



Questions and Answers: Revised Proposed Special Rule for the Lesser Prairie-Chicken

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

Following months of landmark cooperation between the Service and the five range states of the lesser prairie-chicken, the agency is taking the next step in supporting state efforts to conserve the species and its habitat. The Service will accept comments for 30 days on a proposed revised 4(d) special rule that would exempt from regulation under the ESA activities harmful to the prairie-chicken (“take”) if incidental to carrying out the state-developed range-wide lesser prairie-chicken conservation plan, in the event the species warrants listing as “threatened” under the ESA. The proposed revised 4(d) special rule would also exempt take incidental to landowner participation in the Natural Resource Conservation Service’s Lesser Prairie-Chicken Initiative.

2. Why is the Service proposing a revised 4(d) special rule?

The Service has proposed a revised 4(d) special rule for the lesser prairie-chicken in recognition of the on-the-ground management activities taking place for the species. We cannot restore, protect and reconnect habitat for the lesser prairie-chicken without the assistance of private landowners. Our action is meant to focus our resources on the actions that are most important to conserve the lesser prairie-chicken, while avoiding regulation of activities that may cause small amounts of take but are not significant issues for the overall conservation of the species.

We applaud the efforts of the range states and USDA to implement conservation measures that will benefit both the lesser prairie-chicken and private landowners. Our 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.

3. What is the revised 4(d) special rule?

Under the ESA prohibited activities are defined for endangered species; however, the ESA allows the Service to define the prohibited activities for threatened species through a 4(d) special rule. The 4(d) special rule would only be implemented if the species were to be listed as a threatened species under the ESA.

On May 6, 2013, the Service proposed a 4(d) special rule that, in the event that the species were to be listed as threatened, would encourage voluntary participation in conservation programs benefiting the species. The proposed revision of the special rule identifies the five states' range-wide conservation plan as one that, when implemented, addresses the conservation needs of the species. If the Service determines that the lesser prairie-chicken should be listed as threatened, the rule would offer landowners and industry participants regulatory certainty that actions carried out in accordance with the plan or the Natural Resources Conservation Service (NRCS) Lesser Prairie-Chicken Initiative would be in compliance with the ESA. The revised special rule also proposes that take of the lesser prairie-chicken during the continuation of routine agricultural practices on existing cultivated lands would not be prohibited and would not be subject to ESA regulation.

4. What information is the Service seeking?

The Service is requesting public comments concerning the proposed listing rule and revised 4(d) special rule. We particularly seek comments regarding:

(1) The historical and current status and distribution of the lesser prairie-chicken, its biology and ecology, specific threats (or lack thereof) and regulations that may be addressing those threats and ongoing conservation measures for the species and its habitat.

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the ESA, which are:

- (a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;
- (b) Overutilization for commercial, recreational, scientific, or educational purposes;
- (c) Disease or predation;
- (d) The inadequacy of existing regulatory mechanisms; or
- (e) Other natural or manmade factors affecting its continued existence and threats to the species or its habitat.

(3) Application of the Lesser Prairie-Chicken Interstate Working Group's final Lesser Prairie-Chicken Range-Wide Conservation Plan to our determination of status under section 4(a)(1) of the ESA, particularly comments or information to help us assess the certainty that the plan will be effective in conserving the lesser prairie-chicken and will be implemented.

(4) Which areas would be appropriate as critical habitat for the species and why areas should or should not be proposed for designation as critical habitat, including whether any threats to the species from human activity would be expected to increase due to the designation and whether that increase in threat would outweigh the benefit of designation such that the designation of critical habitat may not be prudent.

(5) Specific information on:

- (a) The amount and distribution of habitat for the lesser prairie-chicken;

(b) What may constitute “physical or biological features essential to the conservation of the species,” within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) What areas that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species should be included in the designation and why; and

(f) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(6) Information on the projected and reasonably likely impacts of climate change on the lesser prairie-chicken and its habitat.

(7) Whether measures outlined in this revised proposed 4(d) special rule are necessary and advisable for the conservation and management of the lesser prairie-chicken.

(8) Whether the provision related to the continuation of routine agricultural practices on existing cultivated lands should more clearly differentiate between row crop agriculture and other cropped areas, such as managed grasslands, forage, or other untilled crops.

(9) Whether the provision related to the continuation of routine agricultural practices on existing cultivated lands should be revised to include spatial or temporal restrictions or deferments.

(10) Additional provisions the Service may wish to consider for a 4(d) special rule in order to conserve, recover, and manage the lesser prairie-chicken.

5. What are the primary threats to the lesser prairie-chicken?

The historical, current and projected impacts from cumulative habitat loss and fragmentation, within the species’ range, are the major threats to the species. Once found in abundant numbers across much of Colorado, Kansas, New Mexico, Oklahoma and Texas, the lesser prairie-chicken’s historical range of native grasslands and prairies has been reduced by an estimated 84 percent.

In addition and more recently, land uses related to wind energy and transmission development, in combination with the potential loss of Conservation Reserve Program acres, present conservation challenges for the lesser prairie-chicken.

6. 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.

7. 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. The Service is proposing a revised 4(d) special rule that would allow for incidental take of lesser prairie-chicken resulting from implementation of the range-wide conservation plan and NRCS's Lesser Prairie-Chicken Initiative.

Actions not covered under the 4(d) rule that kill or injure the lesser prairie-chicken or cause significant habitat modifications may 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 a Candidate Conservation Agreement with Assurances (CCAA) does for candidate species.

Even if unforeseen circumstances arise, the Service will honor the terms of the CCAA and HCP and the assurances given in the permit as long as landowners continue to implement the terms and conditions of the CCAAs, 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.

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

The Service will accept comments received or postmarked on or before January 10, 2014. 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>.

9. When will the Service make a final determination on the status of the lesser prairie-chicken?

The Service must submit a final listing determination to the *Federal Register* by March 2014.