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News Bulletin

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USFWS to Perform Lesser Prairie-Chicken Status Review

On November 30, 2016, the U.S. Fish and Wildlife Service (USFWS) announced its intent to initiate a status review of the Lesser Prairie-Chicken (LPC) under the Endangered Species Act (ESA). This 12-month status review could eventually result in a listing of the LPC as threatened - or even endangered - across the 5-State LPC habitat, which includes several KNRC Member counties.

In September, 2016, USFWS published its intent to incorporate an LPC status review in their 2017 work plan. Within days, the litigious radical environmental groups WildEarth Guardians (WEG), Defenders of Wildlife (DW), and Center for Biological Diversity (CBD) filed an 'emergency' petition requesting an immediate, endangered listing of the LPC. In its current status-review decision, FWS denied the 'emergency' request, concluding substantial scientific information does exist and the normal, 12-month status-review schedule to be adequate.

It is important to note that from a procedural standpoint, the status-review process is separate from a listing proposal, which could take place following the status review process. KNRC believes USFWS will again pursue a threatened listing for the LPC.

The status review also includes an expanded list of 'threats,' including nest parasitism, drought, and concerns about climate change (global warming). Irrespective of whether global warming may be occurring, it remains difficult for KNRC to understand what government action could possibly be taken to protect species from changing weather patterns.

In our [March, 2013 Comments](#), KNRC reported the primary threats to the LPC consist of nest parasitism from pheasants and drought, and that the primary predation threat to the LPC is mammalian (coyotes, skunks), not raptorial (owls, hawks and eagles).¹ Our review also concluded the rate of habitat fragmentation (break out of native grassland) has substantially slowed, and we are certain that if a listing is pursued, the many unanswered questions about habitat fragmentation, economic impacts, and the requirement for a NEPA Environmental Impact Statement will [resurface](#).²

Also in 2016, USFWS issued regulations changing how critical habitat may be designated during an ESA listing process. In an astonishing break from the ESA language, USFWS claims, *ultra vires*, the authority to designate or expand critical habitat to include "unoccupied habitat" for a listed species.

The critical habitat criteria rule, found at [50 CFR § 424.12](#) and [§ 402.02](#), is the subject of an Administrative Procedures Act [legal challenge by 18 States, including Kansas](#). If allowed to stand, the Rule would allow USFWS the discretion to designate habitat areas – though currently unoccupied by species – as critical habitat. We believe the Rule to be flagrantly contrary to law and will continue to monitor, report and promote corrective responses.

¹ Center for Environmental Science, Accuracy and Reliability. [Data Do Not Support the Listing of the Lesser Prairie-Chicken](#). Pps. 19-20.

² Report from a 2-Day, 32-County Public Hearing. [Finding of Fact and Conclusion of Law](#). January 29, 2014. pps 20, 30 and 43.