

"Conservation" means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences with the Service on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of added protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation does not result in any regulatory requirement for these actions.

To be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

In accordance with sections 3(5)(C) of the Act, not all areas that can be occupied by a species will be designated critical habitat. Within the geographic area occupied by the species we designate only areas currently known to

be essential. Essential areas should already have the features and habitat characteristics that are necessary to conserve the species. We will not speculate about what areas might be found to be essential if better information becomes available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. We will not designate areas within the geographic area occupied by the species unless at least one of the primary constituent elements are present, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species. Moreover, areas occupied by certain known populations of the Preble's have not been proposed as critical habitat. For example, we did not designate critical habitat for some small scattered populations or habitats in areas highly fragmented by human development.

Our regulations state, "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Based on the best scientific data available, there appears to be no foundation upon which to make a determination that the conservation needs of the Preble's require designation of critical habitat outside of the geographic area occupied by the species, so we have not designated critical habitat outside of the geographic area believed to be occupied.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, procedures, and guidance to ensure decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States, Tribes, and counties, scientific status surveys and studies, and biological assessments or

other unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize designation of critical habitat may not include all habitat eventually determined as necessary to recover the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act, and the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. Though unlikely, future federally-funded or assisted projects affecting listed species outside designated critical habitat areas could still result in likely-to-jeopardize findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts, if new information available to these planning efforts calls for a different outcome.

Relationship to Sections 3(5)(A) and 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection. As such, for an area to be designated as critical habitat for a species it must meet both provisions of the definition. In those cases where an area does not provide those physical and biological features essential to the conservation of the species, it has been Service policy to not include these specific areas in designated critical habitat. Likewise, if we believe, based on an analysis, that an area determined to be biologically essential has an adequate management plan that covers the species, then special management and protection are already being provided, and those areas do not meet the second provision of the definition and are also not proposed as critical habitat.

We consider a current plan to provide adequate management or protection if it