



THE WILDLIFE SOCIETY

Leaders in Wildlife Science, Management and Conservation

23 June 2023

Attention: 1004-AE92
U.S. Department of the Interior
Director (630) Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240

The Wildlife Society
425 Barlow Place, Suite 200
Bethesda, MD 20008

Re: Conservation and Landscape Health [BLM-2023-0001]

Thank you for the opportunity to provide comments on the Bureau of Land Management's proposed rulemaking on Conservation and Landscape Health. The Wildlife Society is pleased to provide feedback on the proposed rulemaking with the support of TWS' Rangeland Wildlife Working Group and the assistance of TWS' Habitat Restoration and Conservation Working Group.

Founded in 1937, The Wildlife Society and our network of affiliated chapters and sections represent over 15,000 wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to inspire, empower, and enable wildlife professionals to sustain wildlife populations and habitat through science-based management and conservation.

Founded in 2014, The Wildlife Society's Rangeland Wildlife Working Group promotes unified efforts in managing rangelands for both wildlife and sustainable use. The working group provides a forum for wildlife professionals to engage in professional development, networking, and outreach opportunities for the benefit of rangeland-dependent wildlife populations.

The Wildlife Society commends the Bureau of Land Management for the breadth and scope of the proposed regulatory revisions. The agency's proposal to expand land health standards beyond grazing authorizations to all uses and BLM-administered lands will also expand available tools at the disposal of BLM staff. However, The Wildlife Society is uncertain of how land health rules could be effectively applied to industrial development such as mining and energy development on public lands, and requests clarification in the final rulemaking.

The Wildlife Society also supports the BLM's emphasis on Areas of Critical Environmental Concern (ACECs) as both a conservation and cultural preservation tool. We are encouraged by the rulemaking's proposed direction and guidance, particularly on identifying rare and unique wildlife habitats in land management plans. In the finalized rulemaking, TWS recommends additional regulatory text on the definition of "protection". At present, it is unclear when and how "protection" may be given to ACECs and what "protection" means in the context of conservation and preservation activities.

Similarly, the proposed rulemaking would benefit from a definition of the term "intact landscapes" and "intactness", particularly as it applies to Section 6102.2. According to the proposed rulemaking, *When determining, through planning, whether conservation use is appropriate in a given area, authorized officers would determine "which, if any" landscapes to manage to protect intactness, necessarily taking into account other potential uses in accordance with the BLM's multiple use management approach.*

The Wildlife Society recommends additional clarification of the term to denote whether conditions such as water connectivity, anthropogenic features avoided by certain wildlife (e.g., power lines, and energy infrastructure), presence of wildlife corridors, visual impairments on the horizon, or other factors will be reviewed when evaluating intactness.

The clarification of conservation as a multiple use activity on par with other uses of public lands managed under the Federal Land Policy and Management Act of 1976 (FLPMA), and the expansion of mitigation activities onto BLM-managed lands, will ensure BLM staff and partners have the tools needed for the BLM to effectively maintain their multiple use mission. The Wildlife Society would like to offer the following comments in response to the questions and prompts posed in the proposed rule specific to conservation leasing:

The proposed rulemaking proposes the creation of a new tool, conservation leases, that would allow public and private entities to directly engage in protection and restoration efforts to build and maintain the resilience of public lands. These leases would be available to entities seeking to restore public lands or provide mitigation for a particular action. Is the term "conservation lease" the best term for this tool?

The Wildlife Society does not have any issues with the term as proposed.

As the Bureau of Land Management makes clear in the rulemaking, the proposed tool is not intended to preclude other uses, such as recreation and grazing. However, The Wildlife Society recognizes that the agency will need to invest in outreach and messaging to current partners and stakeholders, regardless of the term used, to ensure the tool's successful

implementation. As an initial step, The Wildlife Society recommends the adoption of language in the final rulemaking that more clearly makes this point:

Section 6102.4(a)(5) clarifies that the rule itself ~~should~~ SHALL not be interpreted to exclude public access to leased lands for casual use of such lands, although the purposes of a lease may require that limitations to public access be put in place in a given instance (for example, temporarily limiting public access to newly restored areas).

Additionally, The Wildlife Society recommends the “casual use of public lands” be clearly defined to include appropriate research activities and low-impact recreation activities such as hiking, nature viewing, hunting, and fishing.

What do you feel would be the appropriate default duration for conservation leases?

According to the rulemaking, Conservation leases would be issued for a term consistent with the time required to achieve their objective. Most conservation leases would be issued for a maximum of 10 years, which term would be extended if necessary to serve the purposes for which the lease was first issued. Any conservation lease issued for the purposes of providing compensatory mitigation would require a term commensurate with the impact it is offsetting.

The Wildlife Society is supportive of the BLM working with individual third parties to determine the length of time required for compensatory mitigation activities. For non-mitigation conservation activities, we recommend an initial lease term commensurate with the goals and objectives of the conservation activities set forth in the lease. For restoration and monitoring activities, this may require leases well beyond 10 years.

We are supportive of the 10-year time horizon proposed if the intent is for the BLM to evaluate the status of the lease prior to renewal. BLM staff should have the opportunity and resources required to not only put conservation leases on the ground, but also to ensure effective monitoring of the goals and objectives of the lease. To do this, **the Administration must ensure the scope of the resources required for this rulemaking is fully represented in the Fiscal Year 2025 budget request.**

The Wildlife Society also supports the rulemaking's proposal to ensure the BLM has the ability to quickly suspend or terminate a lease in the event of noncompliance (Section 6102.4-1). If a lease was issued for compensatory mitigation activities, there must be additional recourse for BLM to ensure entities acting in bad faith do not hamper future mitigation efforts. The Wildlife Society recommends the use of internal tracking to ensure that such actors do not receive conservation leases in the future. Again, **adequate**

implementation and monitoring dollars will be vital to ensure BLM has the ability to accomplish this.

Should the rule constrain which lands are available for conservation leasing? For example, should conservation leases be issued only in areas identified as eligible for conservation leasing in an RMP (Resource Management Plan) or areas the BLM has identified (either in an RMP or otherwise) as priority areas for ecosystem restoration or wildlife habitat?

The Wildlife Society does not believe that identification of areas suitable for conservation leases needs to be part of the RMP process. While the RMP process is a vital stakeholder engagement tool, it may not be nimble enough to put conservation leases on the ground in a timely manner in light of rapid environmental change brought on from, for example, a changing climate. Future revisions to RMPs should however address how practices deployed in conservation leases specific to the landscape identified align with long-term uses of the landscape.

Should the rule clarify what actions conservation leases may allow?

Activities allowed under conservation leases - The codification into rulemaking of actions that conservation leases may allow will not provide BLM staff with the ability to be nimble and receptive to the diversity of stakeholders interested in conservation leases. Codification into rulemaking of allowable actions would also limit the ability for BLM to engage in pilot studies and experimentation with restorative actions to contribute to the development of future beneficial techniques.

Instead, The Wildlife Society recommends the creation of internal guidance for the prioritization of landscapes, native species, and associated actions that BLM staff can use to efficiently implement the new conservation lease tool. This guidance should be drafted by BLM headquarters, and be used to inform more specific, standalone guidance out of each BLM state office.

Federal and state guidance, in coordination with one another, should be focused on preventing incompatible conservation activities (eg. pinyon jay management vs conifer removal activities, forest restoration activities vs sage grouse conservation activities) from interfering with each other across space and over time. Such guidance should also provide a framework for identifying the responsible party for long-term upkeep of infrastructure, such as fencing or other exclusions, placed on the landscape as a result of the lease.

For conservation leases undertaken for compensatory mitigation, both state and federal guidance should include information on what actions trigger mitigation, when off-site and out-of-kind mitigation is allowable, and how to determine mitigation ratios. Existing agency resources exist to assist the BLM in ensuring clarity in implementation, such as IM 2021-046, Mitigation Manual (1794-M), and the Mitigation Handbook (H-1794-1).

To promote stakeholder engagement on state office guidance, BLM state offices should provide resource advisory committees with annual updates on what lands and types of projects are being prioritized for leasing, as well as a running list of the status of current leases.

Activities not allowed under conservation leases - While The Wildlife Society does not recommend inclusion of the actions allowed in conservation leases in finalized rulemaking, **we do recommend the BLM makes clear in rulemaking those activities that will not be considered under the terms of a conservation lease.** Such activities should include:

- Activities intended to maintain and expand overabundant free-roaming horse and burro populations on BLM lands, as well as any activities intended to provide a conservation benefit to non-native wildlife populations
- Activities not requiring multi-year leases, such as simple fence exclusion activities
- Development activities for new infrastructure to extract fossil fuels and renewable energy resources from the area (e.g., oil wells, roads, solar panels, transmission lines, power lines, and wind turbines)

Under current regulations, the BLM lacks a framework for selling/managing carbon credits. Should the rule expressly authorize the use of conservation leases to generate carbon offset credits?

The Wildlife Society does not have a position in response to this question. However, we encourage the BLM to prioritize the persistence of native species and habitat as a foundational component of this rulemaking. Depending on the habitat management goals of a landscape, conservation activities and carbon offsets are not necessarily complementary of each other. If the BLM moves forward with rulemaking to this effect, the agency should make plain that any plantings resulting from a conservation lease that can be applied to a carbon credit should prioritize the use of native species.

Conservation leases would be available on BLM-managed lands that are not allocated to inconsistent uses, including lands within units of the National Landscape Conservation System (NLCS). The BLM requests public comments on managing conservation leases within the National Landscape Conservation System, including whether separate regulations should apply to these areas.

The Wildlife Society believes additional regulations defining the use of leases on NLCS lands are not needed, and may even prove a hindrance to implementation of the conservation lease tool within the agency. BLM co-manages many NLCS lands alongside other land management agencies, and regulatory amendments specific to NLCS lands may prove to be a multi-year consultation process. Review of ongoing conservation lease activities should be considered through the existing Resource Management Plan review process.

"Conservation leases could be issued to any qualified individual, business, non-governmental organization, or Tribal government. The BLM seeks comments on whether State and local governments, including state agencies managing fish and wildlife, also should be eligible for holding conservation leases."

The Wildlife Society supports both state and local governments, especially state fish and wildlife agencies, being included as eligible parties.

Through this rulemaking, the BLM has an opportunity to meaningfully expand partnerships with state fish and wildlife agencies as well as Tribal governments. Additional considerations to promote state and Tribal agency involvement should include an extension of the fundamentals of land health to include Species of Greatest Conservation Need as identified in State Wildlife Action Plans, and at-risk species as identified by Tribal governments (§ 4180.1(d)).

Thank you for considering the views of natural resource professionals. If we can be of any further assistance, please contact Caroline Murphy, Government Relations Manager at The Wildlife Society (cmurphy@wildlife.org; 301-968-1903).

Sincerely,



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