



Questions and Answers: Lesser Prairie-Chicken Oil and Gas Energy Draft Habitat Conservation Plan for LPC Conservation, LLC

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1. What action is the Service taking?

The U.S. Fish and Wildlife Service is making available for public review and comment an application for an incidental take permit supported by a draft habitat conservation plan (HCP) for the lesser prairie-chicken (LPC) and a draft environmental assessment. LPC Conservation, LLC (applicant) has prepared the HCP in support of an application for an Incidental Take Permit (ITP) for the LPC under section 10(a)(1)(B) of the Endangered Species Act (ESA).

This HCP has been developed in collaboration with the Service and is intended to provide a mechanism for partners in oil and gas energy industries to participate in LPC conservation while meeting the statutory and regulatory requirements of the ESA, should the LPC become listed. The HCP will cover the LPC across its range (portions of Kansas, Colorado, Oklahoma, Texas and New Mexico).

The Service is accepting public review and comments on the incidental take permit application, the draft HCP and draft environmental assessment. A notice of availability, which will be published in the *Federal Register* on February 11, 2022, opens a 30-day public comment period. Information on how to submit comments is available at <https://www.federalregister.gov/> by searching under docket number FWS-R2-ES-2021-N195.

2. Has the lesser prairie-chicken been proposed for listing under the ESA?

On June 1, 2021, the Service [proposed to list two distinct population segments of the lesser prairie-chicken under the ESA](#). The Service will evaluate all new information gathered during the public comment period and make a final determination on the proposed listing by June 1, 2022.

3. What are habitat conservation plans?

HCPs provide a path forward to balance wildlife conservation with development. The primary objective of the HCP program is to offset impacts to the species and the ecosystems they depend on, while streamlining permitting for economic development.

Provided for by the ESA, HCPs are a successful conservation tool as they can anticipate, prevent, and resolve controversies and conflict associated with project-by-project permitting. Programmatic HCPs, like the one being proposed, address issues on a large regional scale, collaboratively and over the long term.

Working with landowners, local communities, the state, environmental organizations and other interested parties, HCPs have shown that we don't need to choose between protection of wildlife and economic development – we can do both.

4. How will the LPC Conservation, LLC HCP work?

This HCP is designed to minimize and mitigate the potential impact to LPC on non-federal property within the permit area from the development and operation of oil and gas development projects enrolled in the HCP. Oil and gas energy developers will have the opportunity to voluntarily enroll under this HCP. The applicant will work with mitigation providers to ensure conservation actions are implemented on conservation properties to fully offset impacts realized by enrolled oil and gas energy projects. Through the metrics established within this HCP, all impacts to the LPC occurring from enrolled energy projects and conservation benefits provided through offsite mitigation will be quantified to ensure the impacts are fully offset.

5. Why does LPC Conservation, LLC need an Incidental Take Permit?

Under the ESA, anyone who believes that their otherwise-lawful activities may result in the “incidental take” of a listed wildlife species needs a permit. LPC Conservation, LLC is pursuing an incidental take permit from the Service in order to provide a mechanism for proponents in the oil and gas development industry to participate in LPC conservation while meeting the statutory and regulatory requirements of the ESA, should the LPC become listed under the ESA. The purpose of the Service's incidental take permit is to authorize the incidental take of a listed species, not to authorize the activities that result in take.

LPC Conservation, LLC has drafted this HCP in support of their application for an incidental take permit. The purpose of the HCP process associated with the permit was to ensure LPC Conservation, LLC has taken reasonable steps to satisfy a legal requirement and to conserve the LPC should it become listed in the future. The elements of the LPC Conservation, LLC HCP will be made binding through the Service's incidental take permit should the LPC become listed, as long as the participants under the plan have fully implemented their portion of the plan.

6. How will this agreement benefit the LPC?

This HCP is expected to fully offset the impacts to lesser prairie-chicken resulting from enrolled projects by protecting, enhancing, and restoring land of relatively high ecological value to the species. Under the plan, industry participants will work with LPC Conservation, LLC, the permit administrator, to purchase mitigation permits to offset their project's impacts to the LPC and its habitat on a voluntary basis.

Specifically, [mitigation offsets](#) under this HCP will support the Service's “stronghold” approach, which includes protecting and expanding existing strongholds and other areas of relatively high-quality habitat and suitable patch size to support viable lesser prairie-chicken populations and restoring currently unsuitable habitat.

Furthermore, the HCP is structured to provide a minimum of one acre of restoration for every acre of potentially suitable lesser prairie-chicken habitat impacted by enrolled projects after the fifth year of the ITP term, provided preservation credits already approved by the Service have been sold.

Restoration parcels must meet Service standards before they can be used to offset impacts; therefore, this 5-year time lag will allow mitigation entities to begin restoring parcels early in the ITP term, that will become available for use later in the ITP term. By offsetting oil and gas impacts with restoration credits, there is a potential for strongholds to increase in size. Restored acres, provided through permanent mitigation credits, will lead to a substantial net increase in protected suitable habitat, with assurances this habitat will remain in strongholds as described above.

7. How will this HCP be monitored to ensure mitigation occurs for the LPC?

LPC Conservation, LLC and the Service will undertake a rolling review process throughout the term of the Incidental Take Permit. This review process will allow the Service to evaluate and comment on impact assessments and conservation measures incorporated into each oil and gas energy project prior to enrollment. The review process will also allow any necessary modifications to the impact evaluation and proposed conservation measures for a specific project to be determined prior to project enrollment under the HCP.

Once projects have been approved, implementation of the HCP requires both compliance and effectiveness monitoring. Compliance monitoring will be undertaken to ensure accordance with the terms of the HCP and ITP. Effectiveness monitoring will include an assessment of the effectiveness of the minimization and mitigation measures, by evaluating progress towards meeting the biological goals and objectives described in the HCP.

8. How was this HCP developed?

The plan was spearheaded by LPC Conservation, LLC, which has been working for several years to develop a conservation agreement for the lesser prairie-chicken under section 10 of the ESA. During this time, they met with Service staff to discuss the regulatory standards necessary to meet issuance criteria for such an agreement. Once the LPC Conservation, LLC was ready to move forward, they drafted the HCP with significant input from the Service regarding the minimum necessary standards.

9. How long would the HCP and permit be in place?

The agreement and permit would be in effect for 30 years following its approval and signing by the Service and the programmatic administrator (LPC Conservation, LLC), unless terminated or revoked before that time.

10. How and when can industry partners enroll in the HCP?

This HCP will operate under a Programmatic structure. The applicant will serve as the Permit Holder and will hold the ITP. An oil and gas company (or associated project LLC) interested in participating in the HCP and seeking take coverage under the ITP can enroll projects under the HCP and ITP via a Certificate of Inclusion.

The enrollment period would begin after the agreement has been approved and would extend until the permit term expires or the incidental take limit is reached.

11. Will this HCP be in competition with Western Association of Fish and Wildlife Agencies' (WAFWA's) Candidate Conservation Agreement with Assurances (CCAA)?

For over two decades, the Service has been working with our federal, state, and private partners, to facilitate the conservation of the LPC and its habitat. These partnerships have resulted in several conservation efforts for the lesser prairie-chicken.

Seven years ago, the Western Association of Fish and Wildlife Agencies (WAFWA), in partnership with wildlife agencies in Colorado, Kansas, New Mexico, Oklahoma, and Texas, created and have since sought to implement a range-wide conservation plan (RWP) that aims to balance lesser prairie-chicken conservation with economic activities that are regionally important. While incidental take coverage for lesser prairie-chicken is currently not required as the species is not currently federally protected, the oil and gas industry were, until recently, able to participate in lesser prairie-chicken conservation through a Candidate Conservation Agreement with Assurances (CCAA) associated with the RWP. At present, WAFWA has suspended enrollment under the RWP CCAA, and the future of the CCAA remains uncertain. As such, this HCP will provide a pathway for oil and gas companies seeking future regulatory assurances with respect to lesser prairie-chicken under a non-listing or federally regulated environment.

We believe this partnership with LPC Conservation, LLC will continue this trend of successful collaboration benefitting the lesser prairie-chicken. The Service continues to support WAFWA's conservation efforts, as well as the agricultural CCAAs in Texas, New Mexico and Oklahoma. We do not see these efforts as being in competition, but rather in concert with one another and providing additional options for industry participants.

12. Why is LPC Conservation, LLC pursuing an HCP rather than a CCAA?

The Service and the applicant discussed the pros and cons of each approach, at the end of which the applicant determined an HCP was the best option to fit their needs.

13. What are "No Surprises" assurances?

The Incidental Take Permit guarantees the applicant that no additional resources will be required should any unforeseen circumstances arise during the term of the permit. This 'No Surprises' clause states that as long as the conditions of the ITP are met, the applicants will be protected from any unexpected changes that may happen to the species or its habitat.

14. How do I submit a comment?

We request public comments on the incidental take permit application, which includes the proposed HCP, and an Environmental Assessment prepared in accordance with the National Environmental Policy Act. Information on how to submit comments is available at <https://www.federalregister.gov/> by searching under docket number FWS-R2-ES-2021-N195.

We request that you submit comments by only the methods described in the Federal Register notice referenced above. All comments received, including names and addresses, will become part of the administrative record associated with this action.