

Facts and Q&A
Critical Habitat for Four Species
Of Freshwater Shrimp and Eleven Vernal Pool Plants

Q. What is critical habitat?

A. Critical habitat is a term used in the Endangered Species Act. It refers to specific geographic areas that are essential for the conservation of a threatened or endangered species and that may require special management considerations. Areas not occupied by the species may be designated if these areas are essential to the conservation of the species. Critical habitat is determined using the best available scientific and commercial information about the physical and biological needs of the species. These needs include: space for individual and population growth, and for normal behavior; food, water, light, air, minerals or other nutritional or physiological needs; cover or shelter sites for breeding, reproduction and rearing of offspring, and habitat that is protected from disturbance or is representative of the historical and ecological distribution of a species.

Q. Are all 740,000 acres critical habitat?

A. While we are designating approximately 740,000 acres of critical habitat for the vernal pool species, not all the areas within these broad boundaries contain the specific habitat features required by these species and therefore not all areas will require Federal agencies to consult with us. We would require consultations only for actions which affect areas that contain the physical and biological features necessary to the species' survival. For example, existing houses, shopping centers and similar development do not provide specific habitat for the vernal pool species, but in some places are included in the designation because of limitations in our ability to map the boundaries at a finer scale.

Q. Do listed species in critical habitat areas receive more protection?

A. No. An area designated as critical habitat is not a refuge or special conservation area. Listed species and their habitats are protected by the Endangered Species Act whether or not they are in an area designated as critical habitat.

Q. Are any of these species protected by state endangered species laws?

A. Yes. Eight of the eleven plants have endangered status with the State of California. None of the vernal pool crustaceans have State status in California, and the vernal pool fairy shrimp has no State status in Oregon.

Q. What protection do the vernal pool species currently receive as listed species?

A. The Endangered Species Act forbids the import, export or interstate or foreign sale of protected animals and plants without a special permit. It also makes "take" illegal -- forbidding the killing, harming, harassing, possessing or removing of protected animals from the wild. Federal agencies must consult with the Service to insure that projects they authorize, fund or carry out are not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat.

Permits may be issued by the Service for activities that are otherwise prohibited under the Act, if these activities are for scientific purposes or to enhance the propagation or survival of the affected species, or for "take" that is incidental to otherwise lawful activities.

In addition, the Endangered Species Act requires that Federal agencies not only take action to prevent further loss of a species, but also pursue actions to recover species to the point where they no longer require protection and can be delisted.

Q. What is the purpose of designating critical habitat?

A. Critical habitat may benefit listed species by identifying habitat that is essential to their conservation, and by making sure Federal activities do not affect the long-term survival of the species.

Q. How do you determine what areas to designate as critical habitat?

A. Biologists consider physical and biological habitat features needed for life and successful reproduction of the species. For the vernal pool crustaceans these “primary constituent elements” are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction and dispersal. These primary constituent elements are found in areas that support vernal pools or other ephemeral ponds and depressions and their associated watersheds.

The primary constituent elements of critical habitat for the vernal pool plants are those habitat components that are essential for the primary biological needs of germination, growth, reproduction and dispersal. These primary constituent elements are found in areas that support vernal pools, swales or other ephemeral ponds and depressions and their associated watersheds.

Boundaries of the critical habitat units were determined by using geographic information systems (GIS) databases such as occurrence records and other survey reports, vernal pool maps, satellite imagery, and other habitat and landscape information databases. Unit boundaries were determined to include sufficient area to maintain the hydrologic function of the vernal pool complexes within the unit. Developed areas were excluded where feasible.

Q. How will the designation of critical habitat affect Federal agencies that undertake, permit, or fund projects?

A. Section 7 of the Endangered Species Act requires Federal agencies to consult with the Service on actions they authorize, fund or carry out that may affect critical habitat. Through this consultation process, the Service can ensure that permitted actions do not change (adversely modify) critical habitat in such a way that it appreciably diminishes the value of the habitat for the conservation of the species. We also analyze Federal actions to determine if they may jeopardize the existence of a listed species, regardless of whether those actions also affect the species’ critical habitat.

Q. Does the designation of critical habitat create preserves?

A. No. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other special conservation area. It does not allow government or public access to private lands, and will not result in closure of private or state areas to all access or use.

Q. What happens if my private property is designated critical habitat for these vernal pool species?

A. The designation of critical habitat on privately-owned land does not mean the government wants to acquire or control the land. Activities on private lands that do not require Federal

permits or funding are not affected by a critical habitat designation. Critical habitat does not require landowners to carry out any special management actions or restrict the use of their land. However, the Act prohibits any individual from engaging in unauthorized activities that will actually harm listed wildlife.

If a landowner needs a Federal permit or receives Federal funding for a specific activity, the agency responsible for issuing the permit or providing the funds would consult with us to determine how the action may affect these vernal pool species or their designated critical habitat. The Service will work with the Federal agency and the private landowner to modify the project to minimize the impacts.

Q. Was an economic analysis done as part of designating critical habitat?

A. Yes. The economic analysis found that listing of the 15 vernal pool species and the critical habitat designation could potentially impose total economic costs for consultation and modifications to projects of up to \$1.3 billion over a 20-year period.

Q. Is critical habitat designated for all listed species?

A. No. The Service has designated critical habitat for 425 of the 1,291 species currently listed as threatened or endangered. The Act requires us to identify critical habitat at the time a species is listed. However, in some cases, designating critical habitat may be considered “not prudent” if it would cause harm to the species, such as increasing the possibility of collection or vandalism. We may also defer critical habitat designation as “not determinable” for up to a year if we don’t have enough information to define critical habitat at the time of listing. [See ESA Sec 4(b)(6)(C)(ii)]

Q. Why is critical habitat being proposed for these vernal pool species now?

A. When we listed these vernal pool species, we concluded that designation of critical habitat was not prudent because such designations would not benefit these species. We were concerned that critical habitat designation would likely increase the degree of threat from vandalism.

On April 12, 2000, the Butte Environmental Council filed suit in D.C. District Court against the Service for failure to designate critical habitat for the four vernal pool crustaceans. On February 9, 2001, the District Court for the eastern district of California ordered the Service to complete a final critical habitat designation for the four species of endangered or threatened freshwater shrimp by August 9, 2001. Under a settlement between the Department of the Interior and Butte Environmental Council that was approved by the U.S. District Court in Sacramento on July 23, 2001, the Service was ordered to propose critical habitat designations for each of the 4 species of freshwater shrimp and also for 11 listed vernal pool plants, allowing for a minimum public comment period of at least 60 days, and with final designation of critical habitat on or before August 15, 2002. That deadline was subsequently extended to July 15, 2003.

Q. What lands are included in this designation?

A. We are designating critical habitat on approximately 740,000 acres of Federal and non-Federal public lands and privately-owned lands. The majority of areas being proposed for designation is on private land. We are excluding Tribal and military lands, lands under Habitat Conservation Plans,

National Wildlife Refuges and National Fish Hatcheries, and State ecological lands and wildlife management areas.

More questions?

Please call 916/414-6600 or write to us at:

U.S. Fish and Wildlife Service
Sacramento Fish and Wildlife Office
Endangered Species Division
2800 Cottage Way, Room W-2605
Sacramento, CA 95825