

PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF THE RULE SUBMITTED BY THE UNITED STATES FISH AND WILDLIFE SERVICE RELATING TO “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”

JUNE 5, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WESTERMAN, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.J. Res. 29]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the joint resolution (H.J. Res. 29) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to “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”, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.J. Res. 29 is to provide for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to “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”.

BACKGROUND AND NEED FOR LEGISLATION

On November 25, 2022, the U.S. Fish and Wildlife Service (USFWS) published a final rule that added the Lesser Prairie Chicken (LPC) to the federal endangered species list under the Endangered Species Act (ESA) and created two distinct population segments (DPS).¹ Specifically, the LPC would be listed as threatened in the Northern DPS, which covers Kansas, Oklahoma, and the northern Texas Panhandle and in the Southern DPS the LPC would be listed as endangered, which covers New Mexico and west Texas.² H.J. Res. 29 would repeal this rule and return the LPC to its previous non-ESA management framework.

LPC ESA History

The LPC is known as a “boom and bust” species that is susceptible to weather conditions such as drought or high precipitation periods.³ As such, the LPC has been subject to several listing petitions from environmental groups since 1995, with the USFWS making a 12-month finding in 1998 that “listing this species is warranted but precluded by other higher priority actions.”⁴

On September 1, 2010, WildEarth Guardians filed suit against the USFWS over several species the litigant desired to be listed, including the LPC.⁵ In May 2011, the USFWS entered into a settlement agreement with WildEarth Guardians that required the USFWS to publish a listing rule for the LPC.⁶ The USFWS published the proposed rule listing the LPC as threatened throughout its range on December 11, 2012.⁷ The final rule⁸ and concurrent 4(d) rule were published on April 10, 2014.⁹ The rule was challenged by the Permian Basin Petroleum Association and several New Mexico counties on September 1, 2015, the U.S. Federal District Court for the Western District of Texas vacated the final listing rule for the LPC, forcing USFWS to remove the LPC from the endangered species list.¹⁰ Federal Judge Robert Junell specifically stated in his opinion that his main justification for striking down the rule was that the USFWS did not properly consider the voluntary conservation measures that were in place for the LPC when the Service made its listing decision.¹¹

¹ 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 FR 72674 (2022).

² *Id.*

³ *Id.*

⁴ Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Lesser Prairie-Chicken as Threatened and Designate Critical Habitat, 63 Fed. Reg. 31400–31406 (1998).

⁵ Press Release: “Lawsuit Filed over Federal Failure to Protect Rare Lesser Prairie-Chicken” September 1, 2010. WildEarth Guardians. <https://wildearthguardians.org/press-releases/group-marks-first-passenger-pigeon-day/>.

⁶ Press Release: “WildEarth Guardians and Interior Reach Settlement on Endangered Species Listings” May 10, 2011. <https://wildearthguardians.org/press-releases/hope-for-endangered-species-act-candidates/>.

⁷ Endangered and Threatened Wildlife and Plants; Listing the Lesser Prairie-Chicken as a Threatened Species. 77 Fed. Reg. 73827–73888 (2012).

⁸ Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Lesser Prairie-Chicken. 79 Fed. Reg. 19973–20071 (2014).

⁹ Endangered and Threatened Wildlife and Plants; Special Rule for the Lesser Prairie-Chicken. 79 Fed. Reg. 20073–20085 (2012).

¹⁰ “Court Vacates Lesser Prairie Chicken Listing Under Endangered Species Act.” Tiffany Dowell. Texas A&M Agrilife Extension. 11/6/15. Court Vacates Lesser Prairie Chicken Listing Under Endangered Species Act—Texas Agriculture Law (agrilife.org).

¹¹ *Id.*

On September 8, 2016, WildEarth Guardians, Defenders of Wildlife, and the Center for Biological Diversity again petitioned to list the LPC, claiming the LPC was on the verge of extinction.¹² On November 30, 2016, the USFWS published a 90-day finding that listing may be warranted and initiated a 12-month finding to determine whether to list the LPC.¹³ The same environmental groups sued USFWS for not completing the 12-month study in June 2019¹⁴ and in September of that year USFWS entered into a settlement agreement.¹⁵ The agreement required the agency to publish a 12-month finding, which was released on June 1, 2021, and led to the November 25, 2022, rulemaking.¹⁶

Voluntary Conservation

The aforementioned rounds of litigation did not take into account the successful voluntary measures intended to benefit the LPC. Starting in 2012, stakeholders who would possibly be affected by a listing of the LPC came together to form the Lesser Prairie Chicken Interstate Working Group (Working Group). The Working Group is composed of the Western Association of Fish & Wildlife Agencies, the state wildlife directors of the five impacted states, industry (oil and gas, wind, and utilities), and private landowners.¹⁷

In October 2013, the Working Group published the Lesser Prairie Chicken Range-Wide Conservation Plan.¹⁸ This plan created a framework for all affected stakeholders to conserve LPC habitat on private and public land through Candidate Conservation Agreements (CCA) and Candidate Conservation Agreements with Assurances (CCAA). The CCA/CCAA program, authorized by the USFWS, allows private landowners to implement voluntary actions designed to reduce threats to a covered species. These agreements provide a level of certainty to property owners that, if they provide a net-benefit to the species by conserving habitat, they will not be required to implement additional conservation measures beyond those in the CCA/CCAA.¹⁹

Since the CCA/CCAAs were formed, private industry has invested more than \$64 million in enrollment and mitigation fees for conservation and over six million acres are enrolled in the partnership.²⁰ These voluntary public-private conservation partnerships for the LPC and its habitat have proven to be successful as recent aerial surveys indicate that the LPC's population has increased

¹²“Petition to list the Lesser Prairie Chicken (*Tympanuchus pallidicinctus*) and Three Distinct Population Segments under the U.S. Endangered Species Act and Emergency Listing Petition for the Shinnery Oak Prairie and Sand Sage Prairie Distinct Population Segments.” WildEarth Guardians. 9/8/2016. LPC petition 2016 final (wildearthguardians.org).

¹³ Endangered and Threatened Wildlife and Plants; 90-Day Findings on Three Petitions. 81 Fed. Reg. 86315–86318 (2016).

¹⁴ Press Release: Lawsuit Seeks Endangered Species Protections for Lesser Prairie Chickens. Center for Biological Diversity. June 12, 2019. <https://biologicaldiversity.org/w/news/press-releases/lawsuit-seeks-endangered-species-protections-lesser-prairie-chickens-2019-06-12/>.

¹⁵ Stipulated Settlement Agreement: 1:19-cv-01709-RC (D.D.C. Sep. 12, 2019).

¹⁶ Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status with Section 4(d) Rule for the Northern District Population Segment and Endangered Status for the Southern Distinct Population Segment. 87 Fed. Reg. 72674–72755 (2022).

¹⁷“Lesser Prairie-Chicken.” Western Association of Fish & Wildlife Agencies. Lesser Prairie-Chicken—WAFWA.

¹⁸ Id.

¹⁹“Candidate Conservation Agreements.” U.S. Fish and Wildlife Service. Candidate Conservation Agreements | U.S. Fish & Wildlife Service (fws.gov).

²⁰ Id.

substantially since 2013, increasing from approximately 20,000 birds to nearly 35,000 birds in 2020.²¹

Other private efforts have also been successful. In New Mexico, a local CCA/CCAA has enrolled over 114 entities and conserved approximately four million acres of LPC historic range.²² However, the LPC listing prevents new acreage from being added to a CCA/CCAA, essentially stopping new private investment and conservation efforts for the species.

Flawed 4(d) Rule

As a part of the listing rule, the LPC in the Northern DPS will be listed as threatened. As a threatened species, the Northern DPS LPC will be managed under section 4(d) of the ESA, otherwise known as a 4(d) rule.²³ A 4(d) rule is intended to allow activities that cause little harm to the species, while preventing actions that have a greater risk of harm.²⁴

The Committee has heard from stakeholders expressing concerns with the requirements in the 4(d) rule, particularly the need for livestock ranchers within the LPC range to follow a grazing plan developed by a “Service-approved party.”²⁵ To date, the USFWS has only approved three entities to review grazing plans.²⁶ Don Hineman, past President of the Kansas Livestock Association, testified that it is unclear if these entities have the expertise and capacity to efficiently review the large volume of grazing plans that will need to be approved, leading to immense uncertainty among stakeholders.²⁷ This is of particular concern given the economic impact of the cattle industry within the LPC’s range. The area inhabited by the LPC contains 37 percent of the nation’s cattle and calves, the equivalent of \$25 billion in economic output.²⁸

LPC populations have increased by more than 50 percent in less than a decade while agricultural production hovered around the same output. The rule admits “grazing by domestic livestock is not inherently detrimental to lesser prairie-chicken management and, in many cases, is needed to maintain appropriate vegetative structure.”²⁹ Yet, by implementing a flawed 4(d) rule, the USFWS has in effect put livestock grazers in the potential crosshairs of ESA compliance and litigation.

²¹“Lesser Prairie Chicken Rule Pressures Fragile Rural Economies.” Shelby Hagenauer and Daniel Munch. U.S. Farm Bureau. 1/19/2023. Lesser Prairie Chicken Rule Pressures Fragile Rural Economies | Market Intel | American Farm Bureau Federation (fb.org).

²²“CEHMM” programs can help in the face of a listing decision by the U.S. Fish and Wildlife Service.” Emily Wirth. CEHMM Conservation & Environmental Services. b96cf9_5e8178c1d4994bea97c6bfaee6adba22.pdf (cehmm.org).

²³87 FR 72674.

²⁴“Section 4(d) Rules Under the Endangered Species Act.” Frequently Asked Questions. October 2021. Section 4(d) Rules Under the Endangered Species Act (fws.gov).

²⁵Endangered 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 (2022).

²⁶“Northern DPS 4(d) Rule Grazing Exception.” U.S. Fish and Wildlife Service. <https://www.fws.gov/page/northern-dps-4d-rule-grazing-exception>.

²⁷“Legislative Hearing on H.J. Res. 29, H.J. Res. 46, H.J. 29, and H.J. 1213.” Water, Wildlife and Fisheries Subcommittee. 4/18/22. Don Hineman response to member questioning. Legislative Hearing on H.J. Res. 29, H.J. Res. 46, H.J. Res. 49 and H.R. 1213 | Water, Wildlife and Fisheries Subcommittee | House Committee on Natural Resources.

²⁸“Lesser Prairie Chicken Rule Pressures Fragile Rural Economies.” Shelby Hagenauer and Daniel Munch. U.S. Farm Bureau. 1/19/2023. Lesser Prairie Chicken Rule Pressures Fragile Rural Economies | Market Intel | American Farm Bureau Federation (fb.org).

²⁹Endangered 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 (2022).

Congressional Review Act

The Congressional Review Act (CRA) was enacted in 1996 and provides Congress with a tool to overturn administrative regulations. If a CRA joint resolution is approved by both the House and Senate and signed by the President, the rule at issue cannot go into effect or continue in effect.

H.J. Res. 29 disapproves of the listing of the lesser prairie chicken and would prevent the administration from implementing the rule or proposing future rules.

COMMITTEE ACTION

H.J. Res. 29 was introduced on February 7, 2023, by Rep. Tracy Mann (R-KS). The resolution was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Wildlife and Fisheries. On April 18, 2023, the Subcommittee on Water, Wildlife and Fisheries held a hearing on the resolution. On April 27–28, 2023, the Full Natural Resources Committee met to consider the resolution. The Subcommittee on Water, Wildlife and Fisheries was discharged by unanimous consent. Rep. Jared Huffman (D-CA) offered an amendment designated Huffman #1. The amendment offered by Rep. Huffman was withdrawn by unanimous consent. The resolution was then ordered favorably reported to the House of Representatives by a roll call vote of 16 yeas to 12 nays, as follows:

Committee on Natural Resources
U.S. House of Representatives
118th Congress

Date: April 28, 2023

Recorded Vote #: 1

Meeting on / Amendment on: **Favorably reporting H.J. Res. 29 (Rep. Mann)**, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to "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"

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman	X			Mr. Grijalva, AZ, Ranking		X	
Mr. Lamborn, CO				Ms. Napolitano, CA		X	
Mr. Wittman, VA				Mr. Sablan, CNMI			
Mr. McClintock, CA	X			Mr. Huffman, CA			
Mr. Gosar, AZ				Mr. Gallego, AZ		X	
Mr. Graves, LA	X			Mr. Neguse, CO			
Mrs. Radewagen, AS				Mr. Levin, CA		X	
Mr. LaMalfa, CA	X			Ms. Porter, CA		X	
Mr. Webster, FL				Ms. Leger Fernandez, NM		X	
Ms. González-Colón, PR				Ms. Stansbury, NM		X	
Mr. Fulcher, ID	X			Mrs. Peltola, AK		X	
Mr. Stauber, MN	X			Ms. Ocasio-Cortez, NY			
Mr. Curtis, UT	X			Mr. Mullin, CA		X	
Mr. Tiffany, WI	X			Ms. Hoyle, OR			
Mr. Carl, AL	X			Ms. Kamlager-Dove, CA			
Mr. Rosendale, MT	X			Mr. Magaziner, RI			
Mrs. Boebert, CO	X			Ms. Velázquez, NY			
Mr. Bentz, OR	X			Mr. Case, HI		X	
Ms. Kiggans, VA	X			Mrs. Dingell, MI		X	
Mr. Moylan, Guam				Ms. Lee, NV		X	
Mr. Hunt, TX							
Mr. Collins, GA	X						
Ms. Luna, FL							
Mr. Duarte, CA	X						
Ms. Hageman, WY	X						
				TOTAL:	16	12	

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Water, Wildlife and Fisheries held on April 18, 2023.

SECTION-BY-SECTION ANALYSIS

Congress disapproves the rule submitted by the Director of the United States Fish and Wildlife Service relating to “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 (November 25, 2022)), and such rule shall have no force or effect.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND
CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the resolution from the Director of the Congressional Budget Office:

H.J. Res. 29, a joint resolution providing for Congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to "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"			
As ordered reported by the House Committee on Natural Resources on April 28, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	*	*	*
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	*	*
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?		Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?		Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

H.J. Res. 29 would void the final rule titled “Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threat-

ened Status With Section 4(d) Rule for the Northern District Population Segment and Endangered Status for the Southern District Population Segment,” submitted by U.S. Fish and Wildlife Service (USFWS) and published in the *Federal Register* on November 25, 2022. The rule added the lesser prairie-chicken to the list of threatened species in its northern habitat and to the list of endangered species in its southern habitat under the Endangered Species Act (ESA), effective January 24, 2023.

Under current law, USFWS collects permitting fees for lawful activities that involve protected species including scientific research, conservation, and unintentional taking of the animals while performing permitted activities. Under H.J. Res. 29, permits would no longer be required for such activities involving lesser prairie chickens. Permitting fees are recorded in the budget as offsetting receipts, (or reductions in direct spending) and are available to be spent without further appropriation. Using information from USFWS, CBO estimates that enacting H.J. Res. 29 would reduce those receipts and the consequent spending by an insignificant amount over the 2023–2033 period.

Violators of the ESA are subject to civil and criminal penalties, which are recorded as revenues; USFWS is authorized to spend those revenues without further appropriation. Using information from the agency, CBO estimates that any reductions in collections and the associated spending would be insignificant because of the small number of related cases that would have occurred over the 2023–2033 period.

Finally, using information from USFWS, CBO estimates that the administrative costs to void the regulation under H.J. Res. 29 would be insignificant; any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Lilia Ledezma. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this resolution is to provide for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to “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”.

EARMARK STATEMENT

This resolution does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

According to the Congressional Budget Office, this resolution contains no unfunded mandates as defined by the Unfunded Mandates Reform Act.

EXISTING PROGRAMS

Directed Rule Making. This resolution does not contain any directed rule makings.

Duplication of Existing Programs. This resolution does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

Any preemptive effect of this resolution over state, local, or tribal law is intended to be consistent with the resolution's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW

As reported by the Committee, H.J. Res. 29 makes no changes in existing law.

DISSENTING VIEWS

H.J. Res. 29 would legislatively de-list the lesser prairie-chicken (*Tympanuchus pallidicinctus*) under the Endangered Species Act of 1973 (ESA) and effectively prevent similar rulemakings in the future, putting the lesser prairie-chicken at risk of extinction.

Despite its small size, the lesser prairie-chicken is an indicator species for the native grassland and prairie ecosystems it inhabits. Historically, the range of lesser prairie-chicken spanned the Great Plains. Before 1900, the lesser prairie-chicken's estimated population was in the millions but has since declined to ~32,210 birds. At the same time, their habitat has shrunk by ~90%. The lesser prairie-chicken requires a "large, intact, and ecologically diverse" grassland habitat.¹ Maintaining appropriate vegetation cover is essential for lesser prairie-chickens' success as different life stages rely on varying vegetative cover and food sources. The lesser prairie-chicken lives in four distinct ecosystem types, or ecoregions, with a current range that includes portions of Colorado, Kansas, New Mexico, Oklahoma, and Texas.

Incentivized by the possible listing of the lesser prairie-chicken under the ESA, public-private conservation efforts have worked to conserve native grassland habitats and increase the lesser prairie-chicken's numbers. Federal, state, and private partners have worked together to raise awareness and conserve habitat and have voluntarily set aside millions of acres for conservation.² These partnerships include oil and gas companies, wind and solar developers, private landowners, and ranchers. Many of these partnerships, called "candidate conservation agreements with assurances" and "habitat conservation plans," set aside conservation land or work to fully offset impacts from enrolled projects. In exchange, participants received assurances that they would not need to implement additional measures should the lesser prairie-chicken be listed under the ESA.

The voluntary conservation efforts have not yielded a significant rebound in the lesser prairie-chicken population, partly because 97% of the lesser prairie-chicken's current range is within private lands, for which species conservation is relatively unregulated.³ Development within the lesser prairie-chicken's current range has significantly reduced habitable area; ~23% of the area is developed as cropland, ~7% is used for petroleum and natural gas production, ~9% is used for wind energy development and transmission lines, ~18% has been degraded by the intrusion of woody vegetation, and

¹ 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. 72,674, 72,677 (Nov. 25, 2022) (to be codified at 50 C.F.R. pt. 70), <https://www.govinfo.gov/content/pkg/FR-2022-11-25/pdf/2022-25214.pdf>.

² <https://www.fws.gov/lpc/partners-lpc-conservation>.

³ Species Status Assessment Report, Version 2.3, Service 2022.

~18% is covered by roads and electrical distribution lines.⁴ Further, given the “boom-bust” nature of this species, short-term increases in the population do not necessarily guarantee a rebound in long-term numbers. Without significant protection, the lesser prairie-chicken faces near-certain extinction due to habitat destruction, drought, and lowered resilience to short-term pressures.

Because of the small population numbers and continued habitat degradation, on November 25, 2022, the FWS listed two Distinct Population Segments (DPS) of the lesser prairie-chicken under the ESA. The Northern DPS is in Colorado, Kansas, Oklahoma, and Texas; the Southern DPS is in New Mexico and Texas. FWS listed the Northern DPS as threatened, with a special 4(d) rule, which warrants similar protections to threatened species as those granted to endangered species, prohibiting the take or possession of the Northern DPS except in some instances, which are discussed below. The Southern DPS is listed as endangered.

The FWS Species Status Report determined that habitat loss and fragmentation due to agricultural use, petroleum production, invasive species, and drought represent significant threats to the lesser prairie-chicken.⁵ Habitat loss has significantly lowered the ability of the Southern DPS to withstand periods of adverse environmental conditions or catastrophes and to adapt to future environmental change, making it currently at risk of extinction and warranting listing it as an endangered species. The Northern DPS may withstand environmental change and temporary adverse conditions. However, this ability may decline with future ecosystem fragmentation and drought, which could lead to a risk of extinction in the near future and warrant listing as a threatened species.

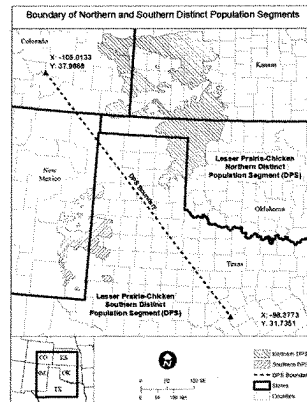


Figure 1. Map of Northern and Southern DPS population ranges.

Source: Species Status Assessment Report, Version 2.3, Service 2022, Docket FWS-R2-ES-2021-0015 on <https://www.regulations.gov>

Species listed as endangered under the ESA are protected from take, and restrictions or consultations are necessary for federal ac-

⁴ Species Status Assessment Report, Version 2.3, Service 2022.

⁵ Species Status Assessment Report, Version 2.3, Service 2022.

tions that threaten the species' existence or undermine critical habitat.

The special 4(d) rule issued for the Northern DPS allows continued agriculture on existing croplands and provides an exception for cattle producers who follow certain land management and grazing best practices that benefit farmers and the lesser prairie-chicken. It also provides exceptions for burning grasslands, which increases habitat quality. This rule otherwise prohibits any actions that would lead to a long-term loss of native vegetation and invertebrate species in lesser prairie-chicken habitat, resulting in the intentional or accidental destruction of nests and eggs; or causing harm to lesser prairie-chickens at any life stage.⁶

Entities participating in Habitat Conservation Plans or with Candidate Conservation Agreements with Assurances are allowed some take and have more flexibility for actions in critical habitat areas of the Northern and Southern DPS.

H.J. Res. 29 provides for congressional disapproval under the Congressional Review Act (CRA) of the FWS rule to list the northern distinct population segment (DPS) lesser prairie-chicken as threatened and the southern DPS lesser prairie-chicken as endangered under the ESA. This resolution would de-list the lesser prairie-chicken under the Endangered Species Act and prevent substantially similar listings.

Using the CRA to prevent listing a key species, such as the lesser prairie-chicken puts that species at risk of extinction. It undermines federal agency authority to make listing, de-listing, and management decisions based on the best available science as the ESA requires. De-listing or down-listing the lesser prairie-chicken from the ESA using the CRA could make it impossible for FWS to list the species under the ESA again, regardless of how close to extinction the population is. Without the ESA backstop, states and stakeholders will have little incentive to conserve or recover the lesser prairie-chicken, and the population is likely to dwindle further toward extinction.

Further, eliminating protections for the lesser prairie-chicken would serve as a considerable regulatory handout to oil and gas at the expense of our nation's native species and grasslands.

Instead of undermining the conservation and recovery of endangered species, legislative efforts would be better spent protecting our nation's irreplaceable resources by securing funding for ESA programs and passing the Recovering America's Wildlife Act to support endangered species recovery and wildlife conservation.

RAÚL M. GRIJALVA,

Ranking Member, House Committee on Natural Resources.



⁶*Provisions of the 4(d) Rule* <https://www.regulations.gov/document/FWS-R2-ES-2021-0015-0418>.