

THE DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Enhancement of Survival Permit Application; Draft Oil and Gas Candidate Conservation Agreement with Assurances for the Lesser Prairie-chicken; Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), received an application for an enhancement of survival permit (permit) under the Endangered Species Act of 1973, as amended (ESA), for take associated with implementation of a lesser prairie-chicken Candidate Conservation Agreement with Assurances (CCAA) throughout the species' range in Kansas, Colorado, Oklahoma, New Mexico, and Texas. The intent of the CCAA is to provide the oil and gas industry with the opportunity to voluntarily conserve the lesser prairie-chicken and its habitat, in a manner that would contribute to precluding the need to list the species, while carrying out their oil and gas activities. The Western Association of Fish and Wildlife Agencies (WAFWA) is the permit applicant and proposes to convey incidental take authorization to oil and gas companies that enroll in the CCAA through certificates of inclusion. Pursuant to the National Environmental

Policy Act (NEPA), we have prepared a draft environmental assessment (EA) that analyzes the potential impacts of issuance of the permit and implementation of the proposed CCAA, as well as two alternatives to the proposed action. The permit application, draft CCAA, and draft EA are available for public review, and we seek public comment on these documents and potential issuance of the permit.

DATES: Written comments must be submitted by January 17, 2014.

ADDRESSES: Send written comments to Field Supervisor, Colorado Ecological Services Field Office, 134 Union Blvd., Ste. 670, Lakewood, CO 80228; or via email to *lesserprairiechicken@fws.gov*. The draft CCAA,EA, and application are available for review on our Mountain-Prairie Region Ecological Services website at <http://www.fws.gov/coloradoes/>.

You also may review copies of these documents by appointment during regular business hours at the following offices: (a) Colorado Ecological Services Field Office (ESFO) (see address above), (303) 236-4773; (b) Kansas ESFO, 2609 Anderson Ave., Manhattan, KS 66502, (785) 539-3474; (c) Oklahoma ESFO, 9014 East 21 St., Tulsa OK 74129, (918) 382-4501; (d) Austin, Texas ESFO, 10711 Burnet Rd., Suite 200, Austin, TX 78758, (512) 490-0057; (e) Arlington, Texas ESFO, 2005 NE Green Oaks Blvd., Suite 140, Arlington, TX 76006, (817) 277-1100; and (f) New Mexico ESFO, 2105 Osuna NE, Albuquerque, NM 87113, (505) 346-2525 .

If you do not have access to the website or cannot visit our office, you may request copies by telephone at (303) 236-4773 or by letter to the Colorado ESFO.

FOR FURTHER INFORMATION CONTACT: Leslie Ellwood, Fish and Wildlife Biologist, Colorado Ecological Services Field Office, (303) 236-4747; *leslie_ellwood@fws.gov*.

SUPPLEMENTARY INFORMATION: A CCAA is an agreement in which private and other non-Federal landowners voluntarily agree to undertake management activities and conservation efforts on their properties to enhance, restore, or maintain habitat to benefit species that are proposed for listing under the ESA, that are candidates for listing, or that may become candidates. If we approve the CCAA, we will issue an associated enhancement of survival permit, under section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*), that authorizes incidental take resulting from covered activities should the species addressed in the CCAA become listed. Through the CCAA and permit, we also provide assurances to participating landowners that we will not impose additional land, water, or financial commitments or restrictions on land, water, or resource use, as a result of efforts to attract or increase the numbers or distribution of a species on their property if that species becomes listed under the ESA in the future. Application requirements and issuance criteria for enhancement of survival permits through a CCAA are found in 50 CFR 17.22(d) and 17.32(d), as well as 50 CFR part 13.

Under the proposed range-wide CCAA, participating members of the oil and gas industry (Participants) would implement conservation measures that avoid, minimize, and mitigate impacts to the lesser prairie-chicken and their habitat from oil and gas activities on enrolled lands. The Service would issue the permit to WAFWA, who would

administer the CCAA and enroll the Participants. The CCAA would be in effect for 30 years. The CCAA would cover non-Federal lands within the current range of the lesser prairie-chicken, plus a 10-mile buffer around the current range. Any non-Federal lands within lesser prairie-chicken habitat in the covered area may be eligible for enrollment under the proposed CCAA.

The CCAA proposes to implement WAFWA's Lesser Prairie-chicken Range-wide Plan (Range-wide Plan), which the Service endorsed and WAFWA finalized in October 2013. The Range-wide Plan's conservation framework provides for financial incentives to landowners who voluntarily manage their lands to benefit the species. It also includes conservation measures to avoid, minimize, and mitigate impacts specific to current and anticipated land-use activities within the species' range, including oil and gas development. The Range-wide Plan contains a detailed mitigation fee structure that incentivizes locating impact activities outside of lesser prairie-chicken habitat or within lower quality habitat rather than within medium or high quality habitat. The proposed CCAA incorporates the Range-wide Plan's conservation measures and mitigation fees pertaining to oil and gas activities. Enrollment of lands with habitat impacted by oil and gas activities into the CCAA is intended to generate mitigation fees that will significantly help fund implementation of conservation actions under the Range-wide Plan for the lesser prairie-chicken throughout its range.

With issuance of the enhancement of survival permit, the Service would provide WAFWA and the Participants assurances that, should the lesser prairie-chicken be listed, no further commitments or restrictions than those they committed to under the CCAA would be imposed, as long as the CCAA is properly implemented. Furthermore, if the

lesser prairie-chicken is listed, the permit would provide WAFWA with incidental take authorization. Participants would also receive take authorization through their certificates of inclusion under the permit. The permit would become effective on the effective date of a listing of the lesser prairie-chicken as endangered or threatened and would continue through the end of the CCAA term.

Background

The lesser prairie-chicken currently inhabits rangelands dominated primarily by shinnery oak-bluestem and sand sagebrush-bluestem vegetation. Major factors affecting the status of the lesser prairie-chicken are habitat fragmentation, overutilization of habitat by domestic livestock, oil and gas development, wind energy development, loss of native rangelands to cropland conversion, herbicide use, fire suppression, and drought. On June 9, 1998, we determined that listing of the lesser prairie-chicken under the ESA was warranted but precluded by other higher priority actions (63 FR 31400). In the December 10, 2008, Candidate Notice of Review (73 FR 75176), we elevated the listing priority of the lesser prairie-chicken from 8 to 2, because the overall magnitude of threats to the lesser prairie-chicken were increasing and occurring throughout almost all of its occupied range.

On December 11, 2012, the Service proposed to list the lesser prairie chicken as threatened throughout its range (77 FR 73828). On May 6, 2013, the Service proposed a special rule (78 FR 26302), under section 4(d) of the ESA, that would allow for take of the lesser prairie chicken incidental to activities conducted pursuant to a Service-approved comprehensive conservation program developed by or in coordination with a

State agency. The rule also proposed authorizing take incidental to agricultural activities included within a conservation plan developed by the Natural Resources Conservation Service (NRCS) for private agricultural lands in connection with the NRCS's Lesser Prairie Chicken Initiative. The Service has published the revised proposed 4(d) rule for public comment (78 FR 75306; December 11, 2013), and intends to issue its final determinations on the proposed listing and 4(d) rule no later than March 30, 2014.

The Service has issued permits under three other approved CCAAs for the lesser prairie-chicken. A Statewide umbrella CCAA has been in effect in Texas since 2006, to enhance conservation efforts in conjunction with ranching, agricultural land use, and oil and gas activities. In New Mexico, a combined umbrella CCAA and Candidate Conservation Agreement with the Bureau of Land Management, approved in 2008, addresses conservation efforts for oil and gas impacts. Most recently, a CCAA was finalized in 2013, for agricultural land use in Oklahoma. An additional CCAA was established with a single landowner in southwestern Kansas; however, this CCAA has since expired. The proposed rule to list the lesser prairie-chicken details several other conservation efforts for the species (77 FR 73828).

WAFWA developed the draft range-wide CCAA for oil and gas activities to facilitate implementation of the Range-wide Plan for conserving the lesser prairie-chicken and restoring its habitat on non-Federal lands throughout its range.

Implementation of conservation measures in the proposed CCAA are expected to benefit the lesser prairie-chicken by establishing, augmenting and maintaining populations.

Conservation measures that minimize new surface disturbance would also minimize habitat fragmentation and preserve contiguous expanses of habitat. Conservation

measures that limit activities and operations during lekking, nesting, and brooding seasons would minimize impacts to reproduction. Furthermore, the conservation offsets implemented with mitigation fees from Participants are expected to further enhance lesser prairie-chicken habitat through the removal of infrastructure and remediation of impacts to restore habitat. Finally, the CCAA's regulatory assurances would act as an incentive for participation by oil and gas companies, thereby increasing conservation for the species.

The Secretary of the Interior has delegated to the Service the authority to approve or deny a section 10(a)(1)(A) permit in accordance with the ESA. To act on WAFWA's permit application, we must determine that the CCAA meets the issuance criteria specified in the ESA and at 50 CFR 17.22 and 17.32, as well as 50 CFR part 13. These criteria include a finding that the proposed CCAA complies with the requirements of our CCAA Policy (64 FR 32726, June 17, 1999).

The issuance of a section 10(a)(1)(A) permit is a Federal action subject to NEPA compliance, including the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500-1508). WAFWA's draft CCAA and application for the enhancement of survival permit are not eligible for categorical exclusion under NEPA. We have prepared a draft EA to further analyze the direct, indirect, and cumulative impacts of the CCAA on the quality of the human environment and other natural resources. In compliance with NEPA, we analyzed the impacts of implementing the CCAA, issuance of the permit, and a reasonable range of alternatives in the draft EA. Based on these analyses and any new information resulting from public comment on the proposed action, we will determine if issuance of the permit

would cause any significant impacts to the human environment. After reviewing public comments, we will evaluate whether the proposed action and alternatives in the draft EA are adequate to support a Finding of No Significant Impact under NEPA. We now make the draft EA available for public inspection online or in person at the Service offices listed in **ADDRESSES**.

Public Availability of Comments

All comments we receive become part of the public record. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22, 17.32), and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

Date: _____

Amelia Orton-Palmer,
Acting Assistant Regional Director—Ecological Services,
Mountain-Prairie Region, Denver, CO.