

published newspaper notices inviting public comment and announcing the public hearings. In addition we contacted interested parties (including elected officials, media outlets, local jurisdictions, and interest groups) through a press release and related fact sheets, faxes, mailed announcements, telephone calls, and e-mails. We received numerous requests to reopen the comment period and hold additional public hearings in Colorado. On September 12, 2002, prior to the closing of the initial comment period, the Service contacted interested parties in a letter, committing to reopen the comment period and, in response to criticism that the previous Colorado hearings had been inadequately publicized, committed to holding at least one more hearing in Colorado. The Service expanded efforts to notify interested parties directly for the second (and third) comment periods. The second comment period opened on November 21, 2002, for a period of 60 days. Two additional public hearings were held. On January 28, 2003, the Service announced the availability of the Draft Economic Analysis and draft EA for the proposed designation of critical habitat for the Preble's and opened a 30-day comment period on all three documents.

In accordance with our policy published on July 1, 1994 (59 FR 34270), we seek the expert opinions of at least three appropriate and independent specialists regarding proposed rules. The purpose of such review is to ensure decisions are based on scientifically sound data, assumptions, and analyses. We solicited opinions of four independent experts familiar with the species or the conservation of small mammals to peer review the proposed critical habitat designation. Three of the four peer reviewers provided comments. We also received 170 written and 47 oral comments. Many individuals or organizations commented more than once. Approximately 104 comments were from Colorado and 102 from Wyoming. Additionally, comments were received from 6 other States. Overall, 121 written comments and 38 oral comments opposed designation or favored reduced designation, 28 written comments and 6 oral comments supported designation or favored expanded designation, and 21 written comments and 3 oral comments were deemed neutral. Several neutral comments consisted of requests for extending the comment period or holding additional hearings.

Peer Review Comments

Comment 1: Two reviewers commented on the taxonomy of the Preble's, both in relation to the western jumping mouse and as compared with other subspecies of the meadow jumping mouse. One reviewer stated that the limited genetic data available is "enough to suggest (consistent with the prevailing taxonomic review of the genus *Zapus* by Krutsch, 1954) that *Zapus hudsonius* is distinct from the western jumping mouse, *Z. princeps*." He emphasized the need to review any available genetic studies regarding the validity of the Preble's as compared to *Z. h. luteus* to the south and *Z. h. campestris* to the north. It was that reviewer's opinion that the conservation value of the proposed rule was dependent on whether the recognized Preble's subspecies represents an evolutionarily significant unit. A second reviewer suggested that the two species, western jumping mouse and the meadow jumping mouse, may not be distinctly separate within the range of the Preble's and that the possibility of hybridization should be given more credence. This reviewer noted that the document "presupposes that the taxon *Z. h. preblei* exists, and that dental, cranial, and genetic evidence is just some sort of double-checking of that forgone conclusion." He suggested specific language to describe existing evidence regarding the taxonomic status of the Preble's.

Our Response: At the time of the 1998 listing, the Service concluded that the best scientific and commercial data available indicated that the Preble's was a valid subspecies. Little additional information has become available since 1998 to revise this conclusion. We anticipate that genetic studies, including those currently being conducted at the Denver Museum of Nature and Science, will significantly add to the existing knowledge regarding the genetic makeup of the Preble's and its relationship to other jumping mice. Based on the court-approved settlement agreement setting a completion date of June 4, 2003, for designation of critical habitat, we can not wait for the results of ongoing genetics studies before completing critical habitat designation. The designation is based on the best scientific information available to date.

Comment 2: Two reviewers were critical of the use of an elevation of 2,300 m (7,600 ft) as a general upper limit to designated critical habitat. One pointed out that vegetation differs by elevation depending on factors such as aspect, slope, and latitude. The other reviewer stated that prairie habitats

extend to higher elevations in the foothills of the Laramie Mountains than in the Front Range of Colorado. One of the reviewers questioned the premise that the Laramie Mountains represented the western boundary of Preble's range in southern Wyoming, since passes in the range do not exceed 2,300 m (7,600 ft) and appropriate habitat appears to exist west of the mountains.

Our Response: It is likely that a variety of factors dictate the maximum elevation at which the Preble's might be found in a given drainage. Research conducted to date on the Preble's has not provided specific knowledge of all factors involved, nor in most cases have drainage-specific trapping studies been done to document the upper limits of the Preble's. We believe that the 2,300 m (7,600 ft) elevation in most cases provides a reasonable estimate of habitat likely to be occupied by the Preble's. While it is possible that the Preble's ranges west of the Laramie Mountains in southern Wyoming (based on preliminary identification of recently acquired specimens), there is currently no conclusive evidence of this. If an established population of the Preble's is documented west of the Laramie Mountains, it would represent a change in our understanding of the Preble's range.

Comment 3: One reviewer stated that without comprehensive taxonomic or biosystematic study across the range of the Preble's, assumptions regarding the identity of trapped and released mice represented a critical deficiency in the proposed rule. In contrast, a second reviewer concluded that, in order to conserve the Preble's, it seemed acceptable to identify and designate critical habitat on stream reaches with "reasonably high chances" of supporting the Preble's, based on captures of jumping mice at elevations shown to support the Preble's.

Our Response: The western jumping mouse and Preble's meadow jumping mouse appear to coexist over portions of their range in southeastern Wyoming and Colorado, and they are difficult to distinguish by visual examination in the field. Detailed morphological or genetic examination is generally required to conclusively establish the identity of a specimen. We proposed critical habitat in some areas where the presence of Preble's was based only on field identification at sites with elevations appropriate for the presence of Preble's. However, we have re-examined the merits of this approach in light of the substantive and thoughtful critique from a peer reviewer. In consideration of these comments from a peer reviewer, we are not persuaded that it is