

Designation” for further discussion of consultations under section 7 of the Act.)

Critical habitat provides nonregulatory benefits to the species by informing the public and private sectors of areas that are important for species conservation, and where such conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public and land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified, by helping people avoid causing accidental damage to such areas.

To be included in a critical habitat designation, the habitat must be “essential to the conservation of the species.” Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (such as areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that, “Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied” by the listed species. In addition, our regulations (50 CFR 424.12(e)) state that “The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.”

Section 4 (b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular areas as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires

that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing rule for the species. Additional information may be obtained from a recovery plan (if available), articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished reports, and discussion with experts.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Since much of the cave-forming rock is located on private property in areas that have not been adequately surveyed, additional populations for some of these species are likely to exist and may be discovered over time. We recognize that our designation of critical habitat for these species may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For these reasons, this critical habitat designation should not be interpreted to mean that habitat outside the designation is unimportant or may not be required for conservation of the species. Critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning and recovery efforts if new information available to these efforts calls for a different outcome.

Habitat of the listed species that is not included in this critical habitat designation will continue to be subject to conservation actions implemented by Federal agencies under section 7(a)(1) of the Act, which directs Federal agencies to utilize their authorities to carry out programs for the conservation of threatened and endangered species. Habitat outside the designation also will continue to receive regulatory protections afforded by the section 7(a)(2) jeopardy standard, which requires each Federal agency to insure, in consultation with the Service, that any action it authorizes, funds, or carries out is not likely to “jeopardize the continued existence” of a listed species. To achieve this objective, action agencies must consult with us whenever a Federal action “may affect” a listed

species. This requirement applies regardless of whether critical habitat is designated, and Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases.

The applicability of the section 9 section take prohibition is not altered by the designation of critical habitat. Section 9 makes it unlawful for any person to “take” (defined broadly in section 3 as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”) a listed wildlife species. Under section 10(a) of the Act, the Service may issue a permit to a non-Federal entity authorizing “take” if certain conditions are met. These conditions include a finding by the Service that such take is incidental to otherwise legal conduct, and that the take “will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.” The issuance criteria for such take permits also require applicants to minimize and mitigate the effects of their permitted actions, to the maximum extent practicable.

#### Primary Constituent Elements

In accordance with section 3(5)(A) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to designate as critical habitat, we consider those physical and biological features that are essential to the conservation of the species and that may require special management consideration or protection. As described in our regulations, these features include, but are not limited to, the following:

- (1) Space for individual and population growth, and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, and rearing of offspring, and generally;
- (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Our regulations at 50 CFR 424.12(b) further direct that, when considering the designation of critical habitat, we are to focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species, and we are to list known primary constituent elements with the critical habitat description. Our regulations describe known primary constituent elements in terms that are more specific than the