



U.S. Fish and Wildlife Service

Daphne Ecological Services Field Office

Questions and Answers:

Alabama Beach Mouse—Revision of Critical Habitat

January 2006

Background

- Critical habitat (CH) was originally designated for the Alabama beach mouse (ABM) (*Peromyscus polionotus ammobates*) when it was listed as endangered on June 6, 1985. Existing CH, which consists of approximately 1000 acres of frontal dunes, is divided into three zones and covers approximately 10.6 miles of shoreline.
- On February 2, 1999, the Service was petitioned by the Sierra Club and Biodiversity Legal Foundation to revise critical habitat for the ABM, to include additional areas, such as scrub habitat, that we now know are important to the conservation of the ABM.
- In our 12-month petition finding published on September 26, 2000, we found that CH revision was warranted. Since that time, CH revision has been precluded due to other, higher priority listing and CH actions.
- In 2003, the Sierra Club and the Center for Biological Diversity filed a lawsuit alleging that we violated the ESA by failing to revise CH for ABM, and that the revision was withheld or unreasonably delayed under the Administrative Procedure Act. In a December 2004 declaration filed with the U.S. District Court for the Southern District of Alabama regarding the complaint, we stated that we would submit a proposed rule for ABM to the *Federal Register* by January 18, 2006.

Q: What is critical habitat?

Critical habitat as defined in the Endangered Species Act (ESA) of 1973 refers to the specific areas within the geographical area occupied by the species at the time it was listed on which are found those physical and biological features essential to the conservation of the species, and which may require special management considerations or protection. Critical habitat may also include specific areas outside the geographical area occupied by the species upon a determination by the Secretary of the Interior that such areas are essential to the conservation of the species. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands.



Q: How does the process work?

The Service has published a proposed revision to critical habitat for the ABM and invites public comment. In addition, the Service is preparing a draft economic analysis that will provide a look at the anticipated economic impacts of designating each section of CH. Following notification in the *Federal Register*, the public will be invited to comment on the proposed rule and economic analysis. The Service will consider all comments received before preparing a final version of CH. The final rule will be published in the *Federal Register* around January 2007.

Q: Will there be an opportunity to discuss the proposed revision with the Service ?

During the public comment period, members of the public can request a formal public hearing concerning the proposed revision. Any public hearing would be scheduled to take place after publication of the draft economic analysis, but at least 15 days before the end of the public comment period to allow sufficient time for the public to submit comments following the public hearing. Members of the public can also contact Rob Tawes in the U.S. Fish and Wildlife Service Office in Daphne, Alabama, by phone at (251) 441-5830, or e-mail: robert_tawes@fws.gov.



Q: What methods is the Service using to determine which areas to designate as critical habitat?

Biologists are identifying areas with the physical and/or biological habitat features needed for life and successful reproduction of the species. These features are known as *primary constituent elements* and include, but are not limited to:

- space for individual and population growth and for normal behavior;
- cover or shelter;
- food, water, air, light, minerals, or other nutritional or physiological requirements;
- sites for spawning and rearing offspring; and
- habitats that are protected from disturbances or are representative of the historic geographical and ecological distributions of a species.

By law, we are required to identify sufficient areas containing these characteristics to ensure the conservation of the species. We are especially interested in areas containing features now known to be essential (e.g., scrub habitat) that were not identified at the time of listing.

Q: Will the critical habitat designation delay Federal decisions on permits or funding?

Under the ESA, we have specific time frames in which to complete the consultation process with action agencies. These time frames remain the same whether or not there is critical habitat within the project area. A critical habitat designation does not create a separate process and timelines do not change.

Q: Are the ABM located outside of the designated critical habitat areas still protected?

Yes. When a species is listed, it is protected under Section 9 of the ESA from “take” throughout its range and federal agencies must consult with the Service under Section 7 of the ESA on activities they undertake, fund, or permit that may affect them. “Take” is defined to include harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these. When critical habitat is designated, Federal agencies are also required to ensure that their activities will not destroy or adversely modify critical habitat.

Q: How will my future development options be affected if my undeveloped land is included in the revised critical habitat designation?

If the land is currently identified ABM habitat, it has the potential for containing ABM, and the Service recommends that the landowner seek an incidental take permit. During the permit review, the Service determines whether or not the permitted action will adversely affect the ABM or jeopardize its continued existence. If critical habitat is designated, we also review the proposed action to determine whether or not the project would adversely modify or destroy CH (noticeably reduce its capacity to provide for the survival and recovery of the species). Development projects can be approved in designated CH (for example: single family residences in Cabana Beach, Gulf State Park improvements).

Q. If I already own a home, but CH is designated in natural areas on my property, how will I be affected?

CH does not affect private landowners who are undertaking activities that do not require federal permits or approval. Expansions to existing structures that would require an incidental take permit, or any federal action, would be reviewed to determine whether or not the project would destroy or adversely modify critical habitat.

Q: Can areas be excluded from a critical habitat designation?

A: Yes, the ESA allows for exclusions for economic or other relevant impacts, provided that the benefits of the exclusion outweigh the benefits of inclusion, and that the exclusion will not result in the extinction of the species. Exclusions are possible for public and private lands that have secure conservation plans in place that benefit the ABM, and for economic reasons.

Q: Who can I contact for more information regarding this proposed critical habitat revision?

Contact Rob Tawes by telephone at (251) 441-5830, by email at robert.tawes@fws.gov, or by mail at U.S. Fish and Wildlife Service, Daphne Field Office, 1208-B Main Street, Daphne, Alabama 36526.