

Enacting Wildlife Viability Legislation

The Problem

All across the West, the viability of our native wildlife populations is being threatened by industrial activity, particularly the unmanaged sprawl of oil and gas development. This activity is fragmenting wildlife habitats, blocking migration corridors, and contributing to the demise of big game populations as well as sensitive species like the sage grouse. In 2005, the Bush administration gutted the National Forest planning regulations of all of their substantive requirements and, in doing so, exempted the agency from its mandate to maintain viable wildlife populations. As a result, wildlife populations on both National Forest and Bureau of Land Management lands are threatened on a scale not seen in many decades.

The History

Despite multiple use guidance in FLPMA that calls for the BLM to manage for wildlife, this agency has never had a specific mandate to maintain viable wildlife populations well-distributed across their lands. From 1982 through 2005, the Forest Service was required by regulations promulgated pursuant to the National Forest Management Act (NFMA) to provide sufficient habitat to maintain viable wildlife populations within the context of its management activities. These requirements remained in full force and effect for 23 years. In 2005, the Bush administration gutted the Reagan-era forest planning regulations, and replaced them with regulations that prevent meaningful forest planning, public oversight, and public participation from occurring. In the process, the NFMA viability regulations were repealed, leaving populations of native wildlife vulnerable to extirpation.

The Solution

A Wildlife Viability Act, incorporating the key language of the 1982 NFMA viability regulations and extending to all federal agencies would curtail the abuses of the public lands and wildlife that we are currently seeing in BLM oil and gas policy. Enacting Wildlife Viability legislation would require industrial development and other federally permitted actions to be completed within the context of maintaining native wildlife populations.

The key language for Wildlife Viability legislation:

“Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.” 36 CFR § 219.19 (1982)¹

Political Advantages of Wildlife Viability legislation

These requirements were put in place by the conservative Reagan administration, and as such can hardly be called a radical environmental concept.

These regulations have a track record of 23 years with the Forest Service; they did not lead to gridlock within the agency or significantly hamper its operations.



Viability threatened on BLM land, principally by oil and gas drilling (L to R): Ferruginous hawk, pygmy rabbit, Colorado River cutthroat trout, mountain plover, black-tailed prairie dog, sage grouse.

¹ Additional provisions of Section 219.19 are provided on the reverse

Political Advantages (cont'd)

There is already an extensive body of case law concerning the NFMA viability regulations, clarifying the responsibilities of federal agencies under viability requirements.

Given the overwhelming popularity of native wildlife among the electorate, a vote against maintaining viable native wildlife populations would be a politically costly act, making this a key wedge issue that has the potential to split anti-conservation lawmakers away from their voter base.

Congress has not passed landmark environmental legislation since 1976; given the growing evidence that a crisis in land management is presently occurring, Wildlife Viability legislation shows that Congress has the will to take remedial action.

The remainder of 36 CFR § 219.19:

(a) Each alternative shall establish objectives for the maintenance and improvement of habitat for management indicator species selected under paragraph (g)(1) of this section, to the degree consistent with overall multiple use objectives of the alternative. To meet this goal, management planning for the fish and wildlife resource shall meet the requirements set forth in paragraphs (a)(1) through (a)(7) of this section.

(1) In order to estimate the effects of each alternative on fish and wildlife populations, certain vertebrate and/or invertebrate species present in the area shall be identified and selected as management indicator species and the reasons for their selection will be stated. These species shall be selected because their population changes are believed to indicate the effects of management activities. In the selection of management indicator species, the following categories shall be represented where appropriate: Endangered and threatened plant and animal species identified on State and Federal lists for the planning area; species with special habitat needs that may be influenced significantly by planned management programs; species commonly hunted, fished, or trapped; non-game species of special interest; and additional plant or animal species selected because their population changes are believed to indicate the effects of management activities on other species of selected major biological communities or on water quality. On the basis of available scientific information, the interdisciplinary team shall estimate the effects of changes in vegetation type, timber age classes, community composition, rotation age, and year-long suitability of habitat related to mobility of management indicator species. Where appropriate, measures to mitigate adverse effects shall be prescribed.

(2) Planning alternatives shall be stated and evaluated in terms of both amount and quality of habitat and of animal population trends of the management indicator species.

(3) Biologists from State fish and wildlife agencies and other Federal agencies shall be consulted in order to coordinate planning for fish and wildlife, including opportunities for the reintroduction of extirpated species.

(4) Access and dispersal problems of hunting, fishing, and other visitor uses shall be considered.

(5) The effects of pest and fire management on fish and wildlife populations shall be considered.

(6) Population trends of the management indicator species will be monitored and relationships to habitat changes determined. This monitoring will be done in cooperation with State fish and wildlife agencies, to the extent practicable.

(7) Habitat determined to be critical for threatened and endangered species shall be identified, and measures shall be prescribed to prevent the destruction or adverse modification of such habitat. Objectives shall be determined for threatened and endangered species that shall provide for, where possible, their removal from listing as threatened and endangered species through appropriate conservation measures, including the designation of special areas to meet the protection and management needs of such species.



National Forest wildlife at risk for loss of viability (L to R): Brown creeper, boreal toad, fisher, northern goshawk, lynx, tiger salamander, three-toed woodpecker.