



## Questions and Answers: Proposed Rule to List Lesser Prairie-Chicken As Threatened

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**Southwest Region** (Arizona • New Mexico • Oklahoma • Texas) [www.fws.gov/southwest/](http://www.fws.gov/southwest/)

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### **1. What action is the U.S. Fish and Wildlife Service (Service) taking?**

The Service is proposing to protect the lesser prairie-chicken as threatened under the Endangered Species Act (ESA). The Service is also opening a 90-day public comment period designed to collect any new information from the public and the scientific community to ensure that the Service's final listing determination is based on the best available science.

### **2. Why is the Service taking this action?**

After reviewing the best available scientific information concerning the status of the lesser prairie-chicken, the Service has determined that it is likely to become in danger of extinction in the foreseeable future. There has been a substantial decrease in the range of the species primarily as a result of habitat fragmentation and loss caused by development and conversion of the species' native grassland habitat to agriculture. The lesser prairie-chicken requires large areas of intact native grassland and shrubland to maintain self-sustaining populations. Habitat loss has resulted in reduced populations of lesser prairie-chickens, making them especially vulnerable to ongoing impacts on the landscape. These grasslands are also important to communities and people across the region, as well as migratory birds and other wildlife.

### **3. Why is this finding occurring now?**

As part of a comprehensive, court-approved agreement, the Service is systematically reviewing and addressing the needs of the lesser prairie-chicken and more than 250 other species now on the list of candidates for protection under the ESA over a six-year period, to determine if they should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. As part of this agreement, the Service will make a final determination on whether to list the lesser prairie-chicken by September 30, 2013. This proposal is the first step in a comprehensive effort to make the best decision possible. In June 1998, the Service determined that the lesser prairie-chicken warranted ESA protection, but that immediate listing of the lesser prairie-chicken was precluded by the need to address other species facing more severe threats of extinction. As a result, the lesser prairie-chicken was added to the federal list of candidates for ESA protection.

The prairie-chicken's status has been reviewed annually since then, along with that of every other candidate species. Each candidate species is assigned a listing priority number (LPN), based on the magnitude and imminence of the threats it faces. In 2008, the Service significantly elevated the listing priority of the prairie-chicken to reflect an increase in the overall magnitude of threats throughout its range.

#### **4. What protections are afforded to threatened species under the ESA?**

To answer this question, it first helps to understand the difference between an endangered and threatened designation under the ESA. An 'endangered' species is one that is in danger of extinction throughout all or a significant portion of its range. A 'threatened' species is one that is likely to become endangered in the foreseeable future.

Endangered animal species are given protection under Section 9 of the Endangered Species Act, which prohibits killing, harming or otherwise "taking" a listed species without authorization in the form of a permit from the Service. Section 7 of the Act also requires federal agencies to contribute to the recovery of endangered species, and to avoid and minimize the impacts of their activities on endangered species. The Service also applies these prohibitions on take and requirements for consultation by federal agencies to threatened species.

#### **5. In what ways does the Service manage threatened species differently than endangered species?**

The Endangered Species Act prohibits all activities that would harm ("take") species listed as endangered, unless exempted or permitted by the Service. In contrast, for species listed as threatened, section 4(d) of the Act gives the Service authority to tailor the "take" prohibitions to the conservation needs of the species. For example, the Service has 4(d) rules in place for the threatened Preble's meadow jumping mouse and California tiger salamander (central DPS) that allow take associated with routine farming and ranching operations because that take is not a significant threat to the species and because maintaining working farms and ranches on the landscape is important for recovery of the species.

As part of the public comment period for the lesser prairie-chicken the Service is asking for information that would help inform our efforts to develop a 4(d) rule for the lesser prairie-chicken. The Service's priority is to work with our partners and private landowners to keep the lesser prairie-chicken on the landscape, reverse its decline and help the species coexist with those who make their living from the land. We will consider ways in which we might use our authority under section 4(d) to maintain and encourage good management practices that benefit the lesser prairie-chicken and incentivize participation in conservation plans that will support recovery of the species.

#### **6. What are the primary threats to the lesser prairie-chicken?**

Habitat loss, fragmentation, modification, and degradation within the species' range are the major threats to the species. In addition and more recently, land uses related to wind energy and transmission development, in combination with the potential loss of Conservation Reserve Program (CRP) acres, present conservation challenges for the lesser prairie-chicken.

## **7. Where is the lesser prairie-chicken found?**

The lesser prairie-chicken currently occupies a five-state range that includes portions of Colorado, Kansas, New Mexico, Oklahoma and Texas.

## **8. How can the public submit information on the lesser prairie-chicken proposal?**

The Service will accept public comments received during the 90-day public comment period. For more information on this proposal, what to comment on, or how to submit comments, see the *Federal Register* notice online at: <http://www.fws.gov/southwest>.

The Service will hold four public hearings to gather public comments on the listing proposal. Below is information for each public hearing:

### **Tuesday, February 5, 2013**

6:30 p.m. – 8:30 p.m.  
High Plains Technology Center  
Seminar Center  
3921 34th Street  
Woodward, OK 73801

### **Monday, February 11, 2013**

6:30 p.m. – 8:30 p.m.  
Lubbock Civic Center  
1501 Mac Davis Lane  
Lubbock Texas 79401

### **Thursday, February 7, 2013**

6:30 p.m. – 8:30 p.m.  
Garden City Community College  
801 N. Campus Drive  
Garden City, KS 67846-6333

### **Tuesday, February 12, 2013**

6:30 p.m. - 8:30 p.m.  
ENMU Fine Arts Auditorium  
64 University Blvd.  
Roswell, NM 88203

For additional information, contact Dixie Porter, Field Supervisor, Oklahoma Ecological Services Field Office, 9014 E. 21st Street, Tulsa, OK, 74129; telephone- 918-581-7458. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

## **9. What efforts are currently being undertaken to protect the lesser prairie-chicken?**

During the last 10 to 15 years, numerous conservation actions have been implemented locally on a state-by-state basis within the historical range of the lesser prairie-chicken, many focused primarily on the currently occupied portion of the range. State conservation agencies have taken a lead role in implementation of these actions, but several federal agencies and private conservation organizations have also played important supporting roles in these efforts. The species is listed as threatened by the State of Colorado. New Mexico, Oklahoma and Texas have closed their lesser prairie-chicken hunting seasons.

State wildlife agencies in Colorado, Kansas, New Mexico, Oklahoma and Texas have joined together to form the Lesser Prairie-Chicken Interstate Working Group. In an effort to establish a more

coordinated approach to lesser prairie-chicken management across the five states, the Group is currently working on the development of a regional conservation strategy for the lesser prairie-chicken.

In addition, the Great Plains Landscape Conservation Cooperative (GPLCC) has identified the lesser prairie-chicken as one of its top priorities. Over the past three years, the GPLCC has provided financial and programmatic support to five projects to improve scientific information on the lesser prairie-chicken and to assist in improving capacity for planning and conservation delivery for the species. One of the GPLCC-funded projects is “Rangewide Population Estimation and Monitoring for Lesser Prairie-Chickens: Sampling Design and Pilot Implementation,” which is supported through a grant to the Western Association of Fish and Wildlife Agencies (WAFWA) - as representation of the five state agencies managing lesser prairie-chickens. The results of this project include a range-wide baseline estimate of the lesser prairie-chicken across its five-state range. The survey results are available at [www.wafwa.org/html/aerial\\_surveys.shtml](http://www.wafwa.org/html/aerial_surveys.shtml).

Recently the five state conservation agencies developed an Internet-based mapping tool as a pilot project under the Western Governors’ Association Wildlife Council. This tool, known as the Southern Great Plains Crucial Habitat Assessment Tool (CHAT), was made accessible to the public in September 2011. The CHAT is available for use by conservation managers, industry, and the public to aid in conservation planning for the lesser prairie-chicken. The tool identifies priority habitat for the lesser prairie-chicken including possible habitat corridors linking important conservation areas. Use of the tool is currently voluntary but ultimately may play an important role in guiding future development and conserving important habitats.

#### **10. What is being done to preserve lesser prairie-chicken habitat in Kansas?**

Many conservation efforts for the lesser prairie-chicken are underway in Kansas. The Service’s Kansas Partners for Fish and Wildlife (PFW) program has helped many landowners restore lesser prairie-chicken habitat through cost-share assistance towards invasive tree removal, reseeding native grasses and implementing prescribed fire. A multitude of landowners have also participated in the CRP in western Kansas. Through the efforts of the NRCS and Kansas Farm Service Agency (FSA), large tracks of land with stands of native grasses have been established through the CRP. These lands have proven to provide a stronghold for the lesser prairie-chicken in Kansas.

#### **11. What is being done to preserve lesser prairie-chicken habitat in Colorado?**

Many conservation efforts for the lesser prairie-chicken are underway in Colorado. In southeast Colorado, primarily in Prowers County, private landowners are participating in the CRP. In Baca County, the Comanche National Grasslands has designated a Lesser Prairie Chicken Zoological Area on 10,177 acres in which grazing and other activities are managed for the benefit of the chicken.

#### **12. Why are private lands and landowners important to wildlife conservation?**

While federal and state land acquisition and protection efforts will remain important, the majority of listed and candidate species in the United States rely on private lands for most of their habitat. Recognizing that many conservation efforts will fail without the involvement and support of private landowners, the Service is increasingly seeking to foster locally supported, partnership-driven

conservation efforts that respect and recognize the contributions of private landowners in conserving wildlife habitat at a landscape scale. At the heart of this approach is the understanding that farmers, ranchers and other landowners have traditionally played key roles as stewards of the Nation's wildlife resources and habitat. The Service seeks to preserve traditional land uses, relying to a much greater extent on conservation easements, voluntary agreements and other incentives instead of federal land acquisition and regulatory enforcement.

Projects like the Dakota Grasslands Conservation Area in the Dakotas, and the Flint Hills Legacy Conservation Area in Kansas, embody the Service's vision for future conservation that grows from the ground up and keeps working families on the land. In New Mexico and Texas, the Service has taken a similar approach with the dunes sagebrush lizard – although no significant federal and acquisitions or easements are contemplated.

### **13. How does the Service work with private landowners who want to take voluntary measures to benefit at-risk species?**

A variety of tools exist to help landowners voluntarily conserve and enhance habitat for listed species and candidate species such as the lesser prairie-chicken, including financial and technical assistance, tax incentives, and conservation agreements that provide regulatory predictability should the species become listed in the future. The primary tools being used to conserve the lesser prairie-chicken are Candidate Conservation Agreements (CCAs) and Candidate Conservation Agreements with Assurances (CCAAs).

Candidate Conservation Agreements (CCAs) are voluntary conservation agreements between the Service and one or more public or private parties. The Service works with its partners to identify measures needed to address threats to candidate species and promote their conservation. The Service then works with willing landowners to develop agreements that implement those measures and monitor their effectiveness.

Candidate Conservation Agreement with Assurances (CCAAs) expand on the success of traditional CCAs by providing non-federal landowners with additional incentives for engaging in voluntary, proactive conservation. The CCAA program was developed to address the uncertainty that non-federal landowners face, given that candidate species on their land may one day be protected under the Endangered Species Act. Enrolling in a CCAA gives landowners who agree to implement conservation measures the assurance that they will not be asked to do more if the candidate species later requires the protection of the ESA. More information on CCAs and CCAAs may be found at <http://www.fws.gov/endangered/what-we-do/cca.html>.

In addition, the Service is working with landowners, as well as many conservation and agricultural groups representing external stakeholders and landowners across the range of the lesser prairie-chicken through the Partners for Fish and Wildlife program. The Partners program is a voluntary non-regulatory program that provides private landowners with the opportunity to perform restoration and enhancement activities that benefit both the lesser prairie-chicken and the landowner's overall operation. The program provides financial and technical assistance for activities such as grazing management, upland restoration, and wetland enhancement and can cover items such as fencing, water tanks, solar pumps, seeding, or a combination of facilitative practices.

#### **14. How are Candidate Conservation Agreements (CCAs) and Candidate Conservation Agreements with Assurances (CCAAs) being employed to conserve the lesser prairie-chicken?**

In New Mexico, a combination CCA and CCAA is in place covering the lesser prairie-chicken. In 2008, the Service, the Bureau of Land Management (BLM) and the Center of Excellence in Hazardous Materials Management (CEHMM) partnered to develop a Candidate Conservation Agreement (CCA) and Candidate Conservation Agreement with Assurances (CCAA) for the conservation of the lesser-prairie chicken. These agreements allow oil and gas producers and the ranching industry to participate in the conservation measures outlined in the agreement, while ensuring that their activities can continue if the lesser prairie-chicken is listed. The CCA covers activities on federal lands, and the CCAA covers activities on non-federal lands. Participating cooperators from the oil and gas industry follow conservation measures at each drill site, and also pay into a conservation fund that is used to restore habitat for the lesser-prairie chicken. CEHMM, a New Mexico-based 501(c)(3) organization whose mandate includes conservation, holds the permit for the CCAA and administers conservation programs in the CCA and CCAA. As of October 1, 2012, thirty oil and gas companies are enrolled in the CCA/A for a total of 816,000 acres (the participating Federal agency in this case is the Bureau of Land Management (BLM)). In addition, forty-one New Mexico ranchers have enrolled a combined 1.5 million acres of rangeland in the CCA/A and the New Mexico State Land Office has enrolled 248,000 acres in the CCAA.

On March 1, 2012, the New Mexico State Land Office enrolled all lesser prairie-chicken habitat on State Trust lands in conservation pursuant to these agreements. That action, as well as the removal from gas and oil leasing by the BLM of prime lesser prairie-chicken habitat and the enrollment of ranching and oil and gas interests on private and BLM lands, has resulted in protections for lesser prairie-chicken habitat in the state. These New Mexico conservation agreements are in effect for 20 years and can be renewed.

In Texas, the Texas Parks and Wildlife Department holds a permit and issues Certificates of Inclusion to participating landowners who are voluntarily implementing management plans for lesser prairie-chickens. As of October 1, 2012, twenty-seven Texas ranchers have 301,022 acres enrolled in the CCAA. Oklahoma, under the leadership of the Oklahoma Department of Wildlife Conservation (ODWC), has submitted a CCAA to the Service. Oklahoma's CCAA is currently under review by the Service after the conclusion of a public comment period on the Agreement that closed on August 24, 2012.

#### **15. Why should someone enroll in a Candidate Conservation Agreement or Candidate Conservation Agreement with Assurances?**

Enrolling in a CCA or CCAA is entirely voluntary and offers significant benefits for landowners – benefits that can remain in place regardless of whether the lesser prairie-chicken is ultimately listed. In addition, the conservation benefits provided to the species by these agreements may even help alleviate the need for listing.

Conservation measures contained in CCAs and CCAAs provide guidance to landowners, helping them take effective actions to benefit the species. Enrolling in a CCAA provides predictability to landowners seeking to alleviate uncertainty about how the lesser prairie-chicken may affect activities on their land. Should the lesser prairie-chicken become protected in the future, the CCAAs provide landowners with assurances that they can continue to manage their lands as outlined in their agreements.

The Service cannot guarantee that these agreements will prevent the need to list the lesser prairie-chicken. Conservation agreements that affect only a portion of the lesser prairie-chicken's range or address only some threats may not be enough to avoid listing the species.

**16. If the lesser prairie-chicken is listed as a threatened species, what does it mean for private landowners?**

First, it's important to remember that the Service has not made a final decision on whether to list the species under the ESA. As such, the species continues to be governed by the respective laws of each state in which it occurs.

In the event that the species is listed, the ESA provides additional management flexibility for threatened species compared to that provided for endangered species. For example, the Service has the ability to issue special management rules for threatened species excepting "take" that may occur as a result of traditional land-use activities such as agriculture and grazing.

Actions that may affect the lesser prairie-chicken or its habitat may nonetheless require a permit from the U.S. Fish and Wildlife Service. In those instances, the Service will work with the landowner to develop a Habitat Conservation Plan (HCP) and associated permit containing measures designed to avoid, reduce and/or mitigate those impacts.

The HCP and permit provide important regulatory predictability to landowners, in much the same way that CCAAs do for candidate species. In some instances, a CCAA may even convert to an HCP if the species is listed, without imposing additional conservation measures.

Even if unforeseen circumstances arise, the Service will honor the terms of the HCP and the assurances given in the permit as long as landowners continue to implement the terms and conditions of the HCPs, permits, and other associated documents in good faith. No additional limitations on land use – or the commitment of additional land, water, or financial compensation – will be implemented without the permit holder's consent.