

MONTANA SAGE GROUSE HABITAT CONSERVATION PROGRAM 2016 ANNUAL REPORT

THIS REPORT COVERS THE PERIOD MAY, 2015 THROUGH DECEMBER, 2016



Photo: Joel Maes



MONTANA SAGE GROUSE
Habitat Conservation Program

EXECUTIVE SUMMARY

The greater sage grouse (*Centrocercus urophasianus*) was once a candidate for listing under the federal Endangered Species Act across its range in 11 western states. Montana and 10 other western states developed conservation strategies to conserve sage grouse and address threats caused by habitat fragmentation, development, loss of sagebrush, and invasive species. These state commitments, in conjunction with revised federal land management plans, led the US Fish and Wildlife Service (USFWS) to decide listing was not warranted. The decision was announced on September 22, 2015.

The 2015 Legislature passed the Montana Greater Sage Grouse Stewardship Act (Act) in 2015. Governor Bullock signed Executive Orders (EO or Order/s) 12-2015 and 21-2015 in 2015. The Executive Orders took effect on January 1, 2016. They are based on recommendations from an advisory council, which itself met ten times from 2013 through-2014. Additionally, seven public hearings were held in Montana. Montana's Sage Grouse Conservation Strategy (Strategy) is based on an "All Hands, All Lands, All Threats" approach which relies on the ongoing, successful collaboration of a diverse group of stakeholders, private landowners, the Montana Legislature, and state and federal agencies.

Taken together, the Act and Executive Orders 12-2015 and 21-2015 comprise Montana's Sage Grouse Conservation Strategy (Strategy). Montana's Strategy mirrors the approach taken in the State of Wyoming. Montana's goals are to: 1. maintain viable sage grouse populations and conserve habitat; 2. maintain flexibility to manage our own lands, our wildlife and our economy; and 3. fulfill commitments in our Strategy so that a listing under the federal Endangered Species Act is not warranted. These goals are shared by Montanans who understand the implications if federal protections are imposed.

The Sage Grouse Habitat Conservation Program (Program) is charged with implementing the Act and the Executive Orders across state government, coordinating with federal land management agencies as they implement the sage grouse conservation provisions in their land use plans, and working with other partners, especially private landowners who conserve the majority of important sage grouse habitat in Montana.

The Montana Sage Grouse Habitat Conservation Program is overseen by the Montana Sage Grouse Oversight Team (MSGOT), whose duties were established by the Act. MSGOT's composition is also established by statute. MSGOT establishes broad policy and implementation guidance and is administratively attached to the Montana's Governor's Office. The Program is administratively attached to and hosted by the Montana Department of Natural Resources and Conservation (DNRC). DNRC provides critical administrative, fiscal, legal, and information technology support to the Program and MSGOT.

MSGOT meets periodically to address timely issues related to implementing the Orders and the Act, coordinating conservation and permitting efforts with state and federal agencies, implementation of the Stewardship Fund, density disturbance calculation tool (DDCT)

implementation, conservation easements and habitat restoration projects, development of the habitat mitigation framework and habitat quantification tool (HQT), and to address concerns and priorities from various stakeholders as to the implementation and focus of the Program and Montana's Strategy overall.

Executive Order 12-2015 applies to all Executive Branch state agencies and is mandatory. EO-12-2015 requires the Program to review all proposed activities in sage grouse habitats designated as a core area, general habitat, or a connectivity area by the map contained in Executive Order 21-2015. Statutory definitions of these habitat areas are also provided for in the Act. If the proposed activity will take place outside of these designated areas, Program review is not required.

Scientific studies have shown that sage grouse are very sensitive to habitat loss and fragmentation and disturbance, particularly during the breeding, nesting, and early brood-rearing seasons. Sage grouse are nearly 100% dependent on sagebrush throughout their life history. Through consultation and implementation of the Executive Orders, Montana aims to first avoid adverse impacts to birds and their habitats, then minimize impacts, and then restore habitats. If residual impacts to habitat still remain after these measures, compensatory mitigation is required.

The Orders guide where and how development and other activities occur in the designated sage grouse habitat areas. Certain limitations, stipulations or conditions may apply, depending on the project or activity. Other components establish general practices that apply to everyone. Mitigation may be required in some cases. Some activities are exempt from the Orders' requirements, either by the Orders themselves or by subsequent MSGOT decisions. Other activities may be grandfathered in because the permitting process had already started prior to January 1, 2016.

The Executive Orders apply to all programs and activities of state government, including permitting, grant programs, and technical assistance. Through a consultation process, the Program will work with project proponents to first avoid impacts, minimize impacts, and restore impacted areas. Restoration is already required by state law or administrative rule for some permitted activities. Compensatory mitigation may be required for residual temporal or spatial impacts that remain after avoidance, minimization, and restoration measures.

The Act provided that compensatory mitigation obligations can be fulfilled through transactions in a mitigation marketplace where providers of sage grouse habitat can sell mitigation credits to developers whose activities have residual impacts so that the impacts can be offset. Alternatively, if sufficient mitigation credits were not available in the mitigation marketplace, developers could offset their impacts and fulfill their compensatory mitigation obligations through a payment to the Montana Sage Grouse Stewardship Fund. A habitat quantification tool (a GIS-model) is being developed to estimate the number of mitigation credits created through conservation efforts and the number of debits (residual impacts) due to development activity.

The Act had also created the Stewardship Fund (Account or Fund; a special revenue account), and the 2015 Montana Legislature appropriated \$10 million. The purpose of the Stewardship Fund is to maintain, enhance, restore, expand, or benefit sage grouse habitat and populations. The fund is a source of competitive funding to facilitate free-market mechanisms for voluntary, incentive based conservation of private lands (and public lands as needed). Through a competitive grant process, organizations or agencies could receive funds to conserve habitats on private lands and create mitigation credits which would then become available for sale in a Montana sage grouse mitigation marketplace to offset impacts of development elsewhere. The Fund would be reimbursed when those credits were sold. The reimbursed funds will then be used to finance other habitat conservation projects. The Act also established limitations on how much funding could be awarded and how MSGOT should prioritize spending the Stewardship Fund dollars.

The Program manager began employment in September, 2015, and additional staff were later hired in 2016 as modified FTEs (February, April and September). The Program's website was launched January 1, 2016, making the State of Montana fully capable of implementing its Strategy at that time.

Key Accomplishments for 2015 and 2016

- The Stewardship Act took effect in May, 2015. The 2015 Montana Legislature appropriated funds to implement Montana's Strategy through the Program and funds to seed Montana's mitigation marketplace using the Stewardship Fund, a state special revenue fund.
- Executive Orders 12-2015 and 21-2015 were signed in September and December, 2015, respectively. Executive Order 21-2015 replaced the map in EO 12-2015, correcting a clerical error. The Orders took effect January 1, 2016.
- Program staff were hired in 2015 and 2016. The Program is comprised of a manager, two environmental specialists with specific wildlife, mitigation, and sage grouse expertise, and a geographic information systems project manager / data analyst.
- MSGOT met seven times between September, 2015 and December, 2016. Complete archives are available on the MSGOT page on the Program's website. See <https://sagegrouse.mt.gov/Team>.
- With the DNRC Office of Technology and Information, the Program launched a website SG 1.0 on January 1, 2016 at www.sagegrouse.mt.gov. It serves as the primary source of information about the Program and implementation of Montana's Strategy. MSGOT meetings and archived information are available, as well. Additionally, the website established the portal through which Program review of activities proposed in sage grouse habitat is requested. The website also includes information about Stewardship Grants. An online public comment tool was also created so public comments could be received electronically, using the website.

- A list serve feature was added to the website, allowing interested parties to ‘opt in’ to receive public meeting notices, and other news or information about the Program or Montana’s efforts to conserve sage grouse. The Program does not share or disseminate the list serve contacts.
- The Program’s website received 865 requests for consultation as a part of a permitting, state grant, or state authorization process. Of those, 370 were outside of habitats designated in Executive Order 21-2015 for sage grouse habitat conservation. The Program notified these proponents by letter that review was not required almost immediately. Eighty five projects were either cancelled by the proponent or the Program in consultation with the proponent. A total of seven requests for consultation carried over into 2017. The Program completed reviews for 99% of all submissions, including correspondence back to project proponents whose activities were geographically located outside of designated habitats. Through December 6, the average Program response time was seven days. See Figures 3 and 4 and Tables 1-6.
- MSGOT refined implementation of the Orders in several respects over the first 12 months of full implementation of Montana’s Strategy. MSGOT reviewed and discussed internal policy guidance provided by the leadership of the Montana Department of Environmental Quality (DEQ). MSGOT granted exceptions to the consultation requirement for any activities proposed within the municipal boundaries of Montana’s cities and towns. Examples include certain DEQ permits, permitting processes that are primarily clerical in nature, or Montana Department of Labor permits for which sage grouse review would be triggered by other permits. MSGOT granted these exceptions to the consultation requirement after careful review and analysis. The exceptions granted were for permitted activities that, if implemented, would not exacerbate threats to sage grouse or their habitat and would not forgo opportunities for future habitat restoration through mitigation.
- On February 19, 2016, MSGOT adopted final administrative rules for implementation of the Stewardship Fund grant program after notice and comment. MSGOT also adopted Procedures 01-2016 describing how grant applications would be received and processed and approved the Eligibility and Evaluation Criteria Guidance document based on the requirements of the Stewardship Act.
- The Program and MSGOT completed the first competitive grant application and award cycle from February to May, 2016. After a competitive process (including peer review) in which it considered nine applications, MSGOT awarded Stewardship Fund grants to five habitat conservation proposals: four perpetual easements and one habitat restoration conifer removal project. See Tables 7 and 8. See Figure 5.
- The Program solicited scoping comments on each project selected for funding. See <https://sagegrouse.mt.gov/Grants>.

- MSGOT executed grant agreements for three conservation easements. The Program continued to work with grant recipients on negotiating easement terms and completing environmental assessments during the rest of 2016.
- One Stewardship Fund grant for a perpetual conservation easement closed in November, 2016, conserving 18,033 acres of sage grouse core area habitat in Petroleum and Fergus counties. An environmental assessment was prepared and made available for public comment. MSGOT gave final approval in November, spending \$1.5 million of Stewardship account funds. Mitigation credits will be retroactively calculated and made available when the HQT tool is finalized.
- In the spring of 2016, the Program and DNRC Office of Information and Technology contracted the development of the Program's new SG 2.0 website, after an extensive RFP process. The new website will be a fully integrated website, database, and user interface, along with secure log-in features. Completion is expected in Summer, 2017.
- Efforts to develop Montana's mitigation framework (guidance and policy) and habitat quantification tool (a GIS model to estimate credits and debits) formally began with the official first mitigation stakeholders meeting on September 16, 2016. Research into the sage grouse mitigation policies and approaches of other states had been ongoing prior to the initiation of the formal stakeholder process. Stakeholders met six times through November 18, 2016.
- In June, 2016, Montana Fish, Wildlife & Parks reported to the Commission that 2016 lek counts rebounded significantly since recent lows in 2014. The 2016 counts are above the long term average in the state as a whole and in each of the individual hunting management zones for the 88 leks which are repeatedly sampled and identified as the Adaptive Harvest Management (AHM) leks. Lek counts in 2016 averaged 33.2 males / lek (which is 17% above the long term average, a 46% increase from 2015 and a 153% increase from 2014 counts). In Zone 1, the long term average males/lek is 28.6 and the 2016 count was 33.0. In Zone 2, the long term average is 24.8 males/lek and the 2016 count was 26.2. In Zone 3, the long term average males / lek is 29.1 and the 2016 count was 35.1. The Commission approved reopening the hunting season in areas that had previously been closed in 2014, with a bag limit of two birds (possession limit is twice the bag limit) and a season closure date of September 30, 2016. See Appendix E.
- On December 6, 2016, MSGOT approved proposed administrative rules for publication in the Montana Administrative Register to initiate formal rulemaking: Habitat Quantification Tool, Compensatory Mitigation, Method to Track and Maintain the Number of Credits and Debits Available and Used, Method to Administer the Review and Monitoring of MSGOT Funded Projects. The proposed rules were published on the Montana Secretary of State Website for public comment on December 23, 2016. Three public hearings are planned for January 2017, and the comment deadline is January 23, 2017. The mitigation stakeholders will continue

working in 2017 to finalize the current documents for review and adoption by MSGOT. MSGOT is expected to formally designate Montana's HQT in 2017.

- Since 2015, the Program Manager has represented the State of Montana on the Sage Grouse Task Force, recognized as a federal advisory council to the U.S. Department of Interior and a working subcommittee of the Western Governors' Association. Other participants include representatives from all other western states within sage grouse range, federal representatives from the Interior Department, U.S. Geological Survey, USFWS, BLM, USFS, and NRCS. This is a forum for ongoing collaboration for sage grouse conservation among all states and federal agencies. The Task Force occasionally forms subcommittees for work on focused issues. Along with representatives from Montana Fish, Wildlife & Parks, the Program manager also participates in sage grouse related collaborative work undertaken by the Western Association of Fish and Wildlife Agencies.
- Throughout late 2015 and all of 2016, the Program has worked extensively with state agencies to facilitate their respective implementation, develop work flow processes, and identify opportunities to improve efficiencies and streamline the permitting processes. Many have been taken to MSGOT for formal approval. Others have been implemented at the agency / Program level as they do not exacerbate threats, implicate policy, or rise to a level requiring formal MSGOT approval.
- Throughout late 2015 and all of 2016, the Program made significant efforts at public outreach by meeting with state agency permit stakeholder groups, attending landowner meetings to learn, share information and answer questions; conducting media interviews; giving formal presentations at stakeholder group conventions or annual meetings; attending field tours; providing technical assistance throughout the consultation process; meeting with project proponents about their projects; developing fact sheets; testifying at legislative oversight meetings; etc.
- The time frame covered in this report straddles state fiscal years and thus will not correspond exactly. The Program's budget from July 1, 2015 to June 30, 2016 was \$590,744. FY 2016 was a key period for startup expenses attributable to a new program. During FY 2016, about \$245,439 was spent on personal services and operations (42% of the total budget), and about \$345,305 was spent on contracted services (58%). Because some contracts were not fully completed in FY 2016, some funds were accrued into FY 2017 and paid out when the contracts were completed. The Program's FY 2017 budget for the period beginning July 1, 2016, was about \$495,736. About \$115,000 of FY 2017 dollars were allocated to contracted services (23%) for additional start up IT, website, and digital data needs.
- See the Montana Sage Grouse Conservation Benchmarks and Montana's Program Timeline (Appendix A) for important dates and events in the history of Montana sage grouse conservation and a more detailed chronology of the Program's efforts to implement Montana's Conservation Strategy.