



## Questions and Answers: Reopening of Comment Period for Lesser Prairie-Chicken

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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 reopening the public comment period on the December 11, 2012, proposed rule to list the lesser prairie-chicken as a threatened species under the Endangered Species Act of 1973, as amended (ESA). We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed listing rule and the draft rangewide conservation plan prepared by the Lesser Prairie-Chicken Interstate Working Group, in association with the Western Associations of Fish and Wildlife Agencies, as it relates to our listing determination for the lesser prairie-chicken. We are also proposing a 4(d) special rule for the lesser prairie-chicken to increase flexibility in our implementation of the Act if the lesser prairie chicken is listed. The public comment period will be open for 45 days.

### **2. Is the Service taking comments on the rangewide conservation plan?**

We will accept comments on the rangewide conservation plan. We request public comment on how the public believes that the rangewide conservation plan addresses the conservation needs of the lesser prairie-chicken in light of the proposed criteria and how the Service should use the plan to inform its listing decision and proposed 4(d) rule.

### **3. Why is the Service proposing a 4(d) special rule?**

At the time the lesser prairie-chicken was proposed as threatened, we did not propose a 4(d) special rule. In our proposed listing rule, we found that some ongoing agricultural activities do not threaten the lesser prairie-chicken. We are now proposing a 4(d) special rule that allows for take of lesser prairie-chicken incidental with activities included within approved conservation plans and the Natural Resources Conservation Service (NRCS) Lesser Prairie-Chicken Initiative.

### **4. What is a 4(d) special rule?**

Under the Endangered Species Act prohibited activities are defined for endangered species; however, the ESA allows the Service to define the prohibited activities for threatened species. These prohibited activities are defined through a 4(d) special rule.

As proposed, the lesser prairie-chicken 4(d) special rule would allow for implementation of Service approved conservation plans prepared by or in coordination with states and incidental take of lesser prairie-chicken resulting from implementation of NRCS' Lesser Prairie-Chicken Initiative. We are proposing a 4(d) special rule for the lesser prairie-chicken in recognition of the management activities being undertaken to conserve the lesser prairie-chicken and its habitat.

The Service is also requesting public comments on the possible inclusion of the following provisions as part of the proposed 4(d) rule:

- Whether measures outlined in this proposed 4(d) special rule are necessary and advisable for the conservation and management of the lesser prairie-chicken.
- Information concerning whether it would be appropriate to include in the 4(d) special rule a provision that would allow continued enrollment in existing Candidate Conservation Agreements with Assurances for the lesser prairie-chicken. These existing agreements would be recognized as Service-approved conservation plans and their take authorization and continued enrollment would be provided for under this 4(d) special rule.
- Information concerning whether it would be appropriate to include in the 4(d) special rule a provision for take of lesser prairie-chickens in accordance with applicable State law for educational or scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.
- Information concerning whether it would be appropriate to include in the 4(d) special rule a provision for take of lesser prairie-chickens in the course of State-managed hunting programs for the lesser prairie-chicken or incidental to hunting activities directed at greater prairie-chicken (*Tympanuchus cupido*), including any information about State management plans related to hunting regulations and any measures within those plans that may avoid or minimize the risk of lesser prairie-chicken mortality incidental to lawful hunting for the greater prairie-chicken.
- Whether and how the Service should expand the scope of this 4(d) special rule to encourage landowners removing their lands from the Conservation Reserve Program to continue managing those areas for the benefit of the lesser prairie-chicken.
- Whether and how the Service should expand the scope of this 4(d) special rule to encourage farmers and ranchers not participating in the Natural Resources Conservation Service's Lesser Prairie-Chicken Initiative to manage their lands for the benefit of the lesser prairie-chicken.
- Whether the Service should expand the scope of this 4(d) special rule to allow incidental take of lesser prairie-chickens if the take results from implementation of a comprehensive lesser prairie-chicken conservation program that was developed by an entity other than a State agency or their agent(s).
- 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.

The 4(d) rule would only be implemented if the species were to be listed as a threatened species under the Act.

## **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. 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.

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

The Service will accept comments received or postmarked on or before June 20, 2013. 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>.

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.

## **8. 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 we have 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 4(d) special rule that would allow for incidental take of lesser prairie-chicken resulting from implementation of Service approved conservation plans and the 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 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. The proposed 4(d) provides a similar assurance for participants in any Service approved rangewide plan.

**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 September 30, 2013.