

*Comment 5:* The benefits associated with critical habitat designations are overstated. Providing habitat for only one species in a riparian area will not enhance ecosystem health, but ultimately could be detrimental to the system in total. Prevention of vegetative succession and successional setbacks will decrease habitat diversity and harm some species (Wyoming Game and Fish Department).

*Our Response:* The Service contends that good Preble's habitat is generally a healthy riparian ecosystem. Clippenger (2002) found evidence of ecological disturbance in the form of lower native species diversity, lower richness, and increased presence of exotic species found in rodent communities at riparian sites lacking meadow jumping mice and concluded that Preble's can be a useful indicator of environmental integrity in riparian areas and associated upland areas in the Colorado piedmont.

*Comment 6:* Wyoming's contention continues to be that the original Preble's listing was not justified. The existence of the Preble's in Wyoming is yet to be verified. Designation of critical habitat based on the presumption of presence is wrong (Governor Geringer, State of Wyoming). The Service should perform a 5-year status review as required under the Act (Governor Freudenthal, State of Wyoming).

*Our Response:* We listed the Preble's as a federally-threatened species in 1998 and described its range based on the best scientific and commercial data available at that time. Substantial additional information on the Preble's has become available since the 1998 listing. Petitions to delist the Preble's have been received and are being addressed. We plan to initiate a 5 year review of Preble's meadow jumping mouse in the near future. We anticipate that the results of continuing genetic and morphological studies of *Zapus* will supplement current information on the taxonomic status of the Preble's subspecies and its distribution in Wyoming. The taxonomy and distribution of the Preble's are addressed in the Background section of this rule. See also the Peer Review section above. As discussed above, we have decided to include in the final critical habitat determination 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), and the Lone Tree Creek unit (SP3) in Wyoming; as well as the Cedar Creek unit (SP7), and the Cherry Creek

unit (SP11) in Colorado. 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. If, in the future, one or more of these areas is determined to support mice verified as Preble's through morphological or genetic examination, we would consider whether rulemaking to amend critical habitat is warranted.

*Comment 7:* The majority of areas proposed as critical habitat have not been visited by Service personnel. (Wyoming Department of Agriculture)

*Our Response:* The Service used site visits to specific reaches, aerial photographs, habitat maps, coordination with Federal, State, and local government agencies, public comments, and other submitted information in determining proposed and final designation of critical habitat. Time, staffing, and monetary constraints, as well as issues of access, limited site visits and methods used to assess specific stream reaches.

*Comment 8:* The Service should prepare a list of all activities with a Federal nexus for which designation of critical habitat may have economic effects (Wyoming Game and Fish Department).

*Our Response:* In general, actions on Federal lands, and actions on non-federal lands that are funded or permitted by a Federal agency have a Federal nexus. An exception exists in cases where the Federal agency involved has no discretionary involvement or control over the action in question (see Federal Actions that May Destroy or Adversely Modify Preble's Meadow Jumping Mouse Critical Habitat, below). The determination of whether a Federal nexus exists for a given activity should be made on a case by case basis and largely rests with the Federal agency involved. Preparation of an all-inclusive list of potential Federal actions by all Federal agencies, that would result in a Federal nexus, is impractical.

*Comment 9:* Landowners may forgo Federal assistance because of the anxiety associated with section 7 consultations (Governor Freudenthal, State of Wyoming).

*Our Response:* In cases where a Federal nexus exists and the resulting action is beneficial or neutral to the Preble's, consultation requirements under section 7 of the Act can be easily completed. We anticipate that all Federal agencies will promote projects beneficial to the Preble's, work with landowners to reduce potential impacts to the Preble's, and provide information

and guidance to landowners to help alleviate fears regarding Federal regulation of activities on private lands.

*Comment 10:* If designation of critical habitat is projected to have a modest impact on agricultural land use, why are these lands included in the designation (Governor Freudenthal, State of Wyoming)? It is puzzling that the Service believes that agricultural development is not a threat to the Preble's but still believes that agricultural lands need critical habitat designation (Wyoming Game and Fish Department).

*Our Response:* Agriculture, including grazing and haying, can be managed in many different ways, some of which may be beneficial to Preble's habitat, others harmful. Much of the habitat in Wyoming is currently being grazed or managed for hay production in a manner that maintains what appears to be good habitat for the Preble's. However, there are also areas being managed in a manner that is not conducive to the development or maintenance of Preble's habitat. As defined, critical habitat is essential to conserve the species and it may require special management considerations or protection. The areas designated as critical habitat have been determined to be essential to the conservation of the Preble's. Additionally, those areas where current management is resulting in maintenance of good habitat have no agreements committing to the continuation of such practices. In such cases, special management considerations or protections may be required. "Agricultural development" implies a change in land use and could be a threat to the Preble's. In instances where a Federal nexus exists, protections would ensure that changes in agricultural practices harmful to the Preble's are not instituted without required consultation.

*Comment 11:* Protection of the Preble's critical habitat is in direct opposition to the needs of the threatened Colorado butterfly plant (*Gaura neomexicana* ssp. *coloradensis*) and the threatened Ute ladies'-tresses orchid (*Spiranthes diluvialis*) (Wyoming Game and Fish Department).

*Our Response:* At a landscape scale, requirements of these species are not in conflict and they are able to co-exist. All have similar, although not identical, habitat requirements. All three occur in floodplain areas, often within the same drainages. Preble's requires more dense vegetation than do the plants, which do not compete well with dense vegetation. However, Preble's also utilizes these more open, grassy areas for foraging and other activities. We believe that