

location. Six respondents found the Vieux Carre preferable to commemorate the French heritage of New Orleans. Additionally in a letter prior to the February 18 notice in the **Federal Register** the French Ambassador expressed the same opinion. One respondent was concerned about the possible deleterious effects of air pollution on the statue. The National Park Service has no substantive information indicating that the Vieux Carre location would be more damaging than the current location. It was also noted that New Orleans currently meets all National Ambient Air Quality Standards. Finally, the petitioners and six respondents raised concerns about safety at the proposed location. However, no evidence was presented that suggested that the relocated Place would attract large crowds of visitors, causing significant impacts to the new location. Furthermore, the City has committed to taking appropriate safety measures on those days that large crowds may be anticipated, such as Bastille Day. Thus, the National Park Service found these concerns to be adequately addressed if large crowds of visitors were ever to occur.

Harrah's Casino was also a topic that generated comment by both the petitioners and four respondents. These parties expressed dissatisfaction with the location of the casino and the role it has played in the proposed relocation of the Place de France. The National Park Service properly noted that the role of the casino on decisions of the city of New Orleans is not an issue before the Department of the Interior. Likewise the location of the casino is not a consideration of the Department of the Interior. We do note, however, that the casino has agreed to pay all costs associated with relocation of the Place de France, the statue and cannon to the Vieux Carre.

Finally, there were numerous comments that are difficult to categorize. First, the petitioners and two respondents expressed concern that the current Place de France had already been badly damaged during the demolition of the Rivergate complex. The National Park Service acknowledged the fact that the site was partially demolished when the city of New Orleans attempted to move the statue in 1994 but noted that the cannon and were not damaged. Also the National Park Service pointed out that nothing was damaged that cannot be replaced or redesigned at the Vieux Carre location. Second the petitioners and three respondents challenged the adequacy of the City's rationale to relocate Place de France. The National

Park Service correctly pointed out that the only question before the Department of the Interior is the proposed move, not the rationale for the move. Third, there were questions about the regulatory framework under which the Secretary would make a decision on the City's request. The National Park Service's response was similar to the discussion on this same issue provided earlier in this Record of Decision. Lastly, nine respondents asked about reviews and approvals by various local agencies. The National Park Service referenced the respondents to the site selection process employed by the New Orleans Planning Commission and Arts Council and the approval of the Vieux Carre Commission.

The National Park Service issued a Finding of No Significant Impact (FONSI) on the proposed relocation on June 3, 1999, finding that the Secretary's approval of the request of the City does not constitute a major Federal action significantly affecting the human environment.

Dated: June 4, 1999.

**Robert J. Lamb,**

*Acting Assistant Secretary for Policy Management and Budget.*

[FR Doc. 99-15018 Filed 6-11-99; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Endangered and Threatened Wildlife and Plants; Notice of Intent To Clarify the Role of Habitat in Endangered Species Conservation

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** We (the U.S. Fish and Wildlife Service) announce our intent to develop policy or guidance and/or to revise regulations, if necessary, to clarify the role of habitat in endangered species conservation. Identification of the habitat needs of listed species and the conservation of such habitat is the key to recovering endangered and threatened species. We will examine all the tools available to identify and conserve the habitat of listed and threatened species including critical habitat determinations (prudence and determinability) and designations under section 4 of the Endangered Species Act of 1973, as amended (Act). We intend to streamline the processes involved in completing critical habitat determinations and designations. Our goal is to achieve the greatest

conservation benefit in the most cost effective manner for imperilled species. We solicit public comments, and we will incorporate comments into the new proposed guidance as appropriate.

**DATES:** We will accept comments on this guidance until August 13, 1999.

**ADDRESSES:** Address comments regarding this guidance to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mailstop ARLSQ-420, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703-358-2171 (see **ADDRESSES** section).

#### SUPPLEMENTARY INFORMATION:

#### Background

##### *Importance of Habitat for Species Conservation*

The process of habitat protection through the designation of critical habitat is properly examined in the broad context of the importance of habitat in endangered and threatened species conservation. Virtually every study of the conservation of imperilled species considers habitat as a major component in a species' conservation and eventual recovery. The very purpose of the Act is "to provide a means whereby the ecosystems upon which endangered species depend may be conserved." The National Research Council recognized the importance of habitat in its 1995 book, *Science and the Endangered Species Act*: "habitat protection is a prerequisite for conservation of biological diversity and protection of endangered and threatened species." The National Research Council further noted: "the Endangered Species Act, in emphasizing habitat, reflects the current scientific understanding of the crucial role that habitat plays for species' (National Research Council 1995).

Habitat considerations are a key part of virtually every process called for in the Act. We describe the habitat needs of species, and threats to habitat, in detail in all listing rules. In fact, Factor A of the "Summary of Factors Affecting the Species" section of all proposed and final listing rules discusses "The Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range" of the species. For most species, the threats to habitat are the most important consideration when determining if a species qualifies for protection under the Act. Habitat considerations are prominent in all recovery plans, and recovery plans include maps and descriptions of the

habitat needed to recover the species. The section 7 consultation process addresses the dynamic and seasonal characteristics of the habitat needs of listed species. New information concerning species' habitat use becomes available throughout the listing, consultation, habitat conservation planning, and recovery processes. It is essential that we consider current and complete habitat information in these processes. The analysis of habitat alteration and/or destruction is the cornerstone of the Act's section 7 consultation process and the section 10 habitat conservation planning process; this is true for species that have designated critical habitat, as well as for those species that do not. Habitat is identified, communicated to affected parties, protected, and conserved through all phases of applying the Act's protections. The conservation and recovery of imperilled species is dependent upon habitat protection and restoration. When species are listed as threatened or endangered, the habitats or ecosystems upon which they depend are recognized. Conservation and recovery actions are directed not only to the imperilled species, but to the species' habitat, as well.

#### *Role of Critical Habitat in the Act*

Critical habitat is defined in the Act as—(i) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) which may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. Critical habitat, if prudent and determinable, must be proposed and designated by regulation and thus codified in the Code of Federal Regulations (CFR).

A designation of critical habitat is not prudent under the current regulations when one or both of the following situations exist: (i) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)). Critical habitat is not determinable when one or both of the following situations exist: (i) information sufficient to perform required analyses of the impacts of the

designation is lacking, or (ii) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)).

Once designated, critical habitat has only one regulatory impact: under section 7(a)(2), Federal agencies must, in consultation with the Service, insure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. As discussed below, section 7(a)(2) likewise prohibits agency actions that are likely to jeopardize the continued existence of any listed species. Section 7(b)–(d) of the Act and 50 CFR part 402 describe in detail the process by which agencies consult with us regarding possible jeopardy to listed species and destruction or adverse modification of critical habitat. According to our interpretation of the regulations, by definition, the adverse modification of critical habitat consultation standard is nearly identical to the jeopardy consultation standard.

#### *Role of Critical Habitat in Actual Practice of Administering and Implementing the Act*

While attention to and protection of habitat is paramount to successful conservation actions, we have long believed that, in most circumstances, the designation of "official" critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) discussed the practical role of critical habitat designation and posed the question, "can the jeopardy standard alone adequately protect species?" Several examples were provided and the conclusion was very clearly stated, "it is likely that, for listed species endemic to a small area, critical habitat is not often necessary." Because there are so many varying opinions, the Service is seeking input on various aspects of critical habitat.

Currently, critical habitat is linked only to the section 7 process and is only enforceable when a Federal nexus (such as Clean Water Act permits, Federal Housing Authority clearances and funding, Environmental Protection Agency authorities, etc.) sufficient to trigger a section 7 consultation exists. Many activities carried out on private, Tribal, State, and Federal lands have Federal involvement, and would be subject to section 7. However, on private land, where no Federal involvement exists, a critical habitat designation has no regulatory impact.

Moreover, we have long believed that separate protection of critical habitat is duplicative for most species. Section 7

prohibits Federal agencies from taking actions that jeopardize the continued existence of a listed species or actions that adversely modify critical habitat. To jeopardize the continued existence of a species is to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of species. Destruction or adverse modification is a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. For almost all species, the adverse modification and jeopardy standards are the same., resulting in critical habitat being an expensive regulatory process that duplicates the protection already provided by the jeopardy standard. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, only 113 species or 9% of the 1179 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1179 listed species through the conservation mechanisms discussed above, such as listing, section 7 consultation, and the recovery planning process. For most species, the duplication between the jeopardy standard and the adverse modification standard exists because unoccupied habitat is not involved. When unoccupied habitat is designated as critical habitat, the duplication ceases because consultation under section 7 of the Act must then be completed on an area not previously included in the analysis. The Service is interested in your opinion; do the unoccupied habitat aspects of critical habitat designation provide significant conservation benefit for imperilled species?

#### *Procedural and Resource Difficulties in Designating Critical Habitat*

We have been inundated with citizen lawsuits for our failure to complete the process described above, and we have been challenged on numerous "not prudent" critical habitat determinations (meaning that the designation of critical habitat was determined to be not prudent for that species).

We believe that the present system for determining and designating critical habitat is not working. Many conservation organizations, affected landowners, and industry groups also recognize that the present system is not working. Perception of the value and

purpose of critical habitat varies widely. Many environmental groups view critical habitat as providing additional regulatory protection, hence the large number of lawsuits to prompt critical habitat designations. Some industry groups view critical habitat as the only way economic impacts are addressed in the conservation of imperilled species.

The consequence of the critical habitat litigation activity is that we are utilizing much of our very limited listing program resources in litigation support defending active lawsuits and Notices of Intent (NOIs) to sue relative to critical habitat, and complying with the growing number of adverse court orders. In the meantime, our efforts to respond to listing petitions, to propose listing of critically imperilled species, and to make final listing determinations on existing proposals are being significantly delayed. There are species not yet listed in Regions or geographic locations where litigation support has and will continue to consume much of our funding resources. For example in Hawaii, a single court order remanded 245 "not prudent" critical habitat determinations. There are other species in Hawaii that are literally facing extinction while precious resources are being depleted on critical habitat litigation support and the reexaminations of critical habitat prudency determinations for species already listed. Litigation over critical habitat issues for species already listed and receiving the Act's full protection has precluded or delayed many listing actions nationwide.

Economic analysis done for critical habitat designation can be expensive, in the past, total costs for such analyses for critical habitat designations have cost as much as \$500,000, against a total listing budget of a few million dollars. The National Research Council's research committee "recognizes that because of public concern over economic consequences, the designation of critical habitat is often controversial and arduous, delaying or preventing the protection it was intended to afford" (National Research Council 1995).

An additional costly consequence (both in terms of staff time and funding) of designating critical habitat is where designation triggers compliance with the National Environmental Policy Act (NEPA). The circuit courts are split on the issue of whether critical habitat designation triggers NEPA. Within the jurisdiction of the Court of Appeals for the Tenth Circuit (the states of NM, CO, NE, UT, WY, OK, and KS) NEPA is required (see *Catron County Board of Commissioners v. USFWS*, 75 F.3d 1429 (10th Cir. 1996)). The Ninth Circuit does

not view the designation of critical habitat as a major Federal action under NEPA (*Douglas County v. Babbitt*, 48 F.3d 1495, 1507-08, (9th Cir. 1995), *cert. denied*).

#### *Our Current Policy on Setting Priorities to Maximize Conservation Benefit*

Because we do not have unlimited resources, we believe we must set priorities in order to use our funds in the manner most beneficial to imperilled species. In the past we have established priorities for the use of funds through our Listing Priority Guidance (LPG). The FY 1998-1999 Listing Priority Guidance consists of three tiers or categories of listing activities. Emergency listing actions are the highest priority (Tier 1); followed by Tier 2, which comprises final rules, proposed rules, and petition findings; and critical habitat actions constitute Tier 3. This system and its predecessor LPGs have allowed us to manage our listing program for maximum conservation benefit following the FY 1995-1996 moratorium and funding rescission that created large backlogs. When the moratorium was lifted on April 26, 1996, 243 proposed species awaited final determinations. Currently, there are only two proposed species that were included in that very large backlog. Our own system for prioritizing listing actions has enabled us to provide the full protection of the Act to more than 250 species since April 26, 1996. This was possible by foregoing low priority listing actions such as critical habitat designations. Now however, we are being faced with numerous court orders that require us to complete critical habitat designations and reconsider not prudent findings for listed species.

Because of our reducing the listing backlogs, the LPG is evolving. The proposed FY 1999/2000 LPG was published in the **Federal Register** on May 20, 1999. That guidance no longer prioritizes critical habitat actions with other section 4 actions. Critical habitat actions are funded separately (funding still is allocated through the listing subactivity), and critical habitat actions will be prioritized on an annual basis. For example, in FY 1999, 17% of the listing subactivity funds were allocated for critical habitat actions. Court ordered critical habitat actions and Regional priorities received funding for FY 1999 activity. The LPG will continue to evolve as we continue to balance our national listing program.

#### *Proposals for Public Comment*

The Service intends to reexamine our existing approach to designation of

critical habitat. The legal debate over critical habitat prudency determinations involves two key areas of the "no net benefit" argument to attain a not prudent critical habitat determination—(a) the contention that the adverse modification standard for the same species with designated critical habitat is equivalent to the jeopardy standard for species without designated critical habitat; and (b) the treatment of unoccupied habitat in prudency determinations. We particularly solicit comments relative to when the designation of critical habitat will provide additional benefit (beyond that of listing) and what considerations should be included in our prudency determinations.

In order to reduce the costs of accomplishing critical habitat actions, we are considering developing a new streamlined and cost-effective process for critical habitat determinations and designation. As mentioned previously in this notice, the current designation process is inefficient, and should be redesigned to be more cost-effective and in line with the amount of conservation benefit provided to the species. Under the current process designating critical habitat for multiple species could devastate the listing program, and result in scarce funds being spent on activities that have a lower benefit to species relative to other activities.

We believe that describing the areas proposed for designation as critical habitat needs to be a much less labor intensive process. We suggest that suitable habitat is best described in broader terms. We encourage views on whether pinpointing small areas of species occurrence and drawing precise small circles around habitat on maps is the methodology we should be employing to identify and describe critical habitat, or whether instead more general habitat location delineations and broad descriptions of habitat types are the most efficient descriptors to be used in the designation of critical habitat. Very specific lines drawn on a map may not be the most efficient way to identify areas that may be important in the recovery of rare species. We would encourage commentators to discuss better ways to describe habitat and species occurrence. We would suggest that commentators consider how a more descriptive approach might be employed, rather than a map-based approach. Descriptions might be linked to habitat types, elevation, and riparian areas, for example. We would also be interested in comments relating to how the Service could, at the stage of developing a recovery plan, when much more may be known about the needs of

the species than at the time of critical habitat designation, be more specific about the extent of habitat protection necessary for recovery.

We also intend to redesign other aspects of the process for designating critical habitat. We encourage comments on how economic analyses can evolve into a streamlined and cost-effective process. We also solicit comments on how NEPA compliance, when required, may be conducted in a simple and efficient manner. Completing programmatic assessments and analyses, for example, may be an efficiency mechanism. Perhaps multispecies/geographic species groupings to reduce and eliminate administrative redundancy should be more common. We request comments and suggestions relative to how we can effectively streamline the process and specifically whether and how our existing regulations might or should be changed to accomplish this. We also request comments and suggestions on possible legislative corrections that might improve the effectiveness and efficiency of the critical habitat process.

#### Public Comments Solicited

We intend that any actions resulting from this notice and subsequent proposed guidance be as accurate and as effective as possible. Therefore, we solicit any suggestions from the public, concerned governmental agencies, the scientific community, environmental groups, industry, commercial trade entities, or any other interested party concerning any aspect of this notice. We will take into consideration any comments and additional information received and will announce proposed guidance after the close of the public comment period and as promptly as possible after all comments have been reviewed and analyzed. We will make available for your review and comment any critical habitat guidance, policy, or regulatory changes that are developed.

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the "Supplementary Information" section of the preamble helpful in understanding the notice?

What else could we do to make the notice easier to understand?

#### References Cited

- National Research Council. 1995. Science and the Endangered Species Act. National Academy Press, Washington, D.C. 271 pp.
- Sidle, J.G. 1987. Critical Habitat Designation: Is it Prudent? Environmental Management 11(4):429-437.

**Authority:** The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: May 3, 1999.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 99-15080 Filed 6-11-99; 8:45 am]

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### DEPARTMENT OF THE INTERIOR

#### National Park Service

#### General Management Plan, Environmental Impact Statement, Chiricahua National Monument, Arizona

**AGENCY:** National Park Service.

**ACTION:** Notice of intent to prepare an environmental impact statement for the General Management Plan, Chiricahua National Monument.

**SUMMARY:** Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Chiricahua National Monument. This statement will be approved by the Regional Director, Intermountain Region. The plan is needed to guide the protection and preservation of the natural and cultural environments considering a variety of interpretive and recreational visitor experiences that enhance the enjoyment and understanding of the park resources.

The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with local and national interests, attention will also be given to resources outside the boundaries that affect the integrity of park resources. Alternatives to be considered include no-action, the preferred alternative, and other alternatives addressing the following:

To clearly describe specific resource conditions and visitor experiences in various management units throughout the park and

To identify the kinds of management, use, and development that will be

appropriate to achieving and maintaining those conditions.

Ongoing scoping was started with an Environmental Assessment process in 1992. A list of topics considered is available upon request from the park. Comments on this notice must be received by July 10, 1999.

#### FOR FURTHER INFORMATION CONTACT:

Superintendent Alan Cox Chiricahua National Monument, Dos Cabezas Rt., Box 6500 Willcox, AZ 85643-9737 (520) 824-3560.

Dated: June 7, 1999.

**Ron Everhart,**

*Regional Director, Intermountain Region.*

[FR Doc. 99-14969 Filed 6-11-99; 8:45 am]

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### DEPARTMENT OF THE INTERIOR

#### National Park Service

#### General Management Plan, Environmental Impact Statement, Fort Bowie National Historic Site, Arizona

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for the General Management Plan, Fort Bowie National Historic Site.

**SUMMARY:** Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Fort Bowie National Historic Site. This statement will be approved by the Regional Director, Intermountain Region.

The plan is needed to guide the protection and preservation of the natural and cultural environments considering a variety of interpretive and recreational visitor experiences that enhance the enjoyment and understanding of the park resources.

The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with local and national interests, attention will also be given to resources outside the boundaries that affect the integrity of park resources.

Alternatives to be considered include no-action, the preferred alternative, and other alternatives addressing the following questions:

To clearly describe specific resource conditions and visitor experiences in various management units throughout the park and