

weed control and ongoing ditch maintenance activities because these activities are also consistent with conservation of the Preble's. Any questions regarding specific practices and their potential effects to the Preble's should be addressed to the Service's Colorado or Wyoming Field Offices.

*Comment 63:* What does the Service consider to be the beneficial and adverse effects on critical habitat of forest thinning and prescribed burns?

*Our Response:* Thinning and prescribed burns may cause both short-term and long-term effects. These can be both beneficial or adverse for the Preble's. Often, minor short-term adverse effects are followed by more substantial long-term beneficial effects as ground level vegetation experiences enhanced growth.

*Comment 64:* What happens to critical habitat if it is greatly impacted, for example, from a catastrophic fire?

*Our Response:* Once critical habitat is designated, even if it is greatly impacted, the boundaries of unit continue to exist. Whether primary constituent elements required to support the species are still within a given area will be determined by the Service on a case by case basis during section 7 consultation.

*Comment 65:* Verify that if actions are covered by exemptions provided under the existing 4(d) rule, section 7 consultation under the Act is not needed.

*Our Response:* This is not the case. The 4(d) rule currently in place provides an exemption from take prohibitions found in section 9 of the Act. Federal agencies are required under section 7 of the Act to utilize their authorities to conserve listed species, to consult with the Service to ensure that their actions are not likely to jeopardize the Preble's or destroy or adversely affect its critical habitat. Exemptions from section 9 prohibitions do not alter this requirement. For consultations that involve the use of Federal land, we expect that those lands will be managed in furtherance of the conservation of the species to the maximum extent possible. Other types of section 7 consultations involve actions on non-federal lands. For example, many of the activities likely to affect Preble's undertaken outside of Federal land, but wholly or partly in wetlands, will be subject to permitting requirements of the Clean Water Act, such as section 404 permits issued by the Army Corps of Engineers. This would be true for sites occupied by the Preble's whether or not they are designated as critical habitat.

*Comment 66:* Weed control may be hampered by designation of critical habitat.

*Our Response:* Certain practices regarding the control of noxious weeds are currently covered under the 4(d) rule. However, consultation under section 7 may still be required where a Federal nexus exists. See our response to comment 65 above.

*Comment 67:* Describe the relationship between critical habitat and take prohibitions under section 9 of the Act.

*Our Response:* The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding. Take prohibitions under section 9 are not affected by the designation of critical habitat.

*Comment 68:* Will take guidance issued by the Service for ditch cleaning be affected by the presence of critical habitat?

*Our Response:* The take guidance referred to was issued by the Service to define ditch-cleaning activities that we believe will not result in take of the Preble's as prohibited by section 9 of the Act. In addition, the existing 4(d) rule provides exclusions to section 9 prohibitions for certain ditch-cleaning activities. This guidance and rule are specific to section 9 prohibitions and will not be affected by designation of critical habitat.

*Comment 69:* Describe changes required in biological assessments and in "mitigation ratios" as a result of critical habitat.

*Our Response:* Biological assessments submitted to the Service by a Federal agency whose actions may adversely affect critical habitat of the Preble's, must address effects of the action on critical habitat. This analysis will be similar to that which would be conducted for any occupied Preble's habitat. In biological assessments, the term "mitigation" is generally used to describe conservation measures submitted by the project proponent as part of the described project. While appropriate extent and design of measures to create, restore, or enhance Preble's habitat, are unlikely to change based on the presence of designated critical habitat, such determinations are best made on a case by case basis.

*Comment 70:* It is not clear whether upstream activities that affect critical habitat downstream are regulated.

*Our Response:* In general, if a Federal nexus exists and a Federal agency has discretionary authority over an action, such activities would be regulated under section 7 of the Act. In any such cases the lead Federal agency must evaluate whether the activity may affect the Preble's, including designated critical habitat. The location of the activity in relation to the location of the effects is not an issue. The activity does not have to take place within critical habitat to be regulated under section 7.

*Comment 71:* Explain the process through which designated critical habitat could be amended in the future.

*Our Response:* Future modifications to critical habitat for the Preble's would occur through a rulemaking process similar to the one used to designate critical habitat.

*Comment 72:* Describe what happens to critical habitat upon delisting of the Preble's.

*Our Response:* Critical habitat terminates upon delisting. However, recovery criteria for the Preble's may include some long-term protection of the Preble's and its habitat.

*Comment 73:* Designation of critical habitat makes people lose trust in government.

*Our Response:* We agree that public support is a vital component of protection of the Preble's and its habitat, but designation of critical habitat is required under the Act. See our statement above.

*Comment 74:* Public comments and hearing testimony does not matter.

*Our Response:* All comments received, including oral comments provided at the public hearings, were carefully evaluated before we made a final designation of critical habitat. Changes have been made from the draft rule based on public comments and other information received during the comment periods.

*Issue 5: Draft Economic Analysis and the Draft EA*

*Comment 75:* The Service must address the costs of listing, including past costs, in the economic analysis.

*Our Response:* Our current policy is to consider only costs from the time of critical habitat designation forward. We consider co-extensive costs, including those associated with the jeopardy standard.

*Comment 76:* The 10-year time frame utilized for the economic analysis was inappropriate. The use of a ten-year time period for the analysis creates unrealistic cost estimates since species