

For: CO, KS, NM, OK, TX State and County Offices

**CRP Measures to Benefit the Lesser Prairie Chicken  
in Colorado, Kansas, New Mexico, Oklahoma, and Texas**

Approved by: Acting Deputy Administrator, Farm Programs



**1 Overview**

**A Background**

On November 17, 2022, the U.S. Fish and Wildlife Service (USFWS) listed two Distinct Population Segments (DPS) of the lesser prairie-chicken (LEPC) under the Endangered Species Act (ESA). The Northern DPS of the LEPC was listed as threatened and the Southern DPS was listed as endangered. On March 27, 2023, the listing of the two DPS of the LEPC became effective.

The USFWS finalized a section 4(d) rule designed to conserve the Northern DPS of LEPC while allowing greater flexibility for producers in southeastern Colorado, south central to western Kansas, western Oklahoma, and the northeast Texas Panhandle. The Southern DPS covers populations in eastern New Mexico and across the southwest Texas Panhandle.

On March 29, 2024, USFWS provided FSA with a Biological Opinion (BO) containing their analysis of the expected adverse and beneficial effects likely to result from CRP implementation on the LEPC and its habitats. The analysis includes the effects of returning lands enrolled in CRP to crop production after CRP contract expiration or termination.

**Note:** This applies only to lands that were under contract at the time in which FSA initiated consultation (March 2022).

USFWS concluded that CRP implementation is anticipated to result in a long-term positive population response, though certain program practices may result in short-term adverse effects to individual birds.

The complete text of the USFWS BO is located on the Conservation Division State SharePoint under Documents, [Final FSA BO\\_Signed.pdf](#)

Disposal Date	Distribution
October 1, 2025 9-9-24	State Offices; State Offices relay to County Offices

## Notice CRP-1034

### 1 Overview (Continued)

#### B Purpose

This notice:

- informs State and County Offices of conservation measures and restrictions on permissive uses of CRP land across portions of southeastern Colorado, western Kansas, eastern New Mexico, western Oklahoma, and portion of Texas (see map in Exhibit 1), providing habitat and hosting remaining lesser prairie chicken populations
- directs COC's to work with local NRCS and State Fish and Wildlife Agencies to facilitate agricultural producer and landowner outreach and awareness about the new conservation measures for the primary purpose of focusing on consideration of LEPC needs in conservation plans.

#### C Contact

For questions about this notice, contact Joy Alspach, continuous CRP Program Manager.

### 2 Policy

#### A Applicability to CRP contracts

For LEPC, the BO serves as the required ESA section 7 consultation for existing CRP contracts, new CRP enrollments and future re-enrollments including all CRP signup types. FSA, NRCS, and Wildlife agencies will communicate new conservation measures procedures and to modify any existing conservation plan as appropriate. Conservation plans on existing CRP contracts may be voluntarily modified to the new procedure. Any changes to the existing Conservation Plan must include the new procedures to ensure compliance with the BO.

#### B State 2-CRP Amendments

State amendments to 2-CRP are not required. If a State chooses to supplement 2-CRP as a result of the BO, submit the State 2-CRP amendment to the [FPAC-FSA-DAFP Correspondence SharePoint site](#) for Conservation Division (CD) to review and approve.

**2 Policy (Continued)**

**C Action Area**

The action area included within the BO includes all counties that intersect with the most current version of the estimated occupied range of the LEPC. The action area for this programmatic consultation further designates counties as either “core” or “fringe” counties (see Exhibit 2 ).

A county is considered a “core” county if either of the following exists:

- at least 25 percent of its land intersects with the LEPC range
- if less than 25 percent of the county’s land intersects with the LEPC range but the county has numerous leks.

All other counties that intersect with the LEPC range are “fringe” counties. These counties either have:

- less than 25 percent of their land intersecting with the LEPC range
- more than 25 percent land intersecting the LEPC range but have few documented LEPC detections and limited habitat.

Counties designated as “core” counties will prescribe conservation measures in the conservation planning process according to the BO. The prescription of conservation measures in “fringe” counties is optional. A list of all counties and their designations can be found in Table 2.5 of the BO.

## Notice CRP-1034

### 2 Policy (Continued)

#### D Conservation Measures

The BO provides significant detail about conservation measures to be applied by practice. Conservation measures include CRP practices and NRCS technical practices and applies to all CRP signup types including grassland, continuous, and general when the offer is in a “core” county. Conservation measures must also be applied to offers for Transition Incentives Program (TIP) and requests for FMI. When applying a conservation practice, planners will plan the practices according to the conservation measures listed in Appendix A of the BO.

The conservation measures are designed to:

- avoid or minimize potential adverse effects to lesser prairie chicken and other federally listed species
- encourage establishment of large blocks of quality lesser prairie chicken habitat comprised primarily of diverse native species, adapted to local ecological site descriptions, providing appropriate food, cover and other habitat needs of the lesser prairie chicken throughout the year, including breeding, nesting, brood-rearing, winter cover, and protection against predators.

CRP maintenance and management activities are restricted to avoid or minimize disturbance of breeding, nesting, and brood-rearing activities during:

- primary nesting; and
- brood-rearing seasons.

The BO establishes a critical reproduction period for LEPC range-wide as **March 1 through July 15**. These dates are crucial in nest success and survival of chicks as the first breeding season has been identified as a key parameter affecting LEPC population growth rates.

In addition, the BO identifies specific conservation measures for each conservation practice standard. For CRP, if the acreage is in a core county, these dates supersede the state’s primary nesting season dates, and the participant will be required to follow the conservation measures for the practice implemented in Appendix A of the BO.

## Notice CRP-1034

### 2 Policy (Continued)

#### D Conservation Measures (Continued)

Listed below are examples of the specific conservation measures as described in the BO. See Appendix A of the BO for a full list of specific conservation practices and associated conservation measures.

Conservation Practice Standard	Code	Conservation Measure
Prescribed Burning	338	(1) Defer implementation of this conservation practice within 1/2 mile to known leks until all breeding and nesting activities are completed, typically March 1 through July 15.
Forage Harvest Management	511	(1) Defer implementation of this conservation practice within 1/2 mile to known leks until all nesting activities are completed, typically April 15 through July 15. (2) Leave corners, field borders, and odd areas un-harvested for supplemental cover and brood rearing habitat.
Livestock Pipeline	516	(1) Design the pipeline route to avoid or minimize the loss of desirable shrubs during practice installation. (2) Where practical, defer implementation of this conservation practice within 1/2 mile to known leks during breeding and nesting seasons, typically March 1 through July 15.

**Example 1:** Beaver County, Oklahoma continuous CRP offer is located within a 1/2 mile of a known lek and the participant would like to complete a prescribed burn. The primary nesting season (PNS) for Oklahoma is May 1 through July 1. However, Appendix A of the BO under Specific Conservation Measures further restricts prescribed burning within a 1/2 mile of a known lek. The prescribed burn will be scheduled to occur in the conservation plan before March 1 or after July 15.

**Example 2:** Kiowa County, Colorado grassland CRP offer is located within a 1/2 mile of a known lek and the conservation planner has determined a livestock pipeline and watering facility is needed for proper grazing distribution. The conservation planner refers to the BO's Conservation Measures because Kiowa County is a "core" county. Practice implementation will be deferred during breeding and nesting seasons, March 1 through July 15. The PNS date for Colorado is March 15 to July 15. However, because of the BO's restrictions during breeding and nesting season for the LEPC, the practice installation should occur before March 1 or after July 15.

**Example 3:** A CP8A (Grassed Waterway) is offered for continuous CRP in De Baca County, New Mexico and the conservation planner discovers a lek. Because De Baca County is a fringe county, implementation of the BO's Conservation measures in Appendix A would not be required but the conservation planner should inquire whether the landowner would voluntarily implement some or all the conservation measures as prescribed in the BO.

**2 Policy (Continued)**

**D Conservation Measures (Continued)**

Existing CRP conservation cover will be maintained according to the conservation plan. While establishment of CRP conservation covers may be scheduled for any time of the year, special effort will be taken to complete activities with as little disturbance as possible to adjacent and surrounding LEPC leks.

**E Permissive Use**

Permissive uses of CRP land will:

- be conducted according to the conservation practice standard and the conservation measures as described in the BO
- avoid or minimize disturbance of lesser prairie chicken breeding, nesting, and brood-rearing activities during established primary nesting and brood-rearing seasons.

Permissive uses include:

- CRP practice establishment, maintenance and required management activities, including required maintenance of the approved cover including weed, insect, and pest control; management activities; and permissive uses (recreational uses such as hunting, emergency haying and grazing, and non-emergency haying and grazing) performed according to Appendix A of the BO
- conversion of CRP covers back to crop production including early land preparation during the last year of the CRP contract, TIP, and development of associated conservation plans in accordance with this BO
- conversion of CRP covers back to crop production following contract expiration
- emergency and non-emergency haying or grazing according to 2-CRP.

2 Policy (Continued)

F Regulatory Predictability

CRP participants following their conservation plan, which include the conservation measures identified in the BO, will receive regulatory predictability. With regulatory predictability, participants following their conservation plan using the guidelines laid out in the BO will be able to anticipate how the ESA will affect their activities.

The predictability is tied to any potential take resulting from implementation of the practices prescribed in the conservation plan as long as they are in accordance with the BO, it is not a blanket coverage for any action that the landowner would take outside of that plan.

ESA, Section 9, and Federal regulation according to ESA, section 4(d) prohibit the take of endangered and threatened species, respectively, without special exemption. The BO provided by USFWS identifies CRP as a comprehensive conservation program with special exemption.

This regulatory predictability will extend through the period of the CRP contract and for up to 30 years from the date the BO was signed provided the landowner continues to follow the conservation plan or a new conservation plan if he or she wishes to:

- maintain the conservation cover
- maintain the conservation cover and engage in a grazing or ranching system that considers LEPC habitat as well as livestock forage needs.

**Example:** If a contract expires in 2040 and the landowner continued to implement the conservation plan, they will not receive coverage until 2070. The landowner would only receive coverage through March 29, 2054 (30 years after BO was signed). Regulatory predictability coverage ends when the landowner ceases implementation of the conservation plan as prescribed the former CRP land is returned to crop production or otherwise ceases to provide LEPC habitat benefit.

**Note:** CRP contracts terminated by FSA because of a contract violation are no longer exempt from incidental take as defined within the Endangered Species Act..

If a landowner changes their land management (returns the land to production), they are not required to continue implementation of the conservation practices and measures. The regulatory predictability only applies to the conservation practices and associated conservation measures implemented in accordance with their CRP conservation plan. If a landowner makes land management changes and wishes to keep the provided regulatory predictability, they must contact FSA and NRCS County Offices to discuss the proposed changes and update their conservation plan.

2 Policy (Continued)

**G Examples of Predictability for a CRP Participant**

The BO authorizes incidental take of the LEPC caused by the implementation, maintenance, and management of the conservation practices identified in a CRP participant's conservation plan as long as such conservation practices are consistent with the BO. In order to receive the predictability provided by the incidental take exemption, a landowner is required to implement and maintain the conservation practices and associated conservation measures identified in their conservation plan exactly as detailed. The following are some examples of when this may or may not occur:

**Example 1:** Participant has a grassland CRP contract and wants to graze during PNS. Unless State specific restrictions apply, the participant's Conservation Plan, and included grazing plan, allows for grazing during the PNS then the participant can graze during the PNS.

**Example 2:** Participant has a grassland CRP contract and would like to hay during the PNS. The county is located in a "core" county and the participant has a lek located within ½ mile of where the participant would like to hay. The participant must defer implementation of haying (Forage Harvest Management Practice 511 on Appendix A of the BO) within ½ mile to known leks until all nesting activities are completed, typically April 15 through July 15. They must also leave corners, field borders and incidental areas un-harvested for supplemental cover and brood rearing habitat.

**Example 3:** Participant has a general CRP contract that expires in September and does not want to reenroll. The participant plans to keep the cover in grass and the land contains a known lek. The participant would like to maintain coverage and protection from any such violation of the Endangered Species Act prohibition on take. The participant contacts NRCS for a conservation plan that includes the provisions of the BO. The participant can maintain their protection as long as they follow the new procedures described in the BO.

**Example 4:** Participant's contract expires in September and wants to return the land to production to maintain coverage and protection from take. The participant contacts NRCS for a conservation plan that incorporates the applicable conservation measures as described in the BO. The participant is covered as long as the conservation plan is followed.

**Example 5:** Participant has an existing FY 2015 CRP contract in a "core" county that is within ½ mile of a known lek. The participant wants to know if they are protected from take under the current BO. Yes, existing contracts do not need to be modified to receive coverage under this opinion. All new conservation plans and any modifications to existing plans will incorporate the conservation measures included in the BO.



2 Policy (Continued)

G Examples of Certainty (Continued)

**Example 6:** CRP contract expires in September; the participant would like to utilize early land prep according to 2-CRP, paragraph 636. To minimize the detrimental effects for acreage they want to return to production, the landowner will defer early land preparation or destruction of CRP conservation cover until after the primary nesting and brood rearing season for the LEPC in the final year of the CRP contract. While the conversion back to agricultural production has the potential to result in adverse effects, the overall benefits of the program will drastically outweigh these impacts as any perceived increase in regulatory risk for producers may result in lower new enrollments and further decrease habitat available for LEPC.

H Reporting Incidental Take

By March 1 of each year:

- County Offices will report the total number of confirmed incidental take that occurred in the previous FY on enrolled acres to the State Office

**Note:** Negative reports are required.

- FSA State Offices will coordinate with NRCS State Offices to identify the total number of units (acres, linear feet, etc.) of practices applied under the conservation measures listed in Appendix A of the BO for the previous FY.

By March 15 of each year, the State Office will compile county reports and submit 1 State report to CD through David Hoge at [David.Hoge@usda.gov](mailto:David.Hoge@usda.gov). Negative reports are required. The following is an example of the State report.

State and County Code	Confirmed Incidental Take on Enrolled Acres	Number of units of practices applied from Appendix A (specify unit)

By March 30 of each year, CD will compile all State reports and provide all of the following to USFWS:

- confirmed incidental take from States,
- number of units of practices applied from Appendix A of BO
- total enrolled acres in CRP per county.

## Notice CRP-1034

### 3 Action

#### A State Office Action

State Offices will :

- forward copies of this notice to the following:
  - all local FWS offices
  - the NRCS State Office
  - State Fish and Wildlife Agency office
- submit all applicable State amendments through the [FPAC-FSA-DAFP Correspondence SharePoint](#) for CD approval
- ensure that affected County Offices follow the provisions of this notice.

#### B County Office Action

County Offices will follow the provisions of this notice.

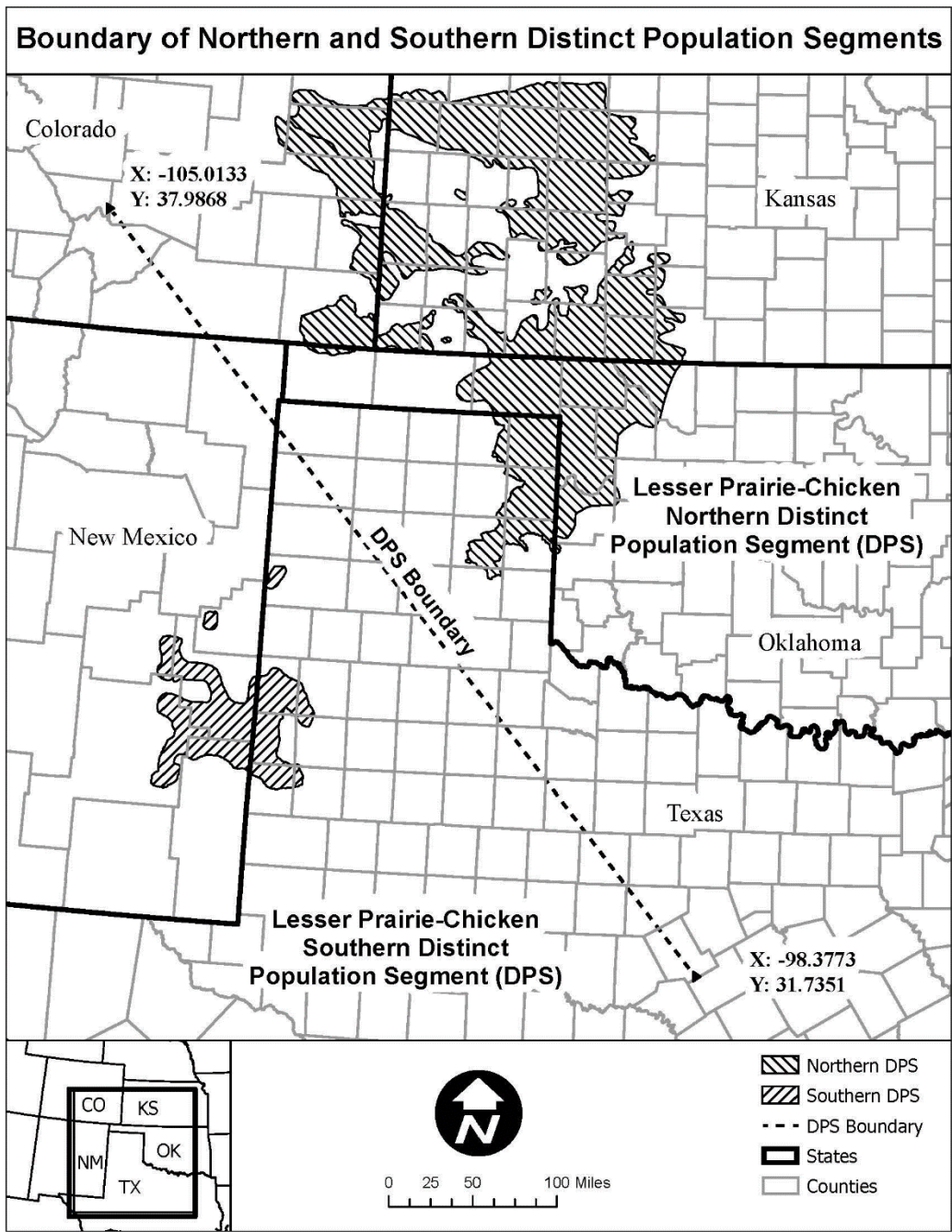
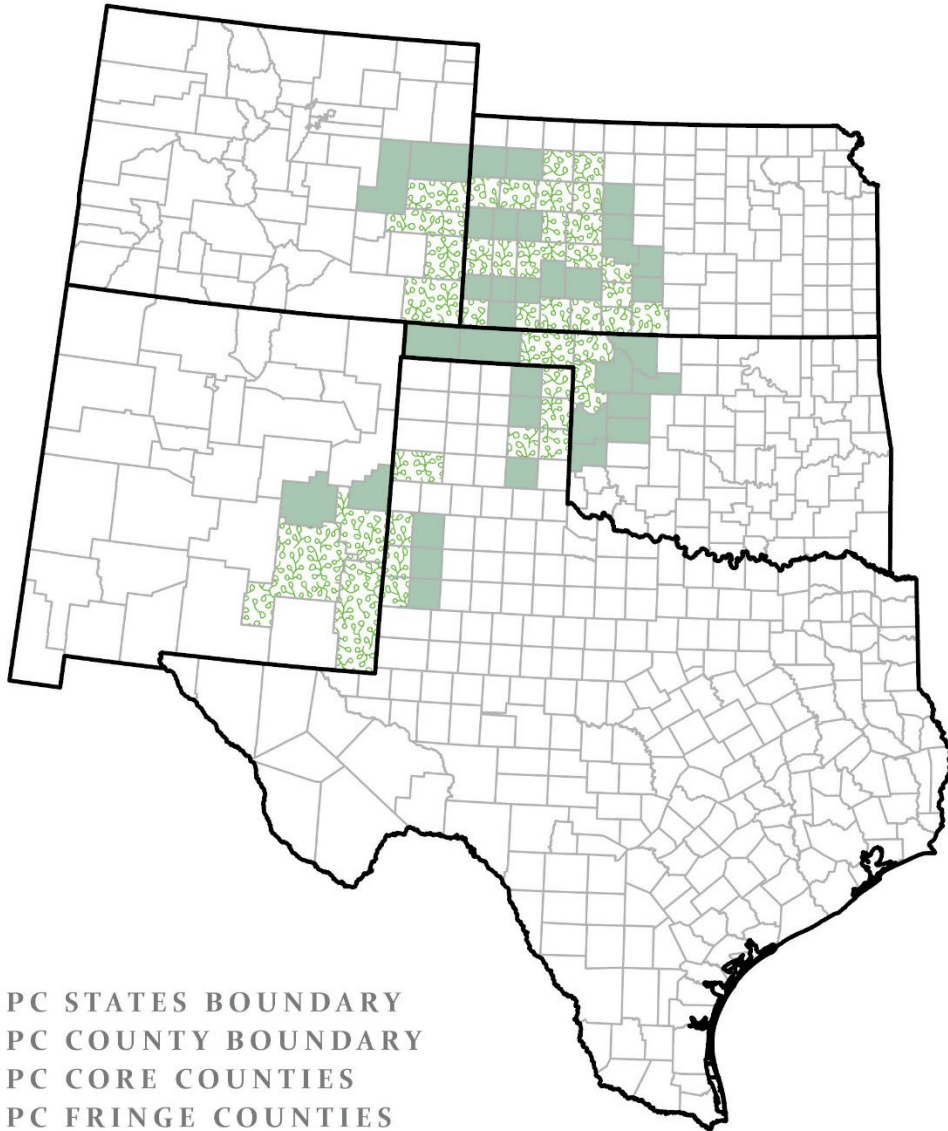



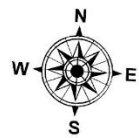


Figure 3.1. LEPC proposed Distinct Population Segments.

# LESSER PRAIRIE CHICKEN CORE AND FRINGE COUNTIES



-  LEPC STATES BOUNDARY
-  LEPC COUNTY BOUNDARY
-  LEPC CORE COUNTIES
-  LEPC FRINGE COUNTIES



Map created by DAFP/CD/CSB June 5, 2024