could be affected
by consultations for residential and
related development, at a cost of
$11,000 in unoccupied habitat,
representing less than 0.3 percent of
annual revenues, or a cost of $880 in
occupied habitat, representing less than
information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

When the range of a species includes states within the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, pursuant to that court’s ruling in Catron County Board of Commissioners v. U.S. Fish and Wildlife Service, 75 F.3d 1429 (10th Cir. 1996), we complete an analysis on proposed critical habitat designations pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA). The range of Gunnison sage-grouse is entirely within the States of Colorado and Utah, which are within the Tenth Circuit. Accordingly, we have prepared a draft environmental assessment to identify and disclose the potential environmental consequences resulting from the proposed designation of critical habitat for the Gunnison sage-grouse.

The draft EA presents the purpose of and need for critical habitat designation, the proposed action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives under the requirements of NEPA as implemented by the Council on Environmental Quality regulations (40 CFR 1500 et seq.) and according to the Department of the Interior’s NEPA procedures.

The draft EA will be used by the Service to decide whether or not critical habitat will be designated as proposed; if the proposed action requires refinement, or if another alternative is appropriate; or if further analyses are needed through preparation of an environmental impact statement. If the proposed action is selected as described (or is changed minimally) and no further environmental analyses are needed, then a finding of no significant impact (FONSI) would be the appropriate conclusion of this process. A FONSI would then be prepared for the environmental assessment. We are seeking data and comments from the public on the draft EA, which is available at http://www.regulations.gov at Docket No. FWS–R6–ES–2011–0111 and at http://www.fws.gov/mountain-prairie/species/birds/gunnisonsagegrouse/.

Executive Order 13211 (Energy, Supply, Distribution, or Use)

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Gunnison sage-grouse occur in areas with oil and gas activity. These areas are primarily limited to the Monticello-Dove Creek and San Miguel populations. Well pads and their existing infrastructure are within proposed critical habitat units. On Federal lands, entities conducting oil and gas related activities as well as power companies would need to consult within areas designated as critical habitat. However, we do not anticipate additional conservation efforts related to oil and gas beyond those requested to avoid jeopardy to the species. Incremental effects of the proposed critical habitat designation are assumed to occur for energy projects in unoccupied sage-grouse habitat.

Approximately 31 producing or newly permitted wells are located within unoccupied portions of the proposed designation. The number of wells within the proposed designation represents less than 1 percent of wells in the State of Colorado. We do not anticipate that the designation of critical habitat would result in significant impacts to the energy industry on a national scale. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. Although no Tribal lands occur within the proposed critical habitat designation, Pine Crest Ranch (approximately 12,000 acres) occurs in the Gunnison Basin Unit (Unit 6) of
proposed critical habitat. Pine Crest Ranch is owned by the Ute Mountain Ute Tribe under restricted fee status. The majority of the property is occupied by Gunnison sage-grouse, and four leks occur on the property. In our January 11, 2013, proposed rule to designate critical habitat (78 FR 2540), we considered the Pine Crest Ranch to be private property.

Since February of 2013, the Service has been in communication with the Ute Mountain Ute Tribe. The Service attended a Tribal Council Meeting on March 26, 2013, to discuss the proposed critical habitat designation and proposed listing of Gunnison sage-grouse. The Tribe has expressed an interest in developing a conservation plan for Gunnison sage-grouse on this property and has requested exclusion of the Pine Crest Ranch from the critical habitat designation. We understand that the Tribe’s legal department is in the process of developing a conservation plan for their property.

To pursue options for developing a conservation plan, the Service has evaluated conservation funding and opportunities for Pine Crest Ranch through its Partners for Fish and Wildlife Program. We have also coordinated with the Natural Resources Conservation Service (NRCS) to discuss options for enrollment in conservation programs for Gunnison sage-grouse. Depending on the outcome of that discussion, an ongoing section 7 conference with the NRCS for conservation programs and practices in Gunnison sage-grouse range could include Pine Crest Ranch.

We will conduct government-to-government consultation with the Ute Mountain Ute Tribe throughout the development of the final designation of critical habitat. We will consider the Pine Crest Ranch for exclusion from final critical habitat designation consistent with the requirements of section 4(b)(2) of the Act.

Authors

The primary authors of this notice are the staff members of the Regional Office and Western Colorado Field Office, Mountain-Prairie Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: August 12, 2013.

Rachel Jacobsen.
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224
[Docket No. 130626570–3570–01]
RIN 0648–XC742

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List Alabama Shad as Threatened or Endangered Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of 90-day petition finding, request for information.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list Alabama shad (Alosa alabamae) as threatened or endangered under the Endangered Species Act (ESA) and to designate critical habitat concurrent with the listing. We find that the information in our files presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We will conduct a status review of the species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this species (see below).

DATES: Information and comments on the subject action must be received by November 18, 2013.

ADDRESSES: You may submit information, identified by the code NOAA–NMFS 2013–0142, addressed to: Kelly Shotts, Ecologist, by any of the following methods:
• Electronic Submission: Submit all electronic information via the Federal eRulemaking Portal. Go to http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013–0142, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
• Facsimile (fax): 727–824–5309.
• Mail: NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.
• Hand delivery: You may hand deliver written information to our office during normal business hours at the street address given above.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and may be posted to http://www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:
Kelly Shotts, NMFS, Southeast Region, 727–824–5312; or Marta Nammack, NMFS, Office of Protected Resources, 301–427–8469.

SUPPLEMENTARY INFORMATION:

Background

In 1997, we added Alabama shad to our Candidate Species List (62 FR 37562; July 14, 1997). At that time, a candidate species was defined as any species being considered by the Secretary of Commerce (Secretary) for listing as an endangered or a threatened species, but not yet the subject of a proposed rule (49 FR 38900; October 1, 1984). In 2004, we created the Species of Concern list (69 FR 19975; April 15, 2004) to encompass species for which we have some concerns regarding their status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA. Twenty-five candidate species, including the Alabama shad, were transferred to the Species of Concern list at that time because they were not being considered for ESA listing and were better suited for Species of Concern status due to some concerns and uncertainty regarding their biological status and threats. The Species of Concern status does not carry any procedural or substantive protections under the ESA.

On April 20, 2010, the Center for Biological Diversity (CBD), Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and the West Virginia Highlands Conservancy (petitioners) submitted a petition to the Secretaries of Interior and Commerce, as well as to the Regional Director of the Southeast Region of the