



# U.S. Fish and Wildlife Service

## Critical Habitat - Frequently Asked Questions



*Micronesian kingfisher* photo: J. Schulz



*Mariana crow* photo: Emily Weiser



*Mariana fruit bat* photo: J. Boland



*Osmoxylon mariannense* photo: C. Harrington

### What is critical habitat?

Critical habitat is a term defined and used in the Endangered Species Act. It is a specific geographic area(s) that contains features essential for the conservation of a threatened or endangered species and that may require special management and protection. Critical habitat may include an area that is not currently occupied by the species but will be needed for its recovery. The species may have been located in these “unoccupied” areas in the past and these areas are considered to be within the species’ historical range.

After the proposed critical habitat is published, we receive public comments on the proposal. In addition, a public hearing may be held. We also prepare an analysis of the economic impacts (also called the draft economic analysis) of critical habitat and make it available for public comment. During this second comment period, the public can comment on both the draft economic analysis and the proposed critical habitat rule. As we prepare the final critical habitat rule, we take into consideration the comments and new information received during the comment periods and public hearing, the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. Under the Endangered Species Act, we may exclude any area from critical habitat if the benefits of not designating an area outweigh the benefits of including the area in critical habitat, unless excluding an area will result in the species’ extinction. The final critical

habitat designation is then published in the Federal Register.

### How does the Fish and Wildlife Service determine what areas to designate as critical habitat?

Under the Endangered Species Act and our published regulations, we use the best available scientific information to determine areas that contain the physical and biological features that are essential to support the successful functioning of the ecosystem upon which each species depends. For species on Guam and the Northern Mariana Islands, this information may include the known location data of the species; the ecosystems upon which these species depend; maps of habitat essential to the recovery of these species; criteria published in the species’ recovery plans; aerial photographs for Guam and the Northern Mariana Islands; Geographic Information System (GIS) coverage of vegetation data for the Northern Mariana Islands; recent biological surveys and reports; and discussions with qualified individuals.

For some species on Guam and the Northern Mariana Islands, limiting critical habitat to only the known present range of each species would be inadequate to conserve these species (i.e., achieve recovery of the species). For example, some species we are considering critical habitat in areas that may be currently unoccupied by these species.

## **What is the purpose of designating critical habitat?**

Federal agencies are required to consult with the Fish and Wildlife Service on actions they carry out, fund, or authorize to ensure that their actions will not destroy or adversely modify critical habitat. In this way, a critical habitat designation protects areas that are necessary for the conservation of the species.

A critical habitat designation generally has no effect on situations that do not involve a Federal agency - for example, a private landowner undertaking a project that involves no Federal funding or permit.

## **Is critical habitat similar to a wilderness area or wildlife refuge?**

No. A critical habitat designation does not in any way create a wilderness area, preserve or wildlife refuge, nor does it close an area to human access or use. It applies only to activities sponsored at least in part by Federal agencies. Land uses such as logging, grazing, and recreation that may require Federal permits may take place if they do not adversely modify critical habitat. Critical habitat designations do not constitute land management plans.

## **Do listed species in critical habitat areas receive more protection?**

An area designated as critical habitat is not a refuge or sanctuary for the species. Listed species and their habitat are protected by the Endangered Species Act (ESA) whether or not they are in an area designated as critical habitat. To understand the additional protection that critical habitat provides to an area, it is first necessary to understand the protection afforded to any endangered or threatened species, even if critical habitat is not designated for it.

- The ESA forbids the import, export, or interstate or foreign sale of endangered and threatened animals and plants without a special permit. It also makes “take” illegal -- forbidding the killing, harming, harassing, pursuing, or removing the species from the wild.
- The ESA requires that Federal agencies conduct their activities in such a way as to conserve

species.

- The ESA also requires Federal agencies to consult with the Service to conserve listed species on their lands and ensure that any activity they fund, authorize, or carry out will not jeopardize the survival of a threatened or endangered species. This is known as consultation.

In consultations for species with critical habitat, Federal agencies are required to ensure that their activities do not destroy or adversely modify critical habitat to the point that it will no longer aid in the species’ recovery. In many cases, this level of protection is similar to that already provided to species merely due to the presence of the species itself. However, in areas that are currently unoccupied by the species, but are essential for its recovery, Federal agencies may need to provide additional protection in order to avoid destruction and adverse modification of critical habitat.

## **Must Federal agencies consult with the Service outside critical habitat areas?**

Yes, even when there is no critical habitat designation, if a Federal action may affect listed species, agencies must consult with the Fish and Wildlife Service to ensure the action is not likely to jeopardize the continued existence of a listed species.

## **How does critical habitat affect the State or private landowner?**

Critical habitat designation does not affect activities on State or private lands unless some sort of Federal permit, license or funding is involved. Activities of the State or a private landowner, such as farming, grazing, and logging, generally are not affected by critical habitat designations, even if the landowner’s property is within the geographical boundaries of the critical habitat. The designation has no impact in individual, town, county, or State actions if there is no Federal involvement, nor does it signal any intent of the Federal government to acquire or control the land.

## **What is the impact of a critical habitat designation on economic development?**

Our experience has been that most activities that

require a Federal agency to consult with the Fish and Wildlife Service can proceed. If modification of the project is necessary, it is likely that those changes would have been needed anyway, in order to avoid an adverse impact to the species. However, in areas where the species is not currently present, there may be some project modifications that would not have occurred without the critical habitat designation.

### **The areas shown on critical habitat maps are often large. Are all the areas within the mapped boundaries considered critical habitat?**

No. In our proposed and final rules, we state that developed areas such as buildings, roads, airports, parking lots, piers, and other such facilities are not critical habitat. The scale of the maps we prepare for publication in the Federal Register may not reflect the exclusion of these developed areas. However, any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps are excluded by text in the rule and are not critical habitat.

### **Why are large areas shown on critical habitat maps if the entire area is not actually considered critical habitat?**

In such cases, precisely mapping critical habitat boundaries is impractical or impossible, because the required descriptions for these precise boundaries would be too unwieldy.

### **Does the Act require an economic analysis as part of designating critical habitat?**

Yes. The Service must take into consideration the potential economic impact, as well as any other benefits or impacts, of specifying any particular area as critical habitat. Any area may be excluded from critical habitat if it is determined that the benefits of excluding it outweigh the benefits of specifying the area as part of critical habitat, unless the Service determines that the failure to designate the area as critical habitat will result in the extinction of the species.

### **Does an economic analysis have any effect on the decision to list a species as threatened or endangered?**

No, under the Act, a decision to list a species is made solely on the basis of scientific data and analysis.

### **Does the Act allow for areas to be excluded or exempted from critical habitat?**

Yes. Under section 4(b)(2) of the Act, we may exclude an area from critical habitat designation based on economic impacts, impacts to national security, or any other relevant impacts provided that the exclusion will not result in the extinction of the species. Any other relevant impacts may include such things as conservation partnerships that would be encouraged or discouraged by critical habitat designation in an area, and conservation agreements and other land management plans for which we must weigh the implementation and effectiveness of these agreements and plans against the effectiveness of a critical habitat designation. In addition, under section 4(a)(3)(B)(i) of the Act, military lands that have an approved Integrated Natural Resources Management Plan may be exempted from critical habitat provided the plan provides a benefit to the species for which critical habitat is proposed for designation

### **For More Information:**

The U.S. Fish and Wildlife Service  
Pacific Islands Fish and Wildlife Office  
300 Ala Moana Blvd., Room 3-122  
Honolulu, Hawai'i 96850  
Ph: (808) 792-9400  
Fax: (808) 792-792-9580  
<http://www.fws.gov/pacificislands/>