

# Gunnison Sage Grouse Continues Its Wobbly Path Toward Listing

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Last week, the **Gunnison Sage Grouse** took another detour on its road to being listed under the **Endangered Species Act (ESA)**, as a federal court agreed to the **US Fish and Wildlife Service's (FWS)** request to postpone a listing decision by six months. A listing – and the concurrent protection of over 1.7 million acres in western Colorado and southeastern Utah – would have significant impacts on oil and gas and grazing activities in the region. The grouse's wobbly path toward listing is therefore being closely watched by the **oil and gas industry**, ranchers and environmentalists alike, but also offers an interesting lesson on how and why certain species get listed, why some do not, and how the listing timeline can be influenced by third parties.

Traditionally, FWS has identified species at risk, researched their status and placed them on the ESA list (or not) as either threatened or endangered. However, FWS is chronically underfunded and as a result often completes its analysis by concluding that as particular species is eligible for listing, but that the listing is precluded because other, more imperiled species take precedence. These “eligible but precluded” species are called “candidate species,” since they remain candidates for listing.

Several nongovernmental organizations (NGOs) very active in seeking ESA protections for species have discovered that, because FWS has limited resources, they could drive the agency toward analyzing certain species by suing FWS and then reaching an agreement with the agency on a timeline for considering the ultimate fate of the species which the NGOs care about, including many of these candidate species. We previously [blogged](#) about the settlement between FWS and NGOs on “candidate species” last year.

The Gunnison Sage Grouse was one of the species to be examined under the settlement, with an original decision deadline of September 2013. In January 2013, FWS proposed listing the grouse as endangered, but in July 2013 extended the deadline by six months in order to consider new scientific information offered by listing opponents. As those opponents feverishly pushed forward on multiple fronts – presenting FWS with even more scientific information and working to assemble voluntary conservation plans with an aim toward preempting the listing, FWS twice reopened the comment period (in September and November of 2013) and, on February 11, 2014, again pushed back its listing decision. Last week, a federal court agreed that the delayed deadline of May 12, 2014, could

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once again be pushed back an additional six months to November 12, 2014.

This latest delay is interesting for a couple of reasons. First, the listing decision will come after the November elections, providing Colorado Governor Hickenlooper with relief from having to give a thumbs up or down to the listing opponents' voluntary conservation plans before ballots are cast. Also interesting is that, in conjunction with the most recent delay, FWS indicated its inclination to list the grouse as threatened rather than endangered. This is significant, because the lower listing status would afford FWS the opportunity to adopt a rule under Section 4(d) of the ESA – a rule that could afford oil and gas producers and ranchers with the ability to continue to engage in activities that could potentially impact the grouse and its habitat so long as it is done in compliance with an FWS-approved voluntary conservation plan.

In short, the Gunnison Sage Grouse is a fairly archetypal example of the listing process. On the one side, we see listing proponents identifying particular species they wish to be listed and suing FWS to have those species reviewed. On the other, listing opponents respond by playing both offense and defense, gathering as much scientific data as possible to try to stop a listing decision or at least delaying the decision until such time as they can assemble voluntary conservation measures which would preclude the need for a listing. It is an amazingly resource-intensive and rather imprecise process. And, as noted in our prior [blog](#), it is a process currently being followed with regard to dozens, if not hundreds, of species across the country, and will continue to be followed for the foreseeable future.

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