

the identification of jumping mice form this drainage. Mice from this drainage have not been confirmed as Preble's through morphological or genetic means. We have excluded SP12 as part of the pending Douglas County HCP.

Comment 49: Subunits in the Upper South Platte River unit (SP13) should be connected to provide one contiguous critical habitat unit including the South Platte River and tributaries proposed for designation.

Our Response: Quality Preble's habitat is not contiguous along the South Platte River. In addition, ownership and land uses vary. The proposed areas largely consist of National Forest System lands. Many of the intervening reaches do not. The Service has determined that connection these subunits to form one very large critical habitat unit is not warranted.

Comment 50: Portions of proposed Upper South Platte River unit (SP13), were burned in the 2002 Hayman Fire. The Forest Service recommends that these areas be removed from consideration for critical habitat designation.

Our Response: We have visited the reaches in question and the Service has elected not to designate the proposed Wigwam Creek subunit as critical habitat. This subunit was severely burned, does not currently support the primary constituent elements required by the Preble's, and it appears that such habitat elements will not return for a period of years. In contrast, we have determined that other reaches proposed as critical habitat that were impacted by the Hayman Fire have been less severely burned and continue to support primary constituent elements required by the Preble's. These areas, in the South Platte River subunit and the Trout Creek subunit, have been designated critical habitat despite impacts of the Hayman Fire.

Comment 51: In the Upper South Platte River unit (SP13) there are instances where, based on mapping, critical habitat appears to extend above 2,300 m (7,600 ft). The Service should revisit the mapping to make sure it is consistent with coverage developed by the Forest Service and Colorado Division of Wildlife.

Our Response: The upward limit of critical habitat proposed in this unit was 2,300 m (7,600 ft). We have reviewed the maps that depict critical habitat boundaries and have not found deviation from the 2,300 m (7,600 ft) standard. Any apparent discrepancies may result from GIS base mapping used by the different agencies.

Comment 52: Proposed critical habitat within the Monument Creek unit (A1)

should be modified to correspond to the mapped Regional Habitat Conservation Plan habitat area.

Our Response: The Service has not designated critical habitat in this unit.

Comment 53: Include the Union Meadows area (along Union Boulevard and the Templeton Gap Floodway) in El Paso County, Colorado, as critical habitat. An isolated site such as this could be valuable to the conservation of the Preble's.

Our Response: The Preble's is not known to exist on or near the area. Our evaluation of this area indicates that it does not warrant critical habitat designation.

Comment 54: Do not exclude the Academy, in El Paso County, Colorado from critical habitat.

Our Response: The Service has excluded the Academy from critical habitat for reasons cited in Relationship with Department of Defense Lands below.

Comment 55: Kettle Creek on the Academy should not be included in the Monument Creek unit (A1) based on the proposed exclusion for the Academy.

Our Response: Inclusion of this reach of the A1 Unit in the proposed rule to designate critical habitat was in error. Like all portions of the Academy, it is excluded in the final critical habitat designation.

Issue 4: Other Relevant Issues:

Comment 56: Provide exemptions from critical habitat where county-wide HCPs are currently being developed. Alternately, provide assurance that critical habitat will be terminated for an area addressed in an HCPs, upon Service issuance of a section 10 permit for a completed HCP.

Our Response: Currently, a limited number of regional or county-wide HCPs are being developed in close cooperation with the Service. For finalized HCPs where a section 10 permit has been issued, and for certain pending HCPs, the Service has considered whether the area covered by the HCP should be excluded under 3(5)(A) or 4(b)(2) of the Act. If pending HCPs are not completed, we will determine whether areas designated in this final rule need further refinement.

Comment 57: Exclude Denver Water properties included under Denver Water's recently completed HCP from final critical habitat designation. The eight properties in question include a total of approximately 250 ac (113 ha) of proposed critical habitat in four proposed critical habitat units in the South Platte River drainage.

Our Response: The Service has excluded these properties from final

critical habitat designation (see Relationship to Habitat Conservation Plans below).

Comment 58: HCPs do not provide sufficient protection of the Preble's to allow exclusion of these areas covered from critical habitat designation. Specifically, areas included in the El Paso County HCP currently under development should not be excluded.

Our Response: See the response to Comment 56 above.

Comment 59: The Air Force Academy should not be excluded based on section 3(5)(A) of the Act.

Our Response: We continue to believe that an exclusion for the Academy is warranted (see Relationship with Department of Defense Lands below).

Comment 60: Critical habitat designation should be limited to public lands.

Our Response: As defined, critical habitat is not limited by land ownership, but rather based on being essential to the conservation of the species. Federal lands are limited in location, size, and habitat quality. We have designated Federal lands where we believe they have met the definition, but we are unable to limit critical habitat designation to Federal lands.

Comment 61: Table 1 of the proposed rule, describing land ownership, should separate out local government lands from private lands.

Our Response: Property ownership was determined from Bureau of Land Management maps that were determined to provide the best ownership information over the range of the Preble's. However, these maps address only Federal lands, State lands and "other" lands. Local government lands and private lands were not differentiated on these maps. Substantial additional effort, including incorporation of diverse mapping data from multiple local jurisdictions, would be required to differentiate local public lands from private lands.

Comment 62: What agricultural practices are allowable, beneficial, or detrimental to the Preble's in designated critical habitat?

Our Response: On May 22, 2001, we adopted special regulations governing take of the Preble's (66 FR 28125), which provide exemption from take provisions under section 9 of the Act for certain activities related to rodent control, ongoing agricultural activities, landscape maintenance, and existing uses of water because these activities are consistent with conservation of the Preble's. On October 1, 2002, we amended those regulations (67 FR 61531) to provide exemptions for certain activities related to noxious