



### Conservation Reserve Program Lesser Prairie-Chicken Biological Opinion

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#### OVERVIEW

On March 27, 2014, the Fish and Wildlife Service (FWS) of the U.S. Department of the Interior listed the lesser prairie-chicken as a “threatened” species under the Endangered Species Act (ESA). FWS also submitted a final special rule under section 4(d) of the ESA that outlines the prohibitions and exception to those prohibitions necessary and advisable for conservation of the species. Under the law, a “threatened” listing means the species is likely to become in danger of extinction within the foreseeable future; it is a step below “endangered” under the ESA and allows for more flexibility in how the protections of the ESA are implemented.

The FWS final rule to list the lesser prairie-chicken as threatened and the final special rule addressing the limitation of regulatory impacts are scheduled to be effective on May 12, 2014.

Information on the final rule can be found at the Federal Register website: <https://www.federalregister.gov/articles/2014/04/10/2014-07302/endangered-and-threatened-wildlife-and-plants-determination-of-threatened-status-for-the-lesser>.

Information on the special final rule can be found at the Federal Register website: <https://www.federalregister.gov/articles/2014/04/10/2014-07298/endangered-and-threatened-wildlife-and-plants-special-rule-for-the-lesser-prairie-chicken>.

On April 14, 2014, USDA’s Farm Service Agency (FSA) received a Biological Opinion from the FWS addressing the Conservation Reserve Program (CRP) within the occupied range of the lesser prairie-chicken. In it, the FWS agreed with the FSA conclusion that CRP implementation may have a short-term adverse effect to individual birds that will be offset by long-term benefits to lesser prairie-chicken populations.

#### TERMINOLOGY

“Leks” are grounds where lesser prairie-chickens gather in the spring for breeding, nesting and brood rearing.

“Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such actions.

“Incidental take” means a take that is related to, but not the purpose of, carrying out an otherwise lawful activity.

#### FSA BIOLOGICAL ASSESSMENT

FSA provided a Biological Assessment to the FWS as background on the CRP. The FWS used that information to complete its Biological Opinion.

FSA’s Biological Assessment described CRP conservation practices, technical practices and related conservation measures. It described how those conservation practices and associated measures are used to restore, enhance and manage the habitats of the lesser prairie-chicken. The assessment also discussed how those conservation measures on CRP land located in lesser prairie-chicken habitat will be improved, applied and monitored across identified lesser prairie-chicken eco-regions, focal areas, connectivity zones and occupied range.

#### FWS BIOLOGICAL OPINION

Based on the Biological Assessment provided by FSA, the FWS concluded that implementation of CRP conservation practices with the associated conservation measures described in the Biological Opinion are not likely to jeopardize the lesser prairie-chicken. The Biological Opinion also establishes CRP as a comprehensive conservation program with special exemptions under Section 9 of ESA.

# FACT SHEET

## CRP - Lesser Prairie-Chicken Biological Opinion

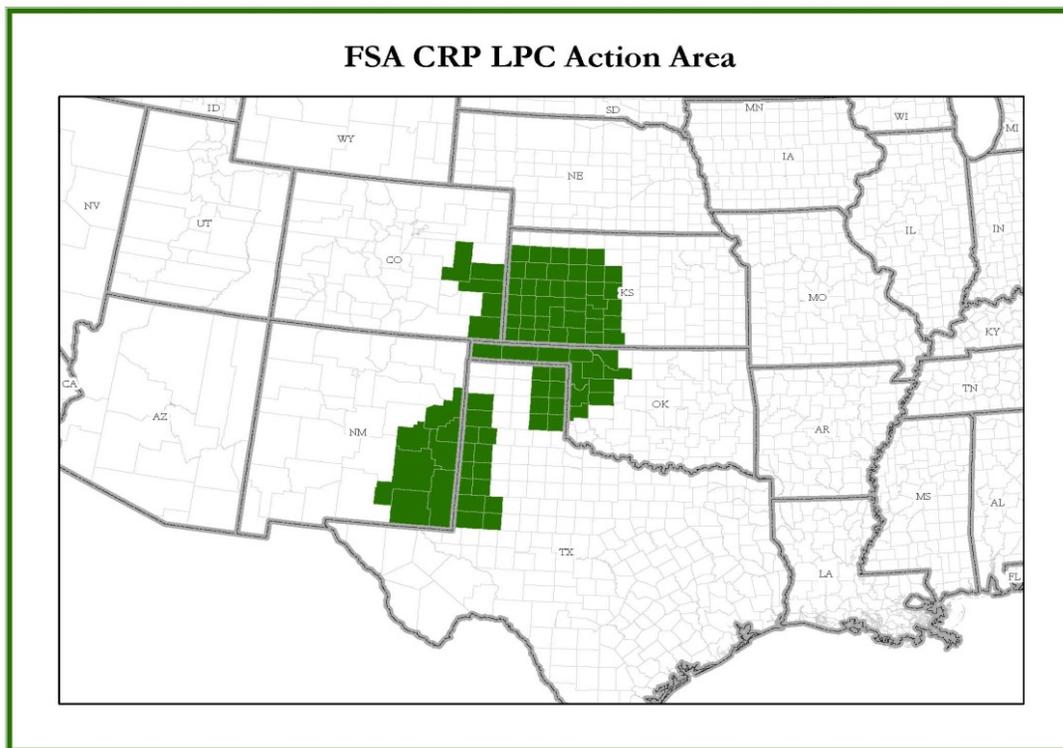
April 2014

### LESSER PRAIRIE-CHICKEN OCCUPIED RANGE

The scope of the FSA Biological Assessment and the FWS Biological Opinion is limited to land within an 85-county area of Colorado, Kansas, New Mexico, Oklahoma and Texas that is currently enrolled in CRP or that becomes enrolled in CRP over the next 30 years.

### PROGRAM AUTHORIZATION AND GOALS

The CRP is administered on behalf of the Commodity Credit Corporation (CCC) through the FSA and was authorized by Congress with the passage of the Food Security Act of 1985. Its original intent was to promote the establishment of permanent grass or tree cover on privately owned,



### COVERAGE PERIOD

Coverage under the Biological Opinion will extend up to a maximum of 30 years and include new and existing CRP contract acreage. The Biological Opinion covers the action of returning the enrolled land to crop production after contract expiration. It will also apply to those lands removed from CRP within this time frame if:

- The conservation cover on that land is retained and managed according to the conservation plan after the CRP contract ends, or
- Until the land that had been enrolled in CRP is returned to annual crop production or otherwise ceases to provide lesser prairie-chicken habitat benefits.

highly erodible croplands to reduce soil loss. Originally, wildlife habitat was not a major program emphasis. Over time, lands enrolled in the program have been established to more diverse species mixes that provide greater benefit for wildlife in general and lesser prairie-chicken specifically while conserving soil and protecting water quality.

CRP conservation goals in the 85-county area include:

- Continuing participation by willing landowners who will voluntarily contribute to enhancement of lesser prairie-chicken habitat;
- Helping to reduce the decline of lesser prairie-chicken populations;
- Demonstrating that traditional farming and ranching is compatible with lesser prairie-chicken conservation.

### **IMPACT ON CRP PARTICIPANTS**

Landowners participating in CRP are not held to a higher standard than landowners that are not participating in CRP when it comes to ESA compliance. The ESA “take” provisions apply equally to all.

While carrying out CRP practices, taking may occur. The regulatory predictability established as a result of this Biological Opinion provides coverage for CRP participants. In the event that such a taking were to occur it would be considered an incidental taking and not a prohibited taking under ESA. Incidental take under this Biological Opinion applies only to acres covered under a CRP contract and does not extend to additional farm or rangeland owned or operated by the same person.

CRP acres currently within the 85-county area can be returned to agricultural production after the CRP contract expires and still be consistent with ESA provisions.

The results of an analysis conducted as part of the development of the FSA biological assessment show that the effect on CRP participants is expected to be limited. Ranchers participating in CRP who in recent years have emergency hayed or emergency grazed CRP land in consecutive years will need to follow a one out of three year approach in the future.

### **APPROVED CONSERVATION MEASURES**

Certain conservation measures were approved for CRP participants in the 85 affected counties under the FWS Biological Opinion, as follows:

- For lands newly enrolled in CRP, conservation measures include establishing CRP conservation covers of native plant species mixes including grass, forbs, legumes and shrubs consistent with ecological site descriptions, and managing those covers once they’re established must be consistent with conservation plans developed by the USDA Natural Resources Conservation Service (NRCS).
- For existing CRP contracts, conservation measures include managing existing conservation covers of introduced or native plant species mixes consistently with conservation plans developed and amended by NRCS.
- Depending on site and climate conditions, management activities should occur on approximately five year intervals, but no more than once in a three year period.
- Any combination of managed/routine grazing, managed harvesting, emergency haying and emergency grazing, will be limited to once in a three year period within the identified lesser prairie-chicken focal areas, connectivity/expansion zones or other important habitat areas within identified eco-regions.
- CRP maintenance, management activities and permitted uses of CRP land that may disturb lesser prairie-chicken breeding activities, nesting hens or hens with broods will be delayed until after primary nesting and brood-rearing season.
- Within the identified lesser prairie-chicken focal areas, connectivity/expansion zones and other important areas within the identified eco-regions, new wind turbine development on land currently under CRP contract or former CRP land being covered under the biological opinion will be prohibited within 1.25 miles of known lesser prairie-chicken breeding groups known as leks.

**ACTION AREA**

The action area includes the 85 counties in the five states previously described. The Western Association of Fish and Wildlife Agencies (WAFWA) established four eco-regions totaling about 20 million acres in their range-wide conservation plan for the lesser prairie-chicken.

Within each of the eco-regions, WAFWA further identified focal areas and connectivity and expansion zones of high priority for lesser prairie-chicken conservation.

Within the 85 counties described, there may be as many as 30,000 CRP participants and 5,000,000 acres of CRP enrollment. Within the WAFWA eco-regions, there are 3.4 million CRP acres. Within the focal areas, connectivity and expansion zones, there are about 2.3 million of these CRP acres.

WAFWA will provide maps to FSA state and county offices showing locations of the eco-regions, focal areas and connectivity and expansion zones.

**ADDITIONAL GUIDANCE**

Additional guidance, training aids information about the Biological Opinion, conservation measures and other pertinent information will be provided by staff at FSA headquarters office in Washington, D.C.

Landowners and agricultural producers not covered under the CRP biological opinion may have other options for regulatory predictability including through enrollment in the NRCS Lesser Prairie-chicken Initiative, the Western Association of Fish and Wildlife Agency's Rangewide Conservation Plan, endorsed by FWS, or the Habitat Conservation Plan prepared by the American Habitat Center, currently under review by the FWS.

**REPORTING**

FSA will report to the FWS on conservation measures in the 85-county lesser prairie-chicken area on an annual basis.

**MORE INFORMATION**

To find more information about FSA programs, contact your local FSA office or USDA Service Center, or visit FSA online at [www.fsa.usda.gov](http://www.fsa.usda.gov).

For more information about FWS actions regarding the lesser prairie-chicken visit [www.fws.gov/southwest/es/LPC.html](http://www.fws.gov/southwest/es/LPC.html).

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