

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R2-ES-2012-0071;  
4500030113]

RIN 1018-AY21

**Endangered and Threatened Wildlife  
and Plants; Determination of  
Threatened Status for the Lesser  
Prairie-Chicken**

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Final rule.

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**Executive Summary**

This document consists of: (1) A final rule to list the lesser prairie-chicken as a threatened species; and (2) a finding that critical habitat is prudent but not determinable at this time.

*Why we need to publish a rule.* Under the Endangered Species Act (Act), a species may warrant protection through listing if it is an endangered or threatened species throughout all or a significant portion of its range. The Act sets forth procedures for adding species to, removing species from or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. In this final rule, we explain why the lesser prairie-

additional information, clarifications, and suggestions to improve this final listing rule.

*We sought public comment on the proposed listing rule and the proposed special rule under section 4(d) of the Act.* During the first comment period, we received 879 comment letters directly addressing the proposed listing and critical habitat designation. During the second comment period, we received 56,344 comment letters addressing the proposed listing rule, proposed special rule, and related rangewide conservation plan. During the third comment period, we received 12 comments regarding the proposed listing. During the fourth comment period, we received 74 comments,

**SUMMARY:** We, the U.S. Fish and Wildlife Service, determine threatened species status for the lesser prairie-chicken (*Tympanuchus pallidicinctus*), a grassland bird known from southeastern Colorado, western Kansas, eastern New Mexico, western Oklahoma, and the Texas Panhandle, under the Endangered Species Act of 1973, as amended (Act). This final rule implements the Federal protections provided by the Act for the lesser prairie-chicken. Critical habitat is prudent but not determinable at this time. Elsewhere in this issue of the **Federal Register**, we published a final special rule under section 4(d) of the Act for the lesser prairie-chicken.

**DATES:** This rule is effective on May 12, 2014.

**ADDRESSES:** Document availability: You may obtain copies of this final rule on the Internet at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0071 or by mail from the Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** below). Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office, 9014 East 21st Street, Tulsa, OK 74129; telephone 918-581-7458; facsimile 918-581-7467.

**FOR FURTHER INFORMATION CONTACT:** Alisa Shull, Acting Field Supervisor, Oklahoma Ecological Services Field Office, 9014 East 21st Street, Tulsa, OK 74129; by telephone 918-581-7458 or by facsimile 918-581-7467. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

chicken warrants protection under the Act. This rule lists the lesser prairie-chicken as a threatened species throughout its range.

*The Act provides the basis for our action.* Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The primary factors supporting the determination of threatened status for the lesser prairie-chicken are the ongoing and probable future impacts of cumulative habitat loss and fragmentation. These impacts are the result of: Conversion of grasslands to agricultural uses; encroachment by invasive, woody plants; wind energy development; petroleum production; and presence of roads and manmade vertical structures including towers, utility lines, fences, turbines, wells, and buildings.

*We requested peer review of the methods used in making our final determination.* We obtained opinions from knowledgeable individuals having scientific expertise in this species or related fields (such as range and fire ecology, shrub management and grouse management) and solicited review of the scientific information and methods that we used in developing the proposal. We obtained opinions from two knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, adherence to regulations, and whether we had used the best available information. These peer reviewers generally concurred with our methods and conclusions and provided

primarily related to the proposed revised special rule.

#### Previous Federal Actions

In 1973, the Service's Office of Endangered Species published a list of threatened wildlife of the United States in Resource Publication 114, often referred to as the "Red Book." While this publication did not, by itself, provide any special protections, the publication served, in part, to solicit additional information regarding the status of the identified taxa. The lesser prairie-chicken was one of 70 birds included in this publication (Service 1973, pp. 134-135), but little Federal regulatory action occurred on the lesser prairie-chicken until 1995.

On October 6, 1995, we received a petition, dated October 5, 1995, from the Biodiversity Legal Foundation, Boulder, Colorado, and Marie E. Morrissey (petitioners). The petitioners requested that we list the lesser prairie-chicken as threatened throughout its known historical range in the United States. The petitioners defined the historical range to encompass west-central Texas north through eastern New Mexico and western Oklahoma to southeastern Colorado and western Kansas, and they stated that there may have been small populations in northeastern Colorado and northwestern Nebraska. The petitioners also requested that critical habitat be designated as soon as the needs of the species are sufficiently well known. However, from October 1995 through April 1996, we were under a moratorium on listing actions as a result of Public Law 104-6, which, along with a series of continuing budget resolutions, eliminated or severely reduced our listing budget through April 1996. We were unable to act on the petition during that period. On July 8, 1997 (62 FR 36482), we announced our 90-day finding that the petition presented substantial information