

in the critical habitat by using coordinate data to describe the boundaries, rather than roads as used in the proposed rule.

(21) *Comment:* Several commenters requested that certain units be excluded because there are other caves with critical habitat, located in the same karst fauna region and containing the same listed species, whose surface habitat is in a more natural and less degraded state. Therefore, the Service should omit those units with degraded surface habitat, because they will not be required for conservation of these species.

*Our Response:* As discussed above, all of the specific areas being designated contain one or more physical or biological features and primary constituent elements that are essential for the conservation of these endangered species and meet the definition of critical habitat as provided in section 3 of the Act. While some of the designated areas may not be in optimal condition, they are the only known locations for these species. Some of the areas may need intensive special management to restore or maintain some of the conditions important to these species. Conservation efforts involving the designated areas and other areas, including efforts taken to implement a recovery plan when one is adopted, will be dependent on the voluntary cooperation of landowners. This may include, but is not limited to, the cooperation of landowners who may voluntarily allow restoration efforts on their lands.

(22) *Comment:* Unit 1e should be divided into multiple smaller units for critical habitat.

*Our Response:* We agree and the final designation divides Unit 1e, previously 341 ha (842 ac), into three smaller Units 1e1, 1e2, and 1e3 for a total area of 50 ha (124 ac) (see Table 2 below).

(23) *Comment:* How can the Service designate critical habitat for Unit 19 and Genesis Cave when the urban development on the site has already resulted in take of the species in the cave? If the unit was designated based on the alleged existence of intact subsurface environment, then why are the vegetation buffer zones necessary?

*Our Response:* We determined that area designated as Unit 19 maintains the biological and physical features essential to the conservation of the species and supports one or more of the primary constituent elements. Thus it warrants inclusion in the final critical habitat designation regardless of whether "take" (as defined in Section 9 of the Act) of listed species in Unit 19 has already occurred. Critical habitat for

Units 19 and 20 is designated only for the subsurface environment due to the significant surface degradation that has already occurred. We acknowledge that intense management will likely be needed in both of these units for conservation of the species. Identifying areas that contain features essential to the conservation of the species and that may require special management considerations or protection is a primary purpose of designating critical habitat.

(24) *Comment:* The Service should address how intensive management will provide nutrients and water to listed species in caves in heavily urbanized areas, such as units 12 and 19. The Service should also identify who should be responsible for this management, since critical habitat designation does not mandate special management or require removal of existing structures.

*Our Response:* Under the definition of critical habitat, all of the areas being designated may require special management. Caves in heavily urbanized areas, such as those within Units 12, 19, and 20, may need more intensive management for conservation of the species than some of the other units. We anticipate that the recovery plan for these species will address the specific management strategies recommended for long-term conservation of these species. This designation does not in any way require landowners to undertake any particular management actions for the designated critical habitat or the listed species. As part of the recovery process, we anticipate working cooperatively with landowners and other partners to provide the management needed for conservation.

(25) *Comment:* The proposed rule did not clearly indicate that surface disturbances within Units 19 and 20 would not have the potential to adversely modify sub-surface critical habitat and would not be regulated under Section 7. Similarly, what is the regulatory distinction between units with both primary constituent elements and those units with only one of the primary constituent elements.

*Our Response:* For critical habitat Units 19 and 20, we designated the subsurface area only as critical habitat, because of the level of disturbance that already has altered the surface habitat. Under section 7 of the Act, Federal agencies are required to insure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. An action

authorized, funded, or carried out by a Federal agency involving the surface of the land is subject to the consultation requirement of section 7, and related regulations at 50 CFR 402, if such action may affect a listed species or its designated critical habitat. The aspect of a consultation involving critical habitat would address the potential effects of a proposed Federal action on the primary constituent elements in the area covered by the consultation. For additional information about consultations and the potential Federal activities that could destroy or adversely modify critical habitat see the "Section 7 Consultation" section, below.

(26) *Comment:* Unit 12 should be deleted because the areas around Hairy Tooth and Ragin' Cajun caves are effectively protected. Big Springs Ltd., has established preserves around each cave and has developed a management plan for Hairy Tooth Cave and is considering a management plan for Ragin' Cajun Cave. Also, Unit 9 should be deleted or much reduced to exclude areas under a karst management plan by the University of Texas at San Antonio.

*Our Response:* In order to consider not including an area that is the subject of a management plan, we first evaluate the plan. Key factors we evaluate include whether the plan or agreement is legally binding, the status of implementation of the plan, whether the plan specifies the management needed to ensure that primary constituent elements are appropriately protected and, if needed, improved. Along with meeting other criteria, the plan also must include a timely schedule for implementation and outline the probability that the funding source or other resources necessary to implement the management will be available. The management plan for Hairy Tooth Cave (Unit 12), which we received after the close of the comment period, did not meet the above criteria. A management plan for Ragin' Cajun Cave was not provided to us.

The University of Texas at San Antonio submitted a draft karst management plan for consideration with respect to Unit 9. This draft plan represents a very positive step for conservation of the listed karst invertebrate species. However, without a final plan, we could not make a determination that the area is receiving adequate special management, in accordance with the criteria described above. (See the "Lands Covered Under Existing Conservation Plans" for additional information on our process.) Therefore, Unit 9 is part of the final designation, although its size has been reduced (for other reasons) from the