



Questions and Answers: Lesser Prairie-Chicken Renewable Energy Habitat Conservation Plan for LPC Conservation LLC

Q: What action is the Service taking?

A: The U.S. Fish and Wildlife Service (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).

While the LPC is not at this time a federally listed species, the Service has initiated a listing status review for the species in response to a 2016 petition. A 12-month finding on the decision whether or not the lesser prairie-chicken warrants listing under the ESA will be submitted for publication in the *Federal Register* no later than May 26, 2021. This HCP has been developed in collaboration with the Service, and is intended to provide a mechanism for partners in renewable energy industries (wind, solar, power line, or communication towers) to participate in LPC conservation while meeting the statutory and regulatory requirements of the ESA, should the LPC become listed under the ESA. 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 April 14, 2021, 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–2020–N125.

Q: What is a Habitat Conservation Plan?

A: Habitat Conservation Plans (HCPs) provide a pathway 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 Endangered Species Act, 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 are one example of many that we don't need to choose between protection of wildlife and economic development – we can do both.

Q: How will the LPC Conservation LLC HCP function?

A: 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 wind, solar, power line and communication tower projects enrolled in the HCP. Renewable 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 renewable energy projects. Through the metrics established within this HCP, all impacts to the LPC occurring from enrolled renewable energy projects and conservation benefits provided through offsite mitigation will be quantified to ensure the impacts are fully offset.

Q: How will this agreement benefit the LPC?

A: This HCP is expected to fully offset the impacts to LPC resulting from enrolled projects by protecting, enhancing and restoring land of relatively high ecological value to the species. 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 LPC populations, and restoring currently unsuitable habitat.

Furthermore, the HCP will minimize impacts to the LPC by providing impact minimization measures during the siting and construction of project infrastructure and incentivizing the siting of wind, solar, power line, and communication tower development outside of strongholds and other suitable habitat through mitigation ratios based on the value of habitat impacted. Mitigation ratios are expected to influence project siting by increasing the amount of mitigation required to fully offset the impacts of projects sited in higher priority LPC habitat, creating a financial incentive for participants to site projects in low value habitat. Furthermore, by enrolling in the HCP, participating wind, solar, power line, and communication tower companies can reduce the time and cost associated with implementing LPC conservation to fully offset project impacts. Encouraging minimization of impacts to LPC through the siting of projects in areas where human caused disturbance has previously occurred will thereby reduce the overall impact of new project development to LPC.

Q: Why does LPC Conservation LLC need an Incidental Take Permit?

A: 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 ITP from the Service in order to provide a mechanism for proponents in the wind, solar, power line, or communication tower industry to participate in LPC conservation while meeting the statutory and regulatory requirements of the ESA, should the LPC become an ESA-listed species. The purpose of the

Service's ITP 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 ITP. 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 with their HCP should the LPC become listed in the future. The elements of the LPC Conservation LLC HCP will be made binding through the U.S. Fish and Wildlife Service's incidental take permit should the LPC become listed in the future, as long as the participants under the plan have fully implemented their portion of the plan..

Q: How will this HCP be monitored to ensure mitigation occurs for the LPC?

A: 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 renewable 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.

Q: How was this HCP developed?

A: 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.

Q: How long would the HCP and permit be in place?

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

Q: How and when can industry partners enroll in the HCP?

A: This HCP will operate under a programmatic structure. The applicant will serve as the permit holder and will hold the ITP. Individual wind, solar, power line, and communication tower industry

proponents (or associated project LLCs) 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.

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

A: 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 a number of conservation efforts for the LPC. We believe this partnership with LPC Conservation LLC will continue this trend of successful collaboration benefitting the LPC. In addition, the CCAA administered by the WAFWA only covers oil and gas activities, so no mechanism currently exists which has a permit providing regulatory certainty for these industries. 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.

Q: Why is LPC Conservation LLC pursuing an HCP rather than a CCAA?

A: 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.

Q: What are "no surprises assurances?"

A: The ITP 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.

Q: How do I submit a comment?

A: 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-2020-N125.

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