

**Frequently Asked Questions**  
**Proposed Revision of Critical Habitat for the Perdido Key**  
**and Choctawhatchee Beach Mice and Proposed Designation**  
**of Critical Habitat for the St. Andrew Beach Mice**  
**December 2005**

**Q: What are beach mice?**

A: Beach mice are nocturnal small mammals that inhabit burrows in primary, secondary, and scrub dunes along the coastline of Florida and Alabama. Beach mice primarily feed on seeds and fruits of a variety of dune plants, but also prey upon insects. The Perdido Key beach mouse and the Choctawhatchee beach mouse were listed as endangered under the federal Endangered Species Act on June 6, 1985 (50 CFR 23872), mainly due to the loss of coastal habitat due to the destruction of the coastal sand dune ecosystem for residential and commercial development. The increased human use associated with the development, as well as predation (primarily by feral house cats), competition for resources (primarily by house mice), and hurricanes were additional factors. For similar reasons, the St. Andrew beach mouse was listed as endangered on December 18, 1998 (63 FR 70053).

**Q: Which beach mouse lives on the coast near me?**

A: The Perdido Key beach mouse lives on Perdido Key in Escambia County, Florida and Baldwin County, Alabama. The Choctawhatchee beach mouse lives in Okaloosa, Walton, and Bay Counties in Florida. The St. Andrew beach mouse lives in Bay and Gulf Counties.

**Q: What is critical habitat?**

A: Critical habitat is a term defined and used in the Endangered Species Act (ESA) of 1973, as amended. It refers to specific geographic areas that are essential for the conservation of a threatened or endangered species and that may require special management consideration or protection. These areas do not necessarily have to be occupied by the species at the time of designation. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands.

**Q: Does critical habitat provide additional benefit for the species?**

A: Federal agencies must consult with the Service on activities they undertake, fund, or permit that may affect critical habitat. However, the Endangered Species Act prohibits unauthorized take of listed species and requires consultation for activities that may affect them, including habitat alterations, regardless of whether critical habitat has been designated. In 30 years of implementing the Act, the Service has found that the designation of critical habitat provides little additional

protection to most listed species, while consuming significant amounts of scarce conservation resources.

**Q: Doesn't critical habitat for beach mice already exist?**

A: Critical habitat for the Perdido Key beach mouse and the Choctawhatchee beach mouse was designated at the time of listing (1985). The designated units extend 500 feet landward of the mean high tide line in three units on Perdido Key for the Perdido Key beach mouse, and four units in Walton and Bay counties for the Choctawhatchee beach mouse. Critical habitat was not designated for the St. Andrew beach mouse at the time of listing (1998).

**Q: Why is the Service now proposing to revise critical habitat for the Perdido Key and Choctawhatchee beach mice?**

A: In 1999, we were petitioned by the Earthjustice Legal Defense Fund (on behalf of the Sierra Club and the Biodiversity Legal Foundation), to revise the existing critical habitat designation, based on new research that showed that beach mice utilize interior scrub habitat and scrub dunes, especially during and after hurricanes. In 2000, we announced in our "12-month" finding that a petition to revise the critical habitat designation for the beach mice was warranted (65 FR 57800). Work on the revision, however, was postponed because of budget constraints and higher priority listing and critical habitat actions. In 2003, the Sierra Club and the Center for Biological Diversity filed a lawsuit alleging that we violated federal laws by failing to revise critical habitat for the beach mice. In December 2004, a declaration filed with the U.S. District Court for the Southern District of Alabama regarding the complaint stated that we would submit a final decision regarding the revision of critical habitat for the Perdido Key and Choctawhatchee beach mice by September 30, 2006. This deadline also includes a final decision regarding the designation of critical habitat for the St. Andrew beach mouse.

**Q: Are beach mice located outside of the designated critical habitat areas still protected?**

A: Yes. Because the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse are listed species, they are protected regardless of whether they are inside or outside of an area designated as critical habitat. When a species is listed, it is protected from "take" throughout its range and federal agencies must consult with the Service on activities they undertake, fund, or permit that may affect them. "Take" is defined to include harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these. When critical habitat is designated, Federal agencies are also required to ensure that their activities will not destroy or adversely modify critical habitat.

**Q: What constitutes destruction or adverse modification of critical habitat?**

A: "Destruction or adverse modification of designated critical habitat" is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for

both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical.

The relationship between a species' survival and its recovery has been a source of confusion to some in the past. We believe that a species' ability to recover depends on its ability to survive into the future when its recovery can be achieved; thus, the concepts of long-term survival and recovery are intricately linked. However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434) regarding our previous not prudent finding, the Court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. This finding was reached again on August 6, 2004, by the United States Court of Appeals for the Ninth Circuit (*Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, No. 03-35279). We are reviewing our regulatory definition of adverse modification in response to these decisions.

**Q: What methods is the Service using to determine which areas to designate as critical habitat?**

A: Service biologists are identifying the physical and/or biological habitat features needed for life and successful reproduction of the species. These features are known as *primary constituent elements* (PCEs) and include, but are not limited to:

- space for individual and population growth and for normal behavior; cover or shelter;
- food, water, air, light, minerals, or other nutritional or physiological requirements;
- sites for spawning and rearing offspring; and
- habitats that are protected from disturbances or are representative of the historic geographical and ecological distributions of a species.

By law, we are required to identify sufficient areas containing these characteristics to ensure the conservation of the species. As we indicated in our 12-month petition finding, we are especially interested in areas now known to be essential to the conservation of the species (e.g., scrub habitat) that were not identified at the time of listing.

**Q: Will the critical habitat designation delay Federal decisions on permits or funding?**

A: Under the ESA, we have specific time frames in which to complete the consultation process with action agencies. These time frames remain the same whether or not there is critical habitat within the project area. Designation of critical habitat for the beach mice notifies the Federal action agencies and the public that federally authorized and funded activities within these designated critical habitat areas must comply with section 7 consultation requirements. For each section 7 consultation, we already review the direct

and indirect effects of the proposed projects on the beach mice and currently designated habitat, and will continue to do so for additional critical habitat if it is designated. A critical habitat designation does not create a separate process and timelines do not change.

**Q. How will my future development options be affected if my undeveloped land is included in the revised critical habitat designation?**

A. If the land has the potential for containing beach mice, we would recommend that the landowner seek an incidental take permit under section 10 of the Act. During the permit review the Service will determine whether or not the permitted action will adversely affect beach mice or jeopardize its continued existence. If critical habitat is designated in the project area, we will also review the proposed action to determine whether or not the project would appreciably diminish the value of the critical habitat (i.e., noticeably reduce its capacity to provide for the survival and recovery of the species).

**Q. If I already own a home, but critical habitat is designated in natural areas on my property, how will I be affected?**

A. Critical habitat does not affect private landowners that are undertaking activities that do not require federal permits or approval. Expansions to the existing structure that would require an incidental take permit, or any federal action, would be reviewed to determine whether or not the project would appreciably diminish the value of the critical habitat (i.e., noticeably reduce its capacity to provide for the survival and recovery of the species).

**Q: Are all areas within the proposed critical habitat boundaries for beach mice considered critical habitat?**

A: In order for an area to be designated as critical habitat, the area has to contain primary constituent elements which are the physical and biological elements essential to support the life cycle needs of the species. When determining proposed critical habitat boundaries, we make every effort to avoid proposing the designation of developed areas such as buildings, paved areas, gravel driveways, ponds, swimming pools, lawns, and other structures that lack PCEs for beach mice. Any such structures inadvertently left inside proposed critical habitat boundaries, and the land (footprint) upon which they are sited, are not considered part of the proposed unit.

**Q: Can areas be excluded from a critical habitat designation and revision?**

A: Yes. The Act allows for some exclusions, provided that the benefits of the exclusion outweigh the benefits of inclusion, and that the exclusion will not result in the extinction of the species. Exclusions are possible for public and private lands that have secure, long term conservation plans in place that benefit beach mice, and for economic reasons.

**Q: Who can I contact for more information regarding this proposed critical habitat revision?**

**A:** Sandra Sneckenberger by telephone at 850/769-0552, via email at *Sandra\_Sneckenberger@fws.gov*, or by mail at U.S. Fish and Wildlife Service, Panama City Field Office, 1601 Balboa Avenue, Panama City, Florida 32405.