

FREQUENTLY ASKED QUESTIONS

Proposed listing with critical habitat for Short's bladderpod, Whorled sunflower, and Fleshy-fruit gladeceess.

1. Why is the U.S. Fish and Wildlife Service proposing to list these three plants as endangered?

Without federal protection, these three plants will ultimately become extinct. All three plants face risks caused by maintenance or construction of transportation rights-of-way; industrial forestry and agricultural practices; water level fluctuation in reservoirs; flooding; or overstory shading, and competition due to habitat encroachment by native and invasive non-native plants. In addition, many of the populations of these species are small in number, making them less resilient to threats to their habitats, and causing potential for inbreeding and loss of genetic variation.

2. What is critical habitat?

Critical habitat is a term defined in the ESA. It refers to specific geographic areas that are essential to the conservation of a threatened or endangered species and which may require special management considerations or protection. The designation of critical habitat will help ensure that federal agencies and the public are aware of the habitat needs of these three plants, and proper consultation is conducted by federal agencies when required by law.

3. What does a critical habitat designation do?

Section 7(a)(2) of the ESA requires federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification its designated critical habitat.

In addition, Section 7(a)(4) of the ESA requires federal agencies to consult with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the ESA or result in the destruction or adverse modification of proposed critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. A critical habitat designation does not allow the government or public to access private lands, nor does it require implementation of restoration, recovery, or enhancement measures by non-federal landowners.

Although non-federal lands have initially been included in these areas, activities on these lands are not affected now, and will not necessarily be affected if the species is protected under the ESA in the future. Only if an activity is authorized, funded, or carried out by a federal agency will the agency need to work with the Service to help landowners avoid, reduce, or mitigate potential impacts to listed species or to ensure actions do not adversely modify critical habitat. In addition, public and private landowners still must comply with other provisions of the ESA to protect threatened and endangered species on their lands. The Service relies on a number

of voluntary, non-regulatory conservation programs to provide willing landowners with assurances to protect them for the work they do on their lands.

4. Where are the proposed critical habitat areas for Short's bladderpod?

- Critical Habitat for Short's bladderpod encompasses about 926 acres of land in 20 units in Posey County, Indiana; Clark and Franklin Counties, Kentucky; and Cheatham, Davidson, Dickson, Jackson, Montgomery, Smith, and Trousdale Counties, Tennessee.
- The proposed critical habitat designation includes lands under federal (30 percent), state or local government (six percent), and private (64 percent) land ownership.
- All of the federal lands are owned by the Army Corps of Engineers, which also holds easements on approximately four percent of the privately owned lands included in this proposed critical habitat designation.

5. Where are the proposed critical habitat areas for Whorled sunflower?

- Proposed critical habitat designation for the whorled sunflower encompasses about 1,542 acres in four units in Cherokee County, Alabama; Floyd County, Georgia; and Madison and McNairy Counties, Tennessee.
- The proposed critical habitat designation includes only privately owned lands.

6. Where are the proposed critical habitat areas for fleshy-fruit gladeceess?

- The proposed critical habitat designation for the fleshy-fruit gladeceess encompasses about 21 acres in Lawrence and Morgan Counties, Alabama.
- The proposed critical habitat designation includes federal (six percent) and privately owned (94 percent) lands.

7. What happens with the information the Service receives during the public comment period?

The Service must base its reasoning and conclusions on the rulemaking record, consisting of the comments, scientific data, expert opinions, and facts accumulated during the pre-rule and proposed rule stages. To move forward with a final rule, the agency must conclude that its proposed solution will help accomplish the goals or solve the problems identified. It must also consider whether alternate solutions would be more effective or cost less.

If the rulemaking record contains persuasive new data or policy arguments, or poses difficult questions or criticisms, the Service may decide to terminate the rulemaking, or the Service may decide to continue the rulemaking but change aspects of the rule to reflect these new issues. If the changes are major, the Service could publish a supplemental proposed rule. If the changes are minor, or a logical outgrowth of the issues and solutions discussed in the proposed rules, the Service may proceed with a final rule.

8. How long does it take for the Service to reach a decision after the public comment period is closed?

There is generally no time limit for agencies to analyze the comments they receive. It is more or less dependent upon the number of comments received. However, when an agency publishes a final rule, generally the rule is effective no less than 30 days after the date of publication in the *Federal Register*.

9. If someone doesn't like the decision the Service makes after the final rule is published, can they protest it or seek to have it repealed?

Under the Administrative Procedures Act, each federal agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule. If someone does not agree with the Service's final decision, they may submit a petition to the Service to request the decision be changed or negated. Petitions are formal requests to list a species as endangered or threatened under the ESA. The ESA requires that the Service make and publish specific findings on the petition. The regulations that apply to petitions submitted under the ESA are found in Title 50 of the Code of Federal Regulations (C.F.R.); petitions to list, delist, or reclassify species are addressed in 50 C.F.R. § 424.14(b), and petitions to revise critical habitat are addressed in § 424.14(c). The full text of the CFR is available online at <http://www.gpoaccess.gov/cfr/index.html>). For a summary of the text, see http://www.fws.gov/endangered/esa-library/pdf/petition_guidance_for_internet_final_for_posting_12-7-10.pdf