

# **Proposal to Revise Regulations for Designating Critical Habitat Under Part 424 of the ESA Implementing Regulations Questions and Answers**

**Q: What actions are the U.S. Fish and Wildlife Service (Service) and National Oceanic Atmospheric Administration's (NOAA) Fisheries Service taking?**

**A:** The Services are proposing revisions to the implementing regulations under the Endangered Species Act (ESA) that relate to designating critical habitat for endangered and threatened species. The proposed amendments would make minor edits to the scope and purpose, add and remove some definitions, and clarify the criteria for designating critical habitat.

**Q: Why are the Services taking this action at this time?**

**A:** These proposed regulation changes are based on the Services' review of the regulations (last revised in 1984) and are intended to add clarity for the public, and provide for a credible, predictable and simplified critical habitat evaluation and designation process.

**Q: Why is this change to the implementing regulations necessary?**

**A:** There have been no comprehensive amendments to the ESA since 1988 and no comprehensive revisions to these implementing regulations since 1984. In the years since those changes took place, the Services have gained considerable experience in implementing the critical habitat designation requirements of the ESA, and there have been numerous court decisions regarding the designation of critical habitat. The proposed changes eliminate confusing or redundant wording and ensure language is consistent with court decisions.

**Q: Why are we removing the term "primary constituent elements" from the regulations?**

**A:** The language used in the implementing regulations refers to "primary constituent elements," but the term used in the ESA is "physical or biological features." Having different terms describing the same thing has proven confusing and added an unnecessary layer of complication during the designation process. Removing reference to this term in the regulations would simplify and clarify the critical habitat process and remove redundancy without substantially changing the manner in which critical habitat is designated.

**Q: Will areas that have been previously designated as critical habitat have to be reevaluated using these proposed new regulations?**

**A:** No. Nothing in these proposed revised regulations is intended to require (now or at such time as these regulations may become final) that any previously completed critical habitat designation be reevaluated.

**Q: Can I provide comments on this proposal?**

**A:** Yes. The Services will be accepting public comments electronically or by postal mail for 60 days immediately following publication of the proposed rule in the Federal Register. Guidance on how to provide comment is provided in the *Addresses section* of the proposed rule. Please visit [www.regulations.gov](http://www.regulations.gov) to view all Federal Register notices, and to submit an electronic comment.