

**\* AUDUBON NEW MEXICO \* AUDUBON ROCKIES \***  
**\* AUDUBON TEXAS \* AUDUBON OF KANSAS \* OKLAHOMA AUDUBON COUNCIL \***

March 11, 2013

Public Comments Processing  
Attn: FWS-R2-ES-2012-0071  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
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Arlington, VA 22203

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Docket No. FWS-R2-ES-2012-0071

Re: Listing the Lesser Prairie-Chicken as a Threatened Species, Proposed Rule

Dear Sir or Madam:

The National Audubon Society, including Audubon Rockies, Audubon New Mexico, and Audubon Texas, along with Audubon of Kansas and the Oklahoma Audubon Council, is submitting these written comments to the U.S. Fish and Wildlife regarding the proposed rule for listing the Lesser Prairie-Chicken (LEPC) as a threatened species.

In celebrating the 40<sup>th</sup> Anniversary of the Endangered Species Act this year, we recognize the achievements of the Act and the U.S. Fish and Wildlife Service (FWS) in protecting and recovering threatened and endangered species, such as the success stories of the Bald Eagle and Brown Pelican. We commend your agency for addressing the precarious status of the LEPC, which has prompted discussion among stakeholders, innovative conservation measures, a range-wide conservation plan, and the current opportunity to provide public input to enhance the protection of this species.

**I.** There have been a number of **positive developments** with respect to expanding our collective knowledge of this species and its habitat needs, addressing the many threats, and improving coordination for protection efforts:

- Southern Great Plains Crucial Habitat Assessment Tool
  - The development by the Western Governors' Association Wildlife Council of the Southern Great Plains Crucial Habitat Assessment Tool (CHAT; <http://www.kars.ku.edu/maps/sgpchat/>), facilitated by the Playa Lakes Joint Venture, has allowed modeling crucial habitats and important corridors for the LEPC throughout its historical range. This tool provides private landowners, land managers, and other stakeholders with better information to guide protection strategies and focus management actions.
- Range-wide Aerial Survey

- The development and implementation of a range-wide survey for LEPC, with robust standardized methodology and analysis, has addressed concerns about the variability in methods used previously for annual state-by-state surveys. This survey also detected several previously unknown breeding areas, and provides corroboration of and confidence in the data collected through field surveys. Unfortunately, field survey data show continuing declines in LEPC populations range-wide.
- Range-Wide Conservation Plan
  - We applaud the collaborative effort of the Lesser Prairie-Chicken Interstate Working Group in working towards developing the voluntary *Range-Wide Conservation Plan for the Lesser Prairie-Chicken*, and concur on the importance of implementing specific conservation measures to improve habitat and minimize threats. The plan expands our knowledge of the LEPC's habitat requirements, details the increasing threats to the LEPC, articulates a conservation strategy with population and habitat goals across the species' range (which incorporates the various seasonal needs of the species), and proposes a mitigation program that includes monitoring. We specifically commend the use of a "Science Team," which includes academics and researchers with LEPC expertise, to set major goals.
- Natural Resources Conservation Service's (NRCS) Lesser Prairie-Chicken Initiative (LPCI)
  - Launched in 2011, this proactive program developed useful field tools and resources to maintain and enhance LEPC habitat while benefiting agricultural producers. The NRCS Farm Bill Conservation Programs (EQIP, WHIP, GRP) have fostered public-private partnerships while bringing attention to the LEPC.
  - Worked with the FWS to finalize conservation practices to be used in the LPCI, released in the June 2011 Conference Report.
  - Was strategic in implementation of actions by identifying high priority target areas for NRCS programs.
  - Enhanced effectiveness by dedicating staff to this initiative, including an LPCI Coordinator and an LPCI Science Coordinator. Partnerships have also resulted in the hiring of 34 private land range conservationists and wildlife biologists in key rural areas across the range, providing more on-the-ground communication and outreach with landowners.
- Additional stakeholder efforts
  - Implementation through FWS of voluntary conservation agreements which develop conservation measures and create incentives for private landowners
  - State programs, such as Task Forces and those that foster public-private partnerships (i.e. agricultural producers)
  - Expansion of private lands under conservation easements
  - Development of Best Management Practices (BMPs) specific to LEPC by the New Mexico Wind and Wildlife Collaborative and the Colorado Renewables & Conservation Collaborative
  - Removal of some public lands from energy development, such as in the LEPC Area of Critical Environmental Concern (ACEC) established by the Bureau of

- Land Management (BLM) in New Mexico where 50,830 acres were closed to new oil and gas leasing
- Acquisition of land to specifically protect LEPC, including by BLM in the LEPC ACEC and also by The Nature Conservancy in New Mexico and other states.

**While these various efforts are intended to have a positive outcome for the LEPC, Audubon is compelled to express some concerns about their limitations and effectiveness.** Since the June 1998 finding (63 FR 31400) by the FWS that listing of the LEPC was warranted but precluded, many stakeholder groups have initiated voluntary measures to enhance and protect habitat for the LEPC. However, the fact that conservation measures that may have been implemented have not had *a quantifiable impact on LEPC populations*, all of the *proposed* efforts and plans are likewise *voluntary*, and *threats to LEPC habitat have increased* (leading to this proposed rule), raises doubts as to whether the current and proposed portfolio of actions will produce long-term, documented benefits to LEPC populations or just more “paper chickens.” There is also little reason to be confident that the Range-Wide Conservation Plan will be fully implemented in some states, or that other state or federal governmental entities within one or more states will implement policies and practices to assist in recovery of LEPC populations or with significant restoration of habitat.

**II. Given this difficult reality, there are a number of steps which will need to be taken to increase LEPC populations and ensure their long-term viability throughout their range:**

- Evaluate effectiveness of voluntary conservation measures
  - Voluntary conservation efforts will need to be rigorously monitored to determine their effectiveness in reducing threats and creating a beneficial population response, with the employment of robust, defensible adaptive management program<sup>1</sup> prepared beforehand to address unproductive results. Results from monitoring efforts must be shared widely to ensure that ineffective practices are not perpetuated through the unwarranted generation of conservation credits.
- Refine and evaluate the proposed mitigation program
  - The proposed mitigation program outlined in the Range-Wide Conservation Plan, admittedly a work in progress, will need to be better articulated, formulated and field tested—with input from stakeholders (including conservation groups, industry, private landowners and public land managers)—to ensure a beneficial outcome for LEPC, rather than constituting a potential opportunity for minimizing or avoiding a commitment to conservation efforts. Audubon is concerned that the cumulative effect of potentially ineffective mitigation measures on top of the voluntary conservation measures already adopted could result in little or no benefit to LEPC populations.
- Remove federal lands from energy development
  - Although only 4% of LEPC range is on federal lands, additional subsurface mineral rights are owned by the U.S. government, and every effort should be

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<sup>1</sup> Elements of an effective adaptive management program include stakeholder involvement, management objectives, management alternatives, predictive models, monitoring plans, decision making, monitoring responses to management, assessment, and adjustment to management actions.

made to remove these lands from leasing for oil and gas and wind energy development, all of which are recognized as being threats to the species. As acknowledged by IM 2010-071, the Mineral Leasing Act vests absolute discretion in the Secretary over mineral leasing decisions. The same legal authority extends to renewable energy and transmission projects occurring on public lands.

- Consider a FWS initiative similar to the Flint Hills Legacy Conservation Area for habitat required for the LEPC. Partners for Fish and Wildlife extension agreements should also be expanded to improve habitat for LEPC.
- Fully fund and implement private landowner incentive programs
  - Private landowner incentive programs, such as the Farm Bill’s Conservation Reserve Program (CRP), should receive a sustained high level of funding to avoid a further decline in LEPC populations. Supporting this important tool will increase LEPC populations on agricultural lands by precluding conversion of native prairie to cropland and establishing native vegetation. Further, extension and renewal of existing contracts must be given a high priority.
  - CRP contracts must not be vulnerable to withdrawal of acreage due to “emergency” provisions, which can impact LEPC populations. For example, in 2012 a total of 477,812 acres of CRP were hayed or grazed in Kansas under emergency provisions. A substantial amount of that was within the range of the LEPC, resulting in a decline in suitable habitat available for late summer brood cover, winter cover, and nesting habitat. This action, combined with the potentially devastating impact of an extended drought on LEPC recruitment and survival, will likely be reflected in declines yet to be documented.
- Establish effective BMPs and stipulations range-wide
  - BMPs must be developed taking into account the various habitat types (sand shinnery oak, sand sagebrush, mixed grass, and short grass).
  - Where development activities are permitted, practices and stipulations based on best available science need to be clearly identified, promulgated, and enforced.
- Designate particular critical habitat areas as ACECs (43 U.S.C. 1702), where opportunities arise on public lands
  - This would allow for special management to protect and prevent irreparable damage to important wildlife habitat. This type of progressive and sound management would protect high quality habitat, populations, and other species that depend on these habitats.
- Focus on increasing LEPC populations
  - All available strategies should be employed to increase LEPC populations, not just to sustain or maintain them or stem declines. Suitable habitat within key areas of the historic range should be protected, whether currently occupied with leks or not, to include all crucial habitat areas identified by the Southern Great Plains CHAT.
  - This includes adequate protections and habitat management practices within the connectivity areas and in key areas of the historical range, as these are expected to be potential areas for expansion (or retreat).
- Cautiously examine the Range-wide Habitat Credit Exchange/Trading Program
  - This concept has been receiving increasing attention in recent months, expanding beyond even LEPC. Audubon is very concerned about the lack of specificity,

oversight, and transparency in the role and authority of the brokers in this proposed structure, and in the capacity and expertise of the brokers with respect to LEPC.

- The impacted population must be the one that receives the mitigation, not a population in a different state or habitat type.
- In addition, existing impacts appear to not be taken into consideration (i.e. the mitigation plan could allow for additional detrimental impacts to LEPC with new facilities/wind/roads/oil and gas/etc. simply because an "offset" or mitigation bank is in place.)

### **III. Regarding the proposed rule itself, there are also a number of concerns:**

- Resolve how FWS will effect private lands
  - Given that per the proposed rule "about 95 percent of the currently estimated occupied range occurs on privately owned land," it is unclear how FWS would be able to develop and implement an effective recovery process for LEPC.
- Increase size and number of strongholds
  - The concept and plan for "secure strongholds or core areas of high quality habitat" which are proffered for the "conservation and eventual recovery" of the LEPC in both the proposed rule and FWS Technical White Paper, *Conservation Needs of the Lesser Prairie-Chicken*, lacks sufficient scientific explanation and justification regarding the identification, minimum size, number and connectivity of these strongholds.
  - The suggestion of establishing a "minimum of four strongholds" is concerning. It sets the lowest common denominator and target for conservation efforts, creating disincentives for both private and public stakeholders to expand the area of potential habitat and provide connectivity for LEPC populations.
  - Given that the rule recommends the size of each of these four strongholds to be at least 25,000 acres, but the current occupied range for LEPC is almost 20 million acres, this minimal approach and target is *unacceptable* and will not protect LEPC in the long-term. Scientific justification of the 25,000 acres is lacking.
- Increase and better address connectivity
  - Connectivity areas, which include key areas of the historical range, are needed to maintain genetic viability of the LEPC populations as well as provide for potential areas for expansion (or retreat).
- Address climate change impacts
  - The effects of climate change needs to be more thoroughly included in the future threats that are challenging this species, otherwise the disturbances to the LEPC habitat is under-represented.
  - The full employment of the many conservation measures identified in the range-wide plan and the proposed rule will not stem LEPC population declines in the face of higher temperatures and more frequent and prolonged droughts.

### **IV. The National Audubon Society's programs offer opportunities to contribute to and inform LEPC conservation:**

- Audubon's Climate Change Modeling Program

- To help inform the listing decision, your agency has requested “information on the projected and reasonably likely impacts of climate change on the LEPC and its habitat.” In seeking to meet that need, Audubon is pleased to offer the information and expertise of its Climate Change Modeling Program.
- The National Audubon Society has been funded through a grant and cooperative agreement with the FWS to analyze how birds across North America may respond to climate change. Using extensive citizen-science data and detailed climate layers, Audubon developed models that characterize the relationship between the distribution of each species and a set of bioclimatic variables. Audubon used these models to forecast species distributions in future time periods based on climate change estimates described by the Intergovernmental Panel on Climate Change.
- For LEPC, and other taxa of concern, Audubon has developed spatially explicit predictions for areas that will remain climatically suitable from 2000-2080. Identification of these climate “refugia” could serve an important role in conservation planning for the LEPC, whether or not it is formally listed by FWS. Results of this work are currently being finalized for inclusion in the Audubon report to FWS.
- Please contact Gary Langham (Chief Scientist, 202-600-7975, [glangham@audubon.org](mailto:glangham@audubon.org)) to discuss use of Audubon’s climate predictions or address any questions related to Audubon’s climate change work.
- Audubon’s Important Bird Areas Program
  - Important Bird Areas (IBA) are part of an international program to identify priority areas where threatened, restricted-range, biome-restricted and congregatory birds occur. The IBA Program is the focal point for Audubon’s bird conservation work because it is a global effort to identify and conserve areas that are vital to birds and other biodiversity. IBAs are sites that provide essential habitat to one or more species of birds during some portion of the year (nesting areas, crucial migration stop-over sites, or wintering grounds). A site is recognized only if it meets certain criteria, which are internationally agreed, standardized, quantitative and scientifically defensible. Following a rigorous review process, IBAs are a particularly effective way of identifying conservation priorities. Thus, IBAs are increasingly being used in planning processes where avian impacts are expected.
  - IBAs may include public or private lands, or both, and may be already protected or not. The program not only brings attention to the site and species in need of conservation but also offers grassroots efforts. It gives land owners, land managers, volunteer citizen scientists, birders, government agencies, non-governmental organizations, and other interested stakeholders opportunities to get involved throughout the process, and encourages them to take ownership of IBAs through monitoring, stewardship, education, and advocacy. Although there is no legal status conferred by the IBA program, nor any regulatory requirements for management of a site that is designated as an IBA (state or global), the designation fosters partnerships and facilitates conservation actions that help preserve the resources that make the site important.

- Audubon has identified state IBA sites that were important for LEPC conservation within New Mexico, Kansas and Oklahoma. While the IBAs identified using the state-level criteria can have tremendous importance locally, they can be limited in their value to larger regional, national, or international conservation planning efforts since comparisons among these sites are not always appropriate. Therefore, Audubon has gone a step further for the conservation of this species and has nominated for global designation a complex of sites that support LEPC populations and habitat in New Mexico, Colorado, Oklahoma and Texas.
- Audubon's IBA Program also recently submitted a nomination for the Lesser Prairie-Chicken New Mexico Complex to BirdLife International<sup>2</sup> as one of five *IBAs in Danger* in the U.S., thus elevating the status of this IBA.
- IBAs represent an important opportunity to highlight the contributions of private landowners to LEPC conservation. The Oklahoma Audubon Council has designated the Selman Ranch in northwest Oklahoma as an IBA primarily because of the LEPC population present on the ranch. The Selman Ranch IBA is entirely private property, and the ranch owner has worked closely with Audubon to promote her property as an IBA, protect the birds and improve habitat, including marking many miles of fencing to reduce fence collision mortality. Since 2009, this IBA has been the featured destination during the Lesser Prairie-Chicken Festival, *Lek Treks & More*, in Woodward, Oklahoma.
- Please contact Connie Sanchez (Director, Important Bird Areas Program, (215) 355-9588 x 19, [csanchez@audubon.org](mailto:csanchez@audubon.org)) to discuss Audubon's LEPC IBAs or address any questions related to Audubon's IBA program. Please note that GIS shapefiles are available for a majority of Audubon's IBAs and can be shared.

At Audubon, we are interested in establishing effective, proactive management actions, long-term habitat protections and funding mechanisms that will bolster LEPC populations throughout their range. For more than a century, Audubon has built a legacy of conservation success by mobilizing the strength of its more than one million members, network of over 500 local chapters, Audubon Centers, state offices and dedicated professional staff to connect people with nature and the power to protect it. This is accomplished through a variety of activities, including education, habitat conservation and public policy advocacy – especially on important conservation issues.

**In its response to the 1995 petition, the FWS found sufficient scientific basis to determine that listing of the LEPC as threatened was warranted. If the FWS, through its current proposed rule process, finds a scientific basis for the agency to determine that listing of the LEPC as threatened is still warranted, our organization will support this decision and avail itself to provide any assistance to facilitate FWS efforts to protect this iconic species.**

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<sup>2</sup> BirdLife International is a partnership of 116 national conservation organizations and the world leader in bird conservation. BirdLife's unique local to global approach enables it to deliver high impact and long term conservation for the benefit of nature and people.  
[\(http://www.birdlife.org/\)](http://www.birdlife.org/)

Audubon is committed to remaining engaged in the conservation of this species and to working with FWS and all partners towards a successful outcome for the LEPC.

Please note that additional comments may be submitted separately by other Audubon entities based within the range of the LEPC.

Respectfully,



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