

Our Response: At this time we do not anticipate that captive breeding and release will be part of the conservation strategy to recover the Preble's. We believe that translocation (moving animals from one site to another) and captive breeding should be considered only as a "last resort" for maintaining a population. Small populations in zoos or in small, highly managed preserves would not substantially contribute to recovery goals.

Issue 2: Procedural and Legal Compliance

Comment 19: Designation of critical habitat will result in taking of private lands.

Our Response: See Takings within the Required Determinations section of this rule below.

Comment 20: The Draft Economic Analysis and the draft EA should have been released along with the proposed critical habitat designation. The 30-day comment period following availability of all three documents was insufficient. They must be viewed together.

Our Response: Comments on the entire proposal, and all three documents, were accepted for 30 days following the notice of availability of the Draft Economic Analysis and the draft EA. We believe that 30 days was sufficient time for review, especially considering that the proposed rule for critical habitat designation had been available for review months prior to release of the other two documents.

Comment 21: The proposed rule to designate critical habitat does not comply with Office of Management and Budget, and Department of Interior 2002 information quality guidelines.

Our Response: The rule to designate critical habitat is subject to the requirements of the Federal Data Quality Act (DQA) 44 U.S.C. 3506, and the specific guidelines that the Department of the Interior issued regarding data quality. These guidelines, Information Quality Guidelines Pursuant to section 515 of the Treasury and General Government Appropriations Act For Fiscal Year 2001, became effective October 1, 2002. This final rule meets these information quality standards as it is based on the best available information. The Service rulemaking with regard to designation of critical habitat for the Preble's includes a comprehensive public comment process and imposes a legal obligation on us to respond to comments on all aspects of the action. These procedural safeguards can ensure a thorough response to comments on quality of information. The thorough consideration required by this process

generally meets the needs of the request for correction of information process. In the case of rulemakings and other public comment procedures, where we disseminate a study analysis, or other information prior to the final rulemaking, requests for correction will be considered prior to the final action. We believe the public comment and review process for this rulemaking adequately addresses the commenter's concerns regarding the quality, objectivity, utility, and integrity of the proposed rule.

Comment 22: The Service can not treat public lands and private lands differently when making decisions regarding designation of critical habitat.

Our Response: The Service has not treated public and private lands differently as far as prerequisites for critical habitat designation are concerned. However, public lands, especially undeveloped Federal lands and other public lands currently devoted to conservation purposes, are more likely, both currently and in the future, to support viable Preble's populations. Therefore, such lands contribute significantly to a rangewide conservation strategy for the Preble's and, as a percentage of occurrence, have more frequently been proposed as critical habitat than have private lands.

Comment 23: The final critical habitat designation should be postponed until the Service promulgates rules to clarify the definition of "adverse modification."

Our Response: In a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club v. U.S. Fish and Wildlife Service et al.*, F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species. However, clarifying the adverse modification definition is not a sufficient reason to delay designation of critical habitat.

Comment 24: Under the Act, designated critical habitat should be limited to "the geographic range occupied by the species at the time of listing." At the time of listing much less was known about the range of the Preble's.

Our Response: The reference to "at the time of listing" applies to designation of critical habitat concurrent with listing. When critical habitat is proposed later, as in this case, status at the time the proposal is used. It would make no sense to ignore the latest available scientific information when proposing critical habitat.

Comment 25: Insufficient notice was given for the public hearings. Service guidance indicates that a notice should be placed in the **Federal Register** 15 days prior to the hearing.

Our Response: We have attempted to provide the notice of public hearings through a variety of means. We held additional hearings based on requests received from the public. Delays in publication of the notice of meetings in the **Federal Register** prevented us from meeting the 15-day guidance.

Comment 26: All affected landowners should be notified directly of the proposed critical habitat designation. The Service should create a file of affected landowners.

Our Response: The Service employed the normal means to notify the public of the proposed rule and of public hearings. While direct notification of affected landowners would have been desirable, the scope of proposed critical habitat and the number of land owners involved made it impractical.

Comment 27: The Service should be receptive to making changes in the final rule that add critical habitat, rather than just deleting areas previously proposed.

Our Response: To add significantly to the critical habitat proposed would likely require us to repropose the rule and open an additional public comment period. Since the proposal was published, we have not received any scientific or commercial information that indicates that we should make significant additions to areas proposed.

Issue 3: Comments on Specific Units

Comment 28: The Horseshoe Creek unit (NP2), and Friend Creek and Murphy Canyon unit (NP4) contain lower quality habitat than many of the units comprised mostly of private land.

Our Response: Based on site visits and information provided by the Forest Service, these units contain habitat suitable for use by the Preble's. The Horseshoe Creek unit and the Friend Creek subunit contain wide riparian areas with beaver ponds, stands of willows, and subirrigated meadows interspersed with some narrower, rocky areas. These narrower areas provide connection between patches of good habitat. The Murphy Canyon subunit is a narrower, mountain canyon, but does support some healthy willow stands and healthy areas of native riparian vegetation. However, both units have been removed from this designation as the drainages contain no mice verified as Preble's through morphological or genetic means.

Comment 29: In the Chugwater Creek unit (NP3), remove Spring Creek and Three Mile Creek from critical habitat