

Questions and Answers:

Final Listing Determination and Special Rule for the Lesser Prairie-Chicken

Q. What actions are the U.S. Fish and Wildlife Service taking?

A. After reviewing public comments and the best available science, the Service has determined that the lesser prairie-chicken meets the definition of a threatened species under the Endangered Species Act (ESA). In recognition of the unprecedented partnership efforts and leadership of the five range states, the Service is finalizing concurrently a 4(d) special rule for the species that will retain more state responsibility for managing the lesser prairie-chicken than has ever been retained with respect to any other ESA-protected species. It will also provide regulatory certainty for landowners and businesses enrolled in the Western Association of Fish and Wildlife Agencies (WAFWA) Lesser Prairie-Chicken Range-Wide Conservation Plan and USDA's Lesser Prairie-Chicken Initiative (LPCI). The final listing determination will be effective 30 days after publication.

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

A. The primary threats to the lesser prairie-chicken are habitat loss and fragmentation resulting from conversion of grasslands to agricultural uses; encroachment by invasive woody plants; wind energy development; petroleum production; the ongoing drought in the southern Great Plains; and the presence of roads and manmade vertical structures including towers, utility lines, fences, turbines, wells and buildings. The range of the lesser prairie-chicken has been reduced by an estimated 84 percent. Habitat loss significantly increases the extinction risk for the lesser prairie-chicken because the species requires large parcels of intact native grassland and shrubland, often in excess of 20,000 acres (8,100 ha) to maintain self-sustaining populations.

Q. Where is the lesser prairie-chicken found?

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

Q. With many conservation activities focused on the lesser prairie-chicken, why did the Service determine that the lesser prairie-chicken should be listed as threatened?

A. Over the last decade, a number of significant, on-the-ground conservation programs have been implemented across the birds' five-state range (Texas, New Mexico, Oklahoma, Kansas and Colorado) to conserve and restore its habitat and improve the status of the lesser prairie-chicken. Key programs such as the WAFWA range-wide plan, USDA's NRCS LPCI, USDA's FSA Conservation Reserve Program, the Bureau of Land Management's New Mexico Candidate Conservation Agreement (CCA), the Service's Partners for Fish and Wildlife Program and Candidate Conservation Agreements with Assurances (CCAAs) in Oklahoma, Texas and New Mexico, are engaging state and federal agencies, landowners and industry in efforts to conserve the lesser prairie-chicken and restore its habitat. Collectively, these various efforts are quite similar to a recovery plan, something that the Service normally prepares years after a species' listing. This early identification of a strategy to recover the lesser prairie-chicken is likely to speed its eventual

delisting. This special rule encourages managers and operators to implement protective practices on their land and recognizes landowners' work to protect the species.

While these conservation programs serve as a comprehensive framework for the conservation of the lesser-prairie chicken, threats including drought and habitat fragmentation continue to impact the species and are expected to continue into the future. After reviewing the best available science and the on-the-ground conservation efforts, the Service has determined that the lesser prairie-chicken is likely to become endangered in the foreseeable future and should therefore be listed as a threatened species.

The term "threatened species," as defined in the ESA, means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Q. How does the listing affect landowners or companies enrolled in either the WAFWA range-wide plan or the Lesser Prairie-Chicken Initiative?

- A. Landowners and companies enrolled in the WAFWA range-wide plan can continue to manage their land or continue oil and gas operations and will not be subject to additional restrictions or required to undertake additional actions as a result of the lesser prairie-chicken being listed, as long as they continue to conduct their activities pursuant to the range-wide plan or the LPCI.

Q. What does a listing mean for private landowners?

- A. Private property is critical in the management and conservation of the lesser prairie-chicken as over 90 percent of the species' habitat occurs on private lands. In general, the ESA makes it unlawful for a person to "take" a lesser prairie-chicken without a permit or authorization. Take is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct." Harm is defined to include significant habitat modification or degradation if it results in the death or injury to a lesser prairie-chicken by significantly impairing essential behavior patterns, including breeding, feeding or sheltering. The Service has developed an array of tools and incentives to protect the interests of private landowners while encouraging management activities that benefit the lesser prairie chicken.

Concurrent with the final listing rule, we are finalizing a 4(d) special rule that will promote the conservation of the lesser prairie-chicken by tailoring the regulations governing take of the species under the ESA to focus on those activities that are threats to the species' survival. The special rule will allow for incidental take of the lesser prairie-chicken associated with: (1) activities conducted pursuant to the Western Association of Fish and Wildlife Agencies' Lesser Prairie-Chicken Range-wide Conservation Plan and related NRCS activities focused on lesser prairie-chicken conservation; (2) conservation practices carried out in accordance with a conservation plan developed by the Natural Resources Conservation Service in connection with the Lesser Prairie-Chicken Initiative; and (3) the continuation of routine agricultural practices on existing cultivated lands.

Landowners that participate in the activities described above that are part of the special rule would be exempt from the take prohibitions of the ESA and no additional actions would be required by the landowner. Actions not covered under the 4(d) special rule that kill or injure the lesser prairie-chicken or cause significant habitat modifications may require a permit from the Service. In those

instances, the Service will work with the landowner to develop a voluntary Habitat Conservation Plan (HCP) and associated permit containing measures designed to avoid, reduce and/or mitigate those impacts. The existence of a 4(d) special rule will not change the need for federal agencies to consult with the Service on actions that may affect the lesser prairie-chicken that an agency carries out, funds or authorizes.

Landowners signed up under a Candidate Conservation Agreement with Assurances (CCAA) who continue to implement their agreements will not be impacted by the listing decision for any activities covered through their agreement. In New Mexico, Oklahoma and Texas, landowners can continue to manage their land as they have been doing under their agreements and will not be subject to additional restrictions or required to undertake additional actions as a result of the lesser prairie-chicken listing, as long as they continue to implement the terms and conditions of their agreement.

Q. How does the listing affect landowners or companies enrolled in Candidate Conservation Agreements with Assurances (CCAAs)?

- A. Landowners and companies that are enrolled in a CCAA and who continue to implement their agreements will not be required to change their management practices as a result of the listing decision. Enrollees can continue to manage their land or continue oil and gas operations as they have been doing under their agreements and will not be subject to additional restrictions or required to undertake additional actions as a result of the lesser prairie-chicken being listed, as long as they continue to implement the terms and conditions of their CCAA.

Q. How will the lesser prairie-chicken benefit from an ESA listing?

- A. Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, recovery actions, requirements for federal protection, and prohibitions against certain practices. Recognition results in public awareness and conservation by federal, state, tribal and local agencies; private organizations; and individuals. The ESA encourages cooperation with the states and requires that recovery actions be carried out for all listed species.

The ESA also requires the Service to develop and implement recovery plans for the conservation of threatened and endangered species. Recovery plans outline actions that are needed to improve the species' status such that it no longer requires protection under the ESA. The Service develops and implements these plans in partnership with the species experts; other federal, state and local agencies; tribes; non-governmental organizations; academia; and other stakeholders. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Examples of typical recovery actions include habitat protection, habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The Service invites the public to submit any new information they may have on the species and that may be used in development of a recovery strategy. The Service will provide information on the recovery planning process for the lesser prairie-chicken when it is available on our website www.fws.gov/southwest.

Under the ESA, federal agencies must ensure that actions they approve, fund or carry out do not jeopardize the continued existence of a listed species or destroy its critical habitat. Endangered or

threatened species cannot be purchased or sold in interstate or foreign commerce without a federal permit.

Q. Will the listing of the lesser prairie-chicken take away my rights as a private property owner?

A. No. The Service recognizes the concerns that landowners may have that ESA actions have the potential to affect private property owners. Over the last few years, the Service has been working with the states, industry, other federal agencies and landowners on a number of programs over the last several years designed to conserve and protect the lesser prairie-chicken and its habitat. Landowners and businesses currently enrolled in the WAFWA range-wide plan, USDA's NRCS Lesser Prairie-Chicken Initiative, USDA's FSA Conservation Reserve Program, the Bureau of Land Management's New Mexico CCA, and the Oklahoma, New Mexico and Texas CCAA will not be subject to additional restrictions or required to undertake additional actions as a result of the listing of the species. Landowners who are not currently enrolled in one of these programs or who do not choose to enroll in a program pursuant to the 4(d) special rule and whose activities may result in take of the lesser prairie-chicken may work with the Service to obtain any necessary permits.

Q: What will the impact be on hunting as a result of the threatened listing?

A: The Service understands that the state of Kansas, which heretofore has been the only state to allow hunting of the lesser prairie-chicken in recent years, will not be allowing sport hunting of the bird in the future.

Q. Now that the species is listed what programs are available for landowners and industry who have projects that may impact the lesser prairie-chicken or its habitat?

A. See attached Lesser Prairie-Chicken Conservation Efforts Table.

Q. Is the listing of the lesser prairie-chicken part of the September 2011 Multi District Litigation settlement agreement?

A. The lesser prairie-chicken is part of the September 2011 MDL settlement agreements. The agreements covered more than 250 candidate species nationwide describing the timing of when the Service should evaluate whether to list the species or not. The agreements did not determine whether or not any species would or would not be listed. Those determinations – including this determination for the lesser prairie-chicken – are made by the Service based on the best scientific and commercial information available. The timing of the final listing determination is a result of the requirements of the ESA and is not a result of the settlement agreements.

Q. Will the Service designate critical habitat for the lesser prairie-chicken?

A. The Service has determined that critical habitat is prudent, but cannot be determined at this time. The Service has one year from the final listing determination to propose and finalize any critical habitat for the lesser prairie-chicken.