

FINAL REPORT



Federal Aid Grant No. F12AF00595 (T-64-R-1)

**Development and Implementation of a Program to Address
Energy-Related Wildlife and Habitat Impacts**

Oklahoma Department of Wildlife Conservation

June 1, 2012 – June 30, 2015

Final Performance Report

State: Oklahoma

Grant Number: F12AF00595 (T-64-R-1)

Grant Program: State Wildlife Grant

Grant Name: Development and Implementation of a Program to Address Energy-Related Wildlife and Habitat Impacts

Grant Period: June 1, 2012- June 30, 2015

Grant Reporting Period: June 1, 2012 – June 30, 2015

Project Leaders:

- Russ Horton, Lands & Wildlife Diversity Coordinator (June 1, 2012 –June 19, 2012)
- Alex Rizzo, Wildlife Biologist – Energy Emphasis (June 20, 2012 – Sept. 30, 2013)
- Russ Horton, Lands & Wildlife Diversity Coordinator (Oct. 1, 2013 – Jan. 31, 2014)
- Rich Fuller, Wildlife Biologist – Energy Emphasis (Feb. 1, 2014 to June 30, 2015)

Objective:

Create and fill a biologist level position to: (1) Evaluate the impacts of all activities associated with energy exploration and production on species of greatest conservation need identified in the Oklahoma Comprehensive Wildlife Conservation Strategy, and (2) Develop working relationships and work collaboratively with the energy industry to provide recommendations to avoid negative impacts to SGCN and their habitats, to minimize the effects of those impacts when avoidance is not possible, and to offset all negative impacts that occur as a result of energy related activities.

Needs:

It is established that the cumulative effects of human activities, including the development of natural energy resources, has a large impact on wildlife populations and their associated habitat. Many of these developments are done without consideration of their impact on local wildlife and fisheries. Some species and projects, however, require review and comments for compliance with the National Environmental Policy Act (NEPA) or the Endangered Species Act (ESA). Therein lies the need for a biologist level position to become familiar with the inner workings of energy companies and the differing types of development they are pursuing (oil & gas well drilling, both large and small scale wind farms, establishment/repair of pipelines and flow lines, electrical lines, road construction, mining, etc.) and how these actions will affect varying species, particularly species of greatest conservation need.

In Oklahoma, two primary species are suffering from habitat loss and degradation due to many factors, of which energy development is one. The Lesser Prairie Chicken (LEPC), *Tympanuchus pallidicinctus* and the American Burying Beetle (ABB), *Nicrophorus americanus* have both seen significant regulatory changes during this reporting period due to actions by the U.S. Fish & Wildlife Service (USFWS). These actions are complex and have required energy companies to

significantly alter standard operations that have been in place for decades within Oklahoma's oil & gas industry.

In March, 2014, the service issued a Draft Industry Conservation Plan (ICP) for ABB directed primarily toward oil & gas and subsidiary development for a 45-county area of Oklahoma (essentially east from a line extending from Kay County on the Kansas border to Love County on the Texas border). The ICP will govern oil & gas development and corresponding mitigation protocols for ABB through the end of the 2015 ABB "active season" (approximately September of 2015). By applying for an ABB incidental take permit, oil & gas companies agree to comply with multiple conservation measures as well as offsetting impacts through purchasing credits from established ABB mitigation banks (Muddy Boggy Conservation Bank in Coal County, ABB Mitigation Bank in Pittsburgh County), or, by establishing their own ABB mitigation bank (pursuant to USFWS rule/approval).

In May 2014, the USFWS listed the Lesser Prairie Chicken as Threatened. Additionally, within the listing decision, the service endorsed a special rule (known as the 4(d) rule) that allows "take" of LEPC incidental to otherwise lawful activities conducted by a participant (including many oil & gas, wind and electrical transmission companies) enrolled in, and operating in compliance with, the LEPC Interstate Working Group's Range-Wide Conservation Plan (RWP). Through the RWP, companies operating in critical LEPC habitat areas pay enrollment fees as well as a calculated mitigation fee for certain projects (i.e. drilling a well, road construction, building a wind turbine, establishing an electric transmission line). The Service endorsed the revised 4(d) special rule in recognition of the significant conservation planning efforts of the five state wildlife agencies within the range of the lesser prairie-chicken. Additionally, ~400,000 acres within Oklahoma were enrolled by private landowners in the Agricultural Candidate Conservation Agreement with Assurances (CCAA) for Lesser Prairie-chickens between the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service, which provides incidental take coverage (within Sec. 10 of the ESA) for landowners conducting various conservation measures within common agricultural practices. In many cases, surface property within the LEPC range may not only be enrolled by the actual landowner into a CCAA agreement requiring various LEPC conservation measures related to agriculture, but also enrolled as an energy "leasehold" into the RWP by an energy company requiring conservation measures related to oil & gas exploration or wind farm development.

In other USFWS actions, the Service listed the Red Knot (REKN), *Calidris canutus rufa*, a rarely sighted high-flying migrant shorebird as threatened (occurring statewide pursuant to IpaC) in December 2014. Additionally, in April of 2015, the Northern Long-eared bat (NLEB) *Myotis septentrionalis* was listed as threatened with an interim 4(d) rule for 23 counties representing approximately the eastern 1/3 of Oklahoma (pursuant to IpaC and 4(d) rule map).

Accordingly, there are many stakeholders within the respective habitats of LEPC, ABB and NLEB that continue to seek guidance on the new regulatory protocols established when these species became listed. Energy companies, landowners, public utilities, local governments and other state agencies have had to alter practices to comply with USFWS rules pertaining to ESA listed species and to perform conservation measures stipulated within various enrolled agreements (e.g. ABB-ICP, Oklahoma Agricultural LEPC CCAA, RWP, LEPC Oil & Gas

CCAA, or the Natural Resources Conservation Service (NRCS) Lesser Prairie Chicken Initiative).

In order to consult with and assist the various stakeholders on not only complex regulatory compliance, but also voluntary BMPs that will benefit ABB, LEPC, NLEB and other SGCN, the Oklahoma Department of Wildlife Conservation (ODWC) Wildlife Biologist – Energy Emphasis position requires:

- a knowledge and distribution of the ecology and habitats of the species of concern,
- sufficient knowledge of the proposed activities so that potential impacts to the species and their habitats can be anticipated, and
- sufficient knowledge of alternative land management practices or permitting to make recommendations for eliminating or minimizing the impacts to species of special concern.

In short, the need is to ensure that as energy exploration and development continue and expand in scope and geographic area in Oklahoma, the needs of all federally-listed species and SGCN and their habitats, are given due and diligent consideration, conservation, and management.

Summary of Progress:

Initial duties were to evaluate and learn the methodologies of the energy industry with respect to effects on environment and wildlife, particularly LEPC and ABB. Initial duties included studying the tenets of the Endangered Species Act (ESA), Range-wide plan for Lesser Prairie Chicken (RWP), Bald & Golden Eagle Protection Act (BGEPA), Migratory Bird Treaty Act (MBT), National Environmental Policy Act (NEPA) and other similar regulatory documents for listed and/or candidate species. Throughout the grant period, duties included responding to requests to the ODWC for information regarding any species of concern near a potential energy-related development throughout the state. During the three (3) year grant period, the following tasks were completed:

- Prepared responses for ~100 consultant letters requesting wildlife related information for planned/proposed oil&gas, mining or electrical transmission developments throughout the state.
- Attended multiple conferences, meetings, and consultations (phone and in person) for energy development related to LEPC and ABB.
- Personally consulted with wind energy companies and/or their environmental consultants to discuss wildlife impacts and siting issues for more than 20 utility scale wind farm projects (including proposed projects, projects under construction or operational wind developments) in Texas, Beaver, Canadian, Carter, Ellis, Grady, Grant ,Garfield, Kay, Murray, Osage, and Woodward, counties. The majority of these consultations incorporated the USFWS's Land-Based Wind Energy Guidelines (2012); and particularly Tier III (pre-construction wildlife and wildlife impact surveys) and Tier IV (post-construction wildlife and wildlife mortality surveys),
- Attended LEPC habitat evaluation guide training (vegetation sampling) pursuant to RWP.
- Attended the joint annual meetings of the Oklahoma Chapter of the Wildlife Society and the Society of Range Management. Attended American Wind Energy Association

(AWEA) - Wind Siting Seminar, and the Annual North American Wildlife & Natural Resources Conference sponsored by Association of Fish and Wildlife Agencies (AFWA). While attending the North American conference, participated in multiple energy-related sessions, including: Wind Energy Subcommittee, Lesser Prairie Chicken – Range Wide Plan Update, Onshore Oil & Gas Subcommittee, Endangered Species Management, Energy & Wildlife Subcommittee and Threatened & Endangered Species Policy. Attended other conferences related to energy and wildlife impacts including the American Wind and Wildlife Institute (AWWI) Research meeting and the AFWA sponsored-Wind Energy 101 workshop held at the Natl. Renewable Energy Laboratory (NREL).

- Participated in meetings/conference calls and provided correspondence related to the Great Plains Habitat Conservation Plan (HCP) for Wind Energy being developed by Wind Energy Whooping Crane Action Group (WEWAG) and USFWS (this HCP also includes provisions for LEPC).
- Posted LEPC data sheets on Department's website: www.wildlifedepartment.com
- Organized a joint meeting with ODWC and the Oklahoma Independent Petroleum Association (OIPA), to discuss regulatory ramifications of an LEPC Threatened listing on Oklahoma's energy industry (approximately 40 companies were represented).
- Organized two (2) meetings to discuss the current status of Oklahoma's T&E species as well as species that have been petitioned for ESA designation. The first meeting was targeted toward energy industry with more than 40 attendees from the petroleum and wind energy sectors. The second meeting, targeted to other state natural resource agencies and NGOs was attended by approximately 20 regulatory professionals.
- Prepared and performed approximately 10 public speaking appearances (some including Power Point Presentations) covering wildlife impacts of energy development. Several presentations were focused to LEPC/ABB protocols (and other species under listing consideration through the Multi-district Litigation Settlement).
- Requested and organized a special meeting to address ongoing issues with surface damage, litter and speeding by oil & gas industry workers on a western Oklahoma wildlife management area.
- A Voluntary Offset (VOP) contribution from a major Oklahoma utility (Oklahoma Gas & Electric Company) was tracked and financial reporting was coordinated.
- Monitored state, local and national media outlets for stories related to energy development which could impact not only wildlife resources, but also ODWC activities conducted on both Wildlife Management Areas, and on other lands (private and/or government owned properties).
- Attended a town hall meeting and coordinated ODWC's internal vetting of the Department of Energy's Plains and Eastern Cleanlines DRAFT Environmental Impact Statement (EIS). Briefed ODWC administration, leading to a formal comment letter submitted by ODWC Director to DOE.
- Assisted with ODWC's internal vetting (and subsequent submission of comment letters) of two (2) USFWS measures announced in the Federal Register – Advanced Notice of Proposed Rule Making regarding pre-ESA listing protocols for land owners, and proposed changes to regulations that codify the process for petitioning species for ESA listing evaluation. Formal comment letters on these two proposed actions were subsequently submitted by ODWC's Director.

- Monitored various other announcements (from USFWS, DOI, DOE, EPA, USDA, etc.) published in the United States Federal Register that had regulatory implications for wildlife and/or wildlife management activities, as well as regulations upon various industries operating in Oklahoma (e.g. oil & gas exploration, wind energy, transmission and/or pipelines, mining and agriculture). ODWC administration and/or partnering agencies were then briefed on regulatory changes that may affect current operations.

Discussion:

The energy emphasis biologist position has led to more efficient consulting and information dissemination between wildlife agencies and energy corporations for the ODWC. It has resulted in the energy industry becoming more informed on wildlife and fisheries as well as natural resource issues while still remaining a robust industry in Oklahoma. This was accomplished via a multitude of interactions such as meetings, conference calls and written correspondence with industry leaders. Particularly regarding new energy operation protocols for compliance with LEPC and ABB protections, the ODWC has become a trusted resource for industry professionals to not only consult, but also to provide feedback to with regard to future operations and impacts to wildlife. In addition to meetings, many responses were issued to inquiries for information from the ODWC regarding other sensitive habitat and species throughout Oklahoma.

Significant Deviations:

None

Date: 1 August 2015

Prepared By: Rich Fuller, Wildlife Biologist - Energy Emphasis
Oklahoma Department of Wildlife Conservation

Approved By: 
Wildlife Division Administration
Oklahoma Department of Wildlife Conservation

Approved By: 
Andrea Crews, Federal Aid Coordinator
Oklahoma Department of Wildlife Conservation