

appropriate in this instance to include such areas within the critical habitat designation, and they are not included in the final designation. We have included in the final designation only those units occurring in drainages within which there is a specimen verified as Preble's through morphological or genetic means. Accordingly, we have removed the Horseshoe Creek unit (NP2), the Friend Creek and Murphy Canyon unit (NP4), the Horse Creek unit (NP5), the Lone Tree Creek unit (SP3), the Cedar Creek unit (SP7), and the Cherry Creek unit (SP11) from final critical habitat. Each of these units occurred in a drainage within which no mice had been verified to be Preble's through morphological or genetic means, but rather only through field identification.

For the purpose of determining whether federal actions may affect the Preble's in areas not designated as critical habitat, we will continue to accept field identification by qualified individuals using established survey guidelines as an adequate basis for determining presence or absence of this subspecies. We do not believe it is appropriate and practical to hold project-specific section 7 consultations to the same level of certainty as a final rulemaking designating critical habitat, nor do we believe it to be sound public policy to require genetic or morphological examination that could substantially delay project review. Federal agencies and project sponsors may voluntarily opt to employ these more detailed and time consuming identification techniques, but it will be at their discretion and not as a requirement of the Service.

*Comment 4:* One reviewer critiqued conservation strategies used to support the Draft Discussion Document and the proposed critical habitat rule. He emphasized the need to understand Preble's movements, connectivity of habitat, interchange of individuals among populations, and potential for re-colonization when populations are extirpated. He commented on the lack of redundancy in the proposed recovery populations within each hydrological unit, resulting in reduced opportunity for re-colonization, and he viewed the number of proposed recovery populations as potentially insufficient. He also emphasized that persistence of Preble's populations will be dependent on habitat quality at the selected recovery sites and that habitat quality may be a more important consideration than land ownership. Regarding the proposed rule to designate critical habitat, he acknowledged that in some drainages designation of additional

populations beyond those identified as recovery populations in the Draft Discussion Document would increase the probability of Preble's persistence.

*Our Response:* Currently proposed distribution and potential connectivity of recovery populations were considered in developing the conservation strategy proposed in the Draft Discussion Document. Future peer review will address a draft recovery plan and the conservation strategies that support it. Regarding designation of critical habitat, we examined both quality of existing habitat and land ownership in making our determinations.

*Comment 5:* One reviewer suggested that hibernation is a key element that separated the Preble's from more common small riparian rodents within its range, and that location and integrity of alluvial deposits appropriate for excavating hibernacula may be an important aspect of Preble's habitat. He also suggested that "bioassay" (assessment) of probable habitat was preferable to delineating outward boundaries of critical habitat based on a set distance from the stream bank.

*Our Response:* We believe that designated outward limits of critical habitat capture most alluvial deposits likely used by the Preble's for hibernacula. We agree that site specific assessment of habitat would be preferable to use of a standard distance outward to designate extent of critical habitat. However, we had neither the time nor resources to conduct such a reach by reach assessment through the range of the Preble's. In addition, we believe that appropriate outward boundaries of critical habitat are not necessarily equivalent to probable Preble's habitat, which corresponds closely to vegetation currently present, and is dependent on current land use and recent site history.

#### *Section 4(i) Comments From States*

*Comment 1:* To suggest that no county-level or individual habitat conservation plans (HCPs) are likely to be implemented in Wyoming during the next 10 years is unacceptable (Governor Freudenthal, State of Wyoming).

*Our Response:* The Addendum to the Economic Analysis acknowledges the possibility that HCPs may be developed and implemented over the next 10 years for activities in Wyoming that are not exempt from sections 9 and 10 of the Act by the special 4(d) rule (*i.e.*, residential or industrial development).

*Comment 2:* An agricultural economist from the University of Wyoming should be hired for the economic analysis to ensure familiarity

with both the economics field and the people being affected rather than relying on those who are comparatively unfamiliar with the subject matter (Wyoming Department of Agriculture).

*Our Response:* To address these very issues, Gary Watts (Watts and Associates, Inc., Laramie, Wyoming) was contracted to assist in development of the Draft Economic Analysis. Mr. Watts is a natural resource and environmental economist from Wyoming with over 30 years of research and consulting experience, including several years of experience as a Senior Economist with the Division of Business and Economic Research at the University of Wyoming. Mr. Watts' expertise and experience include economic analyses associated with water projects, irrigation, and agriculture.

*Comment 3:* The Service needs to define "near" as used on page ES-1 of the Draft Economic Analysis regarding future section 7 impacts in or near proposed critical habitat. Provide information on what being "near" critical habitat will mean (Wyoming Department of Agriculture).

*Our Response:* Section 7(a)(2) of the Act requires every Federal agency, in consultation with and with the assistance of the Secretary, to insure that any action it authorizes, funds, or carries 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. In considering the effects of a proposed action, the Federal agency looks at the direct and indirect effects of an action on the species or critical habitat. Indirect effects are caused by the proposed action, are later in time, and are reasonably certain to occur. They may occur outside of the area directly affected by the action. For example, construction of a housing development upstream of critical habitat may result in increased runoff, sedimentation, and pollution in critical habitat. The definition of "near" or distance within which indirect effects should be considered will vary depending upon the type of Federal action occurring.

*Comment 4:* The Draft Economic Analysis was not clear regarding whether the total cost of section 7 included the Service's cost for consultation (Wyoming Game and Fish Department).

*Our Response:* The total cost of section 7 includes the administrative costs of consultation (borne by the Service, the Federal action agency, and occasionally third parties), as well as the costs of project modifications.