

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

RIN 1018-A146

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule; notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) pursuant to the Endangered Species Act of 1973, as amended (Act). The designation includes 8 habitat units totaling approximately 12,632 hectares (ha) (31,222 acres (ac)) found along 578.1 kilometers (km) (359.2 miles (mi)) of rivers and streams in the States of Colorado and Wyoming. The designation includes river and stream reaches and adjacent areas in the North Platte River and South Platte River.

The critical habitat designation defines the width of designated critical habitat as a distance outward from the river or stream edge (as defined by the ordinary high water mark) varying with the size (order) of a river or stream. This publication also provides notice of the availability of the Addendum to the Economic Analysis of Critical Habitat Designation for the Preble's Meadow Jumping Mouse (Addendum to the Economic Analysis) and the final Environmental Assessment for Designation of Critical Habitat for the Preble's Meadow Jumping Mouse (EA) for this final rule.

**DATES:** This final rule is effective July 23, 2003.

**ADDRESSES:** Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Colorado Ecological Services Field Office, U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood, CO 80215. You may obtain copies of this final rule, the Addendum to the Economic Analysis, and the final EA from the field office address above or by calling 303-275-2370.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, Colorado Ecological Services Field Office, (see **ADDRESSES** section), (telephone 303-275-2370; facsimile 303-275-2371).

## SUPPLEMENTARY INFORMATION:

**Designation of Critical Habitat Provides Little Additional Protection to Species**

In 30 years of implementing the ESA, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of conservation resources. The Service's present system for designating critical habitat is driven by litigation rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

**Role of Critical Habitat in Actual Practice of Administering and Implementing the Act**

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7."

Currently, only 306 species or 25% of the 1,211 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

**Procedural and Resource Difficulties in Designating Critical Habitat**

We have been inundated with lawsuits regarding critical habitat designation, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire

listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits and to comply with the growing number of adverse court orders. As a result, the Service's own to proposals to undertake conservation actions based on biological priorities are significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for additional public participation beyond those minimally required by the APA, the Act, and the FWS implementing regulations, or to take additional time for review of comments and information to ensure the rule has addressed all the pertinent issues before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed. This in turn fosters a second round of litigation in which those who will suffer adverse impacts from these decisions challenge them. The cycle of litigation appears endless, is very expensive, and in the final analysis provides little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with NEPA, all are part of the cost of critical habitat designation. These costs result in minimal benefits to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

**Background**

Much of what is now known about the Preble's meadow jumping mouse is a result of information gained from the early 1990s to the present. Following the Preble's listing as a threatened species in 1998, knowledge about its distribution, habitat requirements, abundance, and population dynamics has grown substantially. However, much of the biology and ecology of the Preble's is still not well understood. Where gaps in knowledge exist, scientists have relied on information from closely related subspecies of the meadow jumping mouse (*Zapus hudsonius*), whose biology and ecology