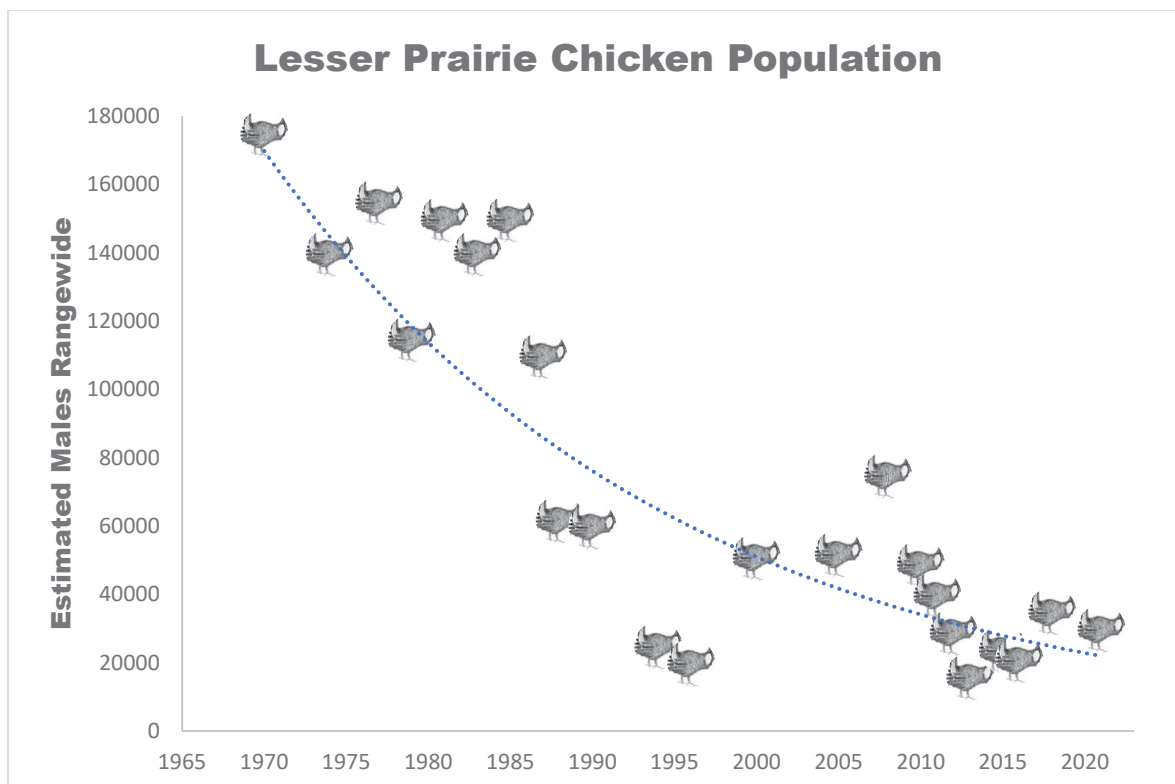




## SAVING THE LESSER PRAIRIE-CHICKEN

After nearly three decades of waiting for protection, the U.S. Fish and Wildlife Service issued a final rule in November 2022 protecting the lesser prairie-chicken under the Endangered Species Act. Two populations are now protected: a Texas and New Mexico population is listed as endangered, while a separate northern population in Texas, Oklahoma, Kansas and Colorado is listed as threatened. In making its final determination, the Service found that existing voluntary conservation actions by States and the oil and gas industry “will not be enough to offset...habitat losses,” and that “the expected conservation efforts are inadequate to prevent continued declines in total habitat availability, much less restore some of what has been lost, and overall viability for this species will continue to decline.”<sup>1</sup>

While the lesser prairie chicken was briefly protected under the Endangered Species Act in 2014, the decision was overturned the following year by a Texas judge who found that the Service misapplied its policy for considering voluntary conservation agreements. The conservation agreement at issue, however, was largely ineffective and poorly implemented. Following the delisting, a 2019 audit revealed that the Western Association of Fish and Wildlife Agencies (WAFWA), which implements the Lesser Prairie-Chicken Range-Wide Conservation Plan, violated its own terms by using funds intended for lesser prairie-chicken conservation to purchase its headquarters building in Boise, Idaho. The audit found that WAFWA mismanaged funds so poorly that it negated any conservation benefit to the bird, which has continued to lose habitat in the intervening years. Critically, the audit found the program was currently resulting in a net loss of habitat and could be out of compliance with the lesser prairie-chicken Candidate Conservation Agreement with Assurances (CCAA).



A subsequent 2021 programmatic audit commissioned by WAFWA found similar issues, namely that the CCAA's endowments were not sufficient to fund management and restoration, that its revenue was not sufficient to meet the expected administrative responsibilities required by the CCAA in perpetuity, and that the adaptive management provisions of the CCAA had fallen short of the agreement's intentions. To extricate itself from its own financial mismanagement, WAFWA is now offering for sale—with no advertised conservation limitations—the entirety of its flagship conservation property that was purchased in 2016 for "permanent" habitat protection to aid lesser prairie chickens.

## CONGRESSIONAL ATTACKS

The lesser prairie-chicken has been a constant target for anti-wildlife members in Congress. Since 2011, there have been 22 legislative attacks – all by wildlife opponents in hostile states – seeking to block federal protections for this iconic dancing bird. Anti-wildlife members of Congress have already introduced a Congressional Review Act (CRA) joint resolution seeking to prevent the listing from having any force or effect.

Using the CRA to rescind protections for the lesser prairie-chicken would have disastrous consequences. The CRA is an unreasonably blunt instrument with far reaching impacts. Upon enactment of a CRA resolution, the underlying rule becomes void and the agency is prevented from future issuance of a rule that is "substantially the same" without an act of Congress. It sidelines important debate, often circumvents committee consideration, and prevents filibuster protections in the Senate, all with the aim of hastily invalidating federal rules that were considered over a long period of time.

If passed, the CRA could prevent the Service from protecting the lesser prairie-chicken under the Endangered Species Act at any point in the future, even if the population collapsed and only a single bird remained. Moreover, passage would set an extremely dangerous precedent for future CRA attacks on listing determinations in the future.

**Background:** Known for the males' elaborate calls and showy displays of reddish-orange air sacs while performing their spring mating dances, the lesser prairie-chicken is a highly imperiled ground-nesting bird that once roamed the southern Great Plains by the millions, but today has declined to roughly 27,000 birds – a decline of 20% since 2021 – across less than 10% of its original range. The primary threats to the lesser prairie-chicken are habitat loss and fragmentation caused by oil and gas drilling, cropland conversion, livestock grazing, and roads and power lines. Drought and high temperatures linked to global warming also harm the bird; increasingly, eggs and hatchlings are not able to weather the extreme heat.

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<sup>1</sup> 87 Fed. Reg. 72674, 72708, 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, available at: <https://www.federalregister.gov/documents/2022/11/25/2022-25214/endangered-and-threatened-wildlife-and-plants-lesser-prairie-chicken-threatened-status-with-section>.

