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Re: "Endangered and Threatened Wildlife and Plants; Status Review for the Lesser Prairie-Chicken," 91 Fed. Reg. 9547 (Feb. 26, 2026), Docket No. FWS-R2-ES-2025-1661

GPA Midstream Association ("GPA Midstream") appreciates the opportunity to provide comments to the U.S. Fish and Wildlife Service (the "Service") regarding the Service's status review for the lesser prairie-chicken ("LEPC").[1]

GPA Midstream has served the U.S. energy industry since 1921 and is composed of approximately 50 corporate members that directly employ 57,000 employees in a wide variety of services that move vital energy products such as natural gas, natural gas liquids, crude oil and refined products, commonly referred to as "midstream activities." The work of our members indirectly creates or impacts more than 450,000 jobs across the U.S. economy. In 2024, GPA Midstream members operated more than 500,000 miles of pipelines, gathered nearly 91 billion cubic feet per day of natural gas, and operated more than 340 natural gas processing facilities that delivered pipeline quality gas into markets across a majority of the U.S. interstate and intrastate pipeline systems.

The Service initiated the present status review following litigation concerning the agency's 2022 rule listing the northern distinct population segment ("DPS") of the lesser prairie-chicken as threatened and the southern DPS as endangered under the Endangered Species Act ("ESA").[2] That rule was subsequently vacated by two federal district court decisions.[3]

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[1] Endangered and Threatened Wildlife and Plants; Status Review for the Lesser Prairie-Chicken, 91 Fed. Reg. 9547 (Feb. 26, 2026).

[2] Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment, 87 Fed. Reg. 72674 (Nov. 25, 2022).

[3] *Kansas Natural Resource Coalition v. FWS*, No. 23-cv-00159 (W.D. Tex. Mar. 29, 2025); *Texas v. DOI*, No. 23-cv-00047 (W.D. Tex. Aug. 12, 2025).

In light of those decisions, the Service is undertaking a new review of the species' status and has requested updated scientific and technical information relevant to the factors identified in Section 4(a)(1) of the ESA. Specifically, the Service has requested updated information regarding:

(i) The species' biology, range, and population trends;
(ii) Data concerning threats to the species and existing conservation measures or regulatory mechanisms that may address those threats; and
(iii) Factors that may affect the continued existence of the species, including habitat modification and other natural or anthropogenic influences.

Executive Summary

GPA Midstream appreciates the Service's commitment to conducting a comprehensive and science-based review of the lesser prairie-chicken's status. GPA Midstream has participated in prior rulemakings concerning the status of the lesser prairie-chicken, including by submitting comments on August 31, 2021, in response to the Service's proposed rule that preceded the 2022 listing.[4] GPA Midstream incorporates those prior comments by reference to the extent relevant and provides the following updated information to assist the Service in its current status review. As reflected in GPA Midstream's prior comments and the updated scientific and technical information discussed below, several key points should inform the Service's analysis.

First, LEPC populations exhibit significant natural variability driven primarily by weather conditions and habitat variability. Population fluctuations are a well-recognized characteristic of the LEPC and should be evaluated in the context of long-term trends rather than isolated annual population estimates.

Second, extensive conservation programs across the species' range—including federal, state, and voluntary programs—have produced significant habitat protection and restoration efforts. These programs rely heavily on private-land participation and collaborative conservation approaches.

Third, available data indicate that midstream energy infrastructure has relatively limited habitat impacts compared to other land uses. Midstream infrastructure is typically linear in nature, occupies a relatively small surface footprint, and is often located within existing corridors or previously disturbed areas.

For these reasons, the Service's status review should carefully consider current population data, the demonstrated success of existing conservation programs, and the comparatively limited role of midstream infrastructure in affecting LEPC habitat.

[4] GPA Midstream Comments, "Threatened Species Status with Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment of the Lesser-Prairie Chicken; Proposed Listing," 86 Fed. Reg. 29,432 (June 1, 2021), Docket No. FWS-R2-ES-2021-0015.

Scientific and Technical Information Relevant to the Status Review

I. Biology, Range, and Population Trends

a. Population Variability Is a Normal Characteristic of LEPC Ecology

Available scientific information demonstrates that LEPC populations naturally fluctuate across their range due largely to weather patterns and habitat conditions. The Service's most recent Species Status Assessment Report ("SSA Report") and other available data confirm that population size varies substantially from year to year.[5] These fluctuations are strongly influenced by environmental conditions, particularly precipitation patterns and drought cycles that affect habitat quality and reproductive success.[6]

These fluctuations are a well-recognized characteristic of the LEPC and similar grassland bird species and do not necessarily indicate long-term population decline. Indeed, available monitoring data indicate that the LEPC population has remained stable overall despite naturally occurring fluctuations and has increased range-wide in recent years.[7]

As a result, short-term population declines may occur even when long-term population viability remains stable. Because of these ecological dynamics, population data must be evaluated in the context of long-term monitoring trends rather than individual annual estimates.

b. Range-Wide Aerial Monitoring Demonstrates Cyclical Population Trends

Range-wide monitoring conducted by state agencies and the Western Association of Fish and Wildlife Agencies ("WAFWA") provides additional evidence that LEPC populations exhibit cyclical patterns rather than uniform long-term decline.

The latest aerial surveys from WAFWA, which document population estimates derived from systematic aerial surveys across the species' range, indicate that LEPC populations had a stable increase between 2013 and 2020, demonstrating the species' capacity to rebound under favorable habitat and weather conditions.[8] Although some regional declines occurred

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[5] FWS, Species Status Assessment Report for the Lesser Prairie-Chicken (*Tympanuchus pallidicinctus*), Version 2.3, at xii (March 2022), at https://www.fws.gov/sites/default/files/documents/LPC_SSA_Report_v2.3_March2022%20%282%29.pdf ("Weather conditions are critical aspects influencing the temporal fluctuations of LEPC populations that can produce dramatic annual fluctuations in LEPC abundance.") (hereinafter "SSA Report").

[6] *Id*. ("Under wet and mild weather conditions, LEPC populations will increase, and under drought or other extreme weather conditions, LEPC populations will decrease.").

[7] *Id*. at 65, Figure 32 (showing fluctuations and recent increases in range-wide population trends).

[8] Western Association of Fish and Wildlife Agencies, Range-Wide Population Size of the Lesser Prairie-Chicken: 2012 to 2022, at 23 (Oct. 2022), at https://wafwa.org/wp-content/uploads/2022/11/LPC_RangeWidePopSize2012-2022.pdf.

after 2020, WAWFA's surveys note that the estimated decrease between 2021 and 2022 was not statistically significant at the 90 percent confidence level.[9]

Taken together, these data show that LEPC populations experience periods of both increase and decline over time. Accordingly, population status should be evaluated using long-term monitoring trends rather than short-term fluctuations.

II. Existing Conservation Measures and Regulatory Programs

a. Extensive Conservation Programs Protect LEPC Habitat

Over the past decade, federal agencies, state wildlife agencies, conservation organizations, landowners, and industry participants have implemented numerous programs designed to conserve and restore LEPC habitat. These have been incredibly effective at stabilizing and increasing the LEPC population, as described above, and create additional habitat to benefit the long-term sustainability of the LEPC.

Since at least 2001, "all States within occupied range of the lesser prairie-chicken [have committed] significant resources via personnel, outreach, and habitat improvement incentives to landowners to recover the species."[10] The Service's most recent SSA Report identifies several major conservation initiatives currently operating across the species' range, including:

- WAFWA's Range-wide Conservation Plan;
- U.S. Department of Agriculture ("USDA") Natural Resources Conservation Service's LEPC Initiative and Environmental Quality Incentives Program;
- USDA Farm Service Administration's Conservation Reserve Program; and
- Various state wildlife agency habitat restoration and management programs, such as Kansas Department of Wildlife and Parks' Habitat First; the Service's Partners for Fish and Wildlife Program in all five LEPC states; and the Shortgrass Prairie Initiative in Colorado by The Nature Conservancy and Colorado Department of Transportation.[11]

These initiatives collectively represent substantial conservation investments across the species' range and have resulted in significant habitat protection and restoration activities. Under Section 4(a)(1)(D) of the ESA, 16 U.S.C. § 1533(a)(1)(D), the Service must evaluate whether existing regulatory mechanisms adequately address potential threats to the species. The Service's previous failure to not adequately account for these conservation efforts caused a court to vacate a previous LEPC listing.[12]

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[9] *Id*. at 26.
[10] 66 Fed. Reg. 54,807, 54,817 (Oct. 30, 2001).
[11] SSA Report at v–vi.
[12] *Permian Basin Petroleum Ass'n v. DOI*, 127 F. Supp. 3d 700 (W.D. Tex. 2015) (striking down Service's previous "threatened" listing for the LEPC because the agency failed to consider important and material information related to ongoing conservation efforts to make a proper ESA evaluation).

In conducting the present status review, the Service should therefore carefully evaluate the effectiveness of existing conservation programs and regulatory mechanisms already operating across the species' range. These state conservation programs, voluntary habitat restoration initiatives, and conservation agreements have produced measurable conservation benefits and should be fully considered as part of the Service's evaluation of the species' status.

b. Conservation Success Depends on Private-Land Participation

The SSA Report also confirms that most lesser prairie-chicken habitat occurs on private lands.[13] As a result, successful conservation of the species depends heavily on voluntary conservation efforts and participation by private landowners. Programs that encourage collaborative conservation and provide incentives for habitat protection have therefore played an important role in supporting LEPC conservation across its range.[14]

Recent reports also demonstrate that participation in conservation programs continues to expand. For example, a 2023 Annual Report for the Range-Wide Oil and Gas Candidate Conservation Agreement with Assurances ("CCAA")—a voluntary conservation and mitigation strategy—documents ongoing industry participation in conservation efforts across Colorado, Kansas, New Mexico, Oklahoma, and Texas.[15] The WAFWA CCAA program reported that more than 46,000 acres of lesser prairie-chicken habitat were conserved in 2023 alone, compared to 18,569 acres of cumulative impacts since the program's inception in 2014, demonstrating that conservation outcomes substantially exceed habitat impacts under the program.[16] Additional reporting as recent as last year on conservation activities in relevant states like Oklahoma also indicates that voluntary conservation efforts on private lands continue even in the absence of federal regulatory protections.[17]

The success of these programs illustrate there is no need for additional, federally-prescribed measures and requirements.[18]

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[13] SSA Report at 49.
[14] *Id*. at 49–62.
[15] 2023 Annual Report, Range-Wide Oil and Gas Candidate Conservation Agreement with Assurances for the Lesser Prairie-Chicken in Colorado, Kansas, New Mexico, Oklahoma, and Texas (CCAA) (Mar. 2024), at https://wafwa.org/wp-content/uploads/2024/05/WAFWA-2023-LPC-CCAA-Annual-Report_final.pdf.
[16] *Id*. at 3.
[17] KGOU, *Despite loss of federal protections, lesser prairie chicken conservation persists on private la*nd (Oct. 23, 2025) (reflecting ongoing private-land conservation efforts), at https://www.kgou.org/science-technology-and-environment/2025-10-23/despite-loss-of-federal-protections-lesser-prairie-chicken-conservation-persists-on-private-land.
[18] *Colorado River Cutthroat Trout v. Salazar*, 898 F.Supp.2d 191, 201–03 (D.C. Cir. 2012) (stating the Service should pay more attention to the voluntary and state/regional conservation plans that have had success already in determining whether threats to the population are warranted).

III. Limited Impact of Energy Infrastructure

Available information indicates that certain land uses—such as cropland conversion and road development—account for a significantly larger proportion of habitat disturbance within key LEPC ecoregions than energy infrastructure.[19]

Midstream infrastructure is typically linear in nature and occupies a relatively small surface footprint compared to other land uses. In many cases, midstream infrastructure is located within existing utility corridors or other previously disturbed areas. In addition, midstream operators routinely implement avoidance, minimization, and mitigation measures designed to reduce potential environmental impacts and maintain habitat integrity. For example, as demonstrated in CCAA's 2023 Annual Report, 127 oil & gas companies had committed to implementation of the CCAA's conservation strategy of avoiding, minimizing and mitigating impacts within the LEPC estimated occupied range.[20] The primary avoidance strategy of the CCAA is to promote the location of new oil and gas developments within areas already impacted by development, a strategy which has avoided potential habitat impacts on 26,150 acres since inception of the program.[21] These practices further reduce the potential for adverse effects on LEPC populations.

In evaluating the role of energy infrastructure within the broader landscape of land uses affecting LEPC habitat, the Service should ensure that any potential regulatory measures are appropriately tailored to the actual level of risk presented. Courts reviewing the 2022 LEPC rule emphasized that ESA Section 4(d) requires the Service to demonstrate that regulatory prohibitions are "necessary and advisable" for the conservation of the species. Courts have further recognized that the Service may consider economic and operational impacts when determining which protections satisfy this standard.[22]

Accordingly, any future regulatory approach should be carefully calibrated to address demonstrated conservation needs while avoiding unnecessary restrictions on infrastructure activities that have limited habitat impacts.

Conclusion

The Service's status review should be grounded in current scientific information and a comprehensive evaluation of existing conservation efforts. Available evidence demonstrates that:

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[19] *See, e.g.*, SSA Report at 67, Table 3.4 (reflecting main impact sources are cropland conversion (37%) and roads (17%) in the short-grass/CRP ecoregion).

[20] *Supra* note 15 at 5.

[21] *Id.* at 6.

[22] *Kansas Natural Resource Coalition v. FWS*, No. 23-cv-00159 (W.D. Tex. Mar. 29, 2025) ("Such a determination requires consideration of costs. Because [the Service] failed to account for costs, to include cost of compliance, [] it failed to consider the 'all relevant factors' and ignored 'important aspect[s] of the problem' before it." (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 55 (1983))).

(i) Lesser prairie-chicken populations exhibit natural variability rather than consistent long-term decline;
(ii) Conservation programs across the species' range are extensive and ongoing; and
(iii) Midstream energy infrastructure has limited habitat impacts and is compatible with ongoing conservation efforts.

GPA Midstream appreciates the opportunity to submit these comments and looks forward to continuing to work with the Service and other stakeholders to support effective conservation of the lesser prairie-chicken.

Sincerely,

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