



Questions and Answers:

Direct Final Rule to Remove Lesser Prairie-Chicken from List of Endangered And Threatened Species

Southwest Region (Arizona • New Mexico • Oklahoma • Texas) www.fws.gov/southwest/

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

The Service is issuing a direct final rule to formally remove the lesser prairie-chicken from the List of Endangered and Threatened Wildlife, in accordance with the September 1, 2015, ruling by the U.S. District Court for the Western District of Texas. This court's ruling vacated the 2014 threatened listing of the lesser prairie-chicken, making it no longer protected under the Endangered Species Act (ESA). The final rule is an administrative action that officially removes the lesser prairie-chicken from the List of Endangered and Threatened Wildlife. It will be effective immediately upon publication in the *Federal Register*.

2. Why is the Service taking this action now?

On September 1, 2015, the U.S. District Court for the Western District of Texas issued an order vacating the 2014 decision to add the lesser prairie-chicken to the list of Endangered and Threatened Wildlife as a threatened species. The court order also had the effect of invalidating the final 4(d) rule. The United States requested that the court modify the judgment, to leave the listing in place on remand for the Service to complete a new determination regarding the species, or to limit any vacatur to certain areas in the Permian Basin and New Mexico. On February 29, 2016, the court denied the request to amend the judgment. With publication of the Direct Final Rule, the Service is officially removing the species from the list of Endangered and Threatened Wildlife in accordance with the court's order.

3. Upon publication of the Direct Final Rule what is the status of the lesser prairie-chicken?

Upon publication of the final rule the lesser prairie-chicken will have no legal status under the Endangered Species Act as either a listed or candidate species.

A candidate species is one for which the Service has determined that a proposal to list the species is warranted. The previous rulemaking process that listed the lesser prairie-chicken under the ESA resolved the former candidate status of the species; as a result of that rulemaking being vacated by the court, the lesser prairie-chicken does not currently have any status under the ESA. The Service is undertaking a new status review to determine whether the species is again warranted for listing (see FAQ #4).

However, the lesser prairie-chicken can still be covered within a habitat conservation plan for other listed species, even without having current candidate status, if applicants wish to do so.

4. Will the Service be reviewing the status of the lesser prairie-chicken?

The Service is undertaking a thorough re-evaluation of the status of the lesser prairie-chicken, and the threats it faces, to determine anew if it warrants listing as either an endangered or a threatened species under the ESA. The Service is reassessing the overall status of the lesser prairie-chicken based on the best scientific and commercial data available, including an updated assessment of all conservation efforts. Based on our assessment of the status of the species and the relevant conservation efforts, we will determine if we will move forward with a proposal to return the lesser prairie-chicken to the List of Endangered and Threatened Wildlife. If so, a listing proposal will require a separate rulemaking informed by public notice and comment.

5. 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.

6. What efforts are currently being undertaken to protect the lesser prairie-chicken?

For almost two decades, numerous conservation actions have been carried out within the historical range of the lesser prairie-chicken, with many focused on the currently occupied portion of the range.

On October 23, 2013, the Service endorsed the WAFWA Range-wide Conservation Plan for the lesser prairie-chicken. The RWP has enrolled over 10 million acres of land where impacts may occur and approximately 130,000 acres to offset impacts, as required through the RWP. State conservation agencies have taken a lead role in implementation of the RWP; several federal agencies and private conservation organizations have also played important roles in conserving the lesser prairie-chicken. The species is listed as threatened by the State of Colorado. New Mexico, Kansas, Oklahoma, and Texas have closed their lesser prairie-chicken hunting seasons.

In 2010, USDA Natural Resources Conservation Service (NRCS) launched the Lesser Prairie-Chicken Initiative (LPCI). Through the LPCI, NRCS works with landowners across the five range states of the lesser prairie-chicken to improve habitat for the chicken while helping landowners improve their lands. NRCS has focused its work on more than 10 million acres of habitat in Kansas, Colorado, Oklahoma, Texas, and New Mexico. LPCI participants can receive technical and financial assistance for a number of actions including brush management, prescribed grazing, prescribed burning, range planting and restoration of habitat.

USDA also works with landowners on lesser prairie-chicken conservation through the Farm Services Agency's Conservation Reserve Program (CRP). CRP is a voluntary program that allows eligible landowners to receive annual rental payments and cost-share assistance to remove land from agricultural production and establish vegetative cover for the term of the contract. Contract terms are for 10 to 15 years. During the life of the contract, these converted agricultural lands will have grass

cover that can be used by the lesser prairie-chicken. This additional cover helps to reduce the amount of habitat loss and fragmentation on the landscape.

A variety of tools exist to help landowners voluntarily conserve and enhance habitat for listed and at-risk 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. Other key 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 to address threats to candidate species and species of concern and promote their conservation. Candidate Conservation Agreements with Assurances expand on the success of traditional CCAs by providing non-federal landowners with additional incentives for engaging in voluntary, proactive conservation. In New Mexico, 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 and Candidate Conservation Agreement with Assurances for the conservation of the lesser-prairie chicken in 2008. CCAAs are also in place in Oklahoma and Texas, and a range-wide CCAA is in place across the range of the species for oil and gas companies.

Conservation banks also provide a means of protecting and restoring habitat for the lesser prairie-chicken. Conservation banks are permanently protected areas that contain natural resource values. Lands within conservation banks are conserved and permanently managed for species that are endangered or threatened, are candidates for listing as endangered or threatened, or are otherwise at-risk species. Lands protected by conservation banks may then be used as mitigation to offset impacts to the species. In March 2015, the Service finalized the first Programmatic Conservation Bank Agreement submitted by LPC Conservation LLC for the lesser prairie-chicken. To date, three parcels – two in Kansas and one in Texas, totaling over 30,000 acres - have been approved under the Programmatic Conservation Banking Agreement.

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.

7. 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, candidate, and at-risk 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 on a balance of conservation easements, voluntary agreements, and other incentives.

8. 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 Candidate Conservation Agreement (CCA) and Candidate Conservation Agreement with Assurances (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 CCA and a 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 and they continue to implement the conservation measures in the agreement. 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 and enhance 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 September, 2015, 96 oil and gas companies are enrolled in the CCA/A for a total of over 2 million acres (the participating Federal agency in this case is the BLM). In addition, 109 New Mexico ranchers have enrolled a combined 1.9 million acres of rangeland in the CCA/A.

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 BLM's removal of prime lesser prairie-chicken habitat from gas and oil leasing, and ranching and oil and gas interests' enrollment of private and BLM lands in the CCA/A, 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 September, 2015, 93 Texas ranchers have 671,590 acres enrolled in the CCAA. In Oklahoma, the Oklahoma Department of Wildlife Conservation (ODWC) has 81 landowners enrolled in the CCAA for a total of 390,675 acres.

9. Can I enroll in a Candidate Conservation Agreement or Candidate Conservation Agreement with Assurances? What are the benefits of enrolling in a CCA or CCAA?

Yes, landowners can still enroll in lesser prairie-chicken CCAAs and CCAs that remain open for further enrollments, even though the species does not currently have candidate status.

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 in some cases 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 listed in the future, the CCAAs provide landowners with assurances that, as long as they continue to implement their agreements, they can continue to manage their lands as outlined in those agreements.