Frequently Asked Questions

November 2025

ESA Regulation Proposed Revisions Sections 4 & 7

What actions are the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service proposing?

The U.S. Fish and Wildlife Service and NOAA's National Marine Fisheries Service (NOAA Fisheries) propose to revise portions of their regulations that guide implementation of Sections 4 and 7 of the Endangered Species Act.

These revisions will be proposed in four separate rules. One rule would clarify and improve the joint regulations regarding listing, delisting, and reclassification decisions and improve critical habitat designation under Section 4. The second rule focuses on Section 7 and would revise the Services' interagency consultation process. The third rule, which applies only to the Fish and Wildlife Service, would rescind the Section 4(d) "blanket rule" options for protecting threatened species. The fourth rule, which applies only to the Fish and Wildlife Service, clarifies and updates the Service's processes for excluding areas from critical habitat designations under Section 4(b)(2) of the ESA.

What prompted the Services to propose these revisions to the implementing regulations of the Endangered Species Act?

Executive Order 14154, "Unleashing American Energy," issued Jan. 20, 2025, directed all departments and agencies to review agency actions that impose an undue burden on the identification, development, or use of domestic energy resources, and, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding agency actions that conflict with this national objective. To implement provisions of E.O. 14154, the Secretary of the Interior subsequently issued Secretary's Order 3418, which directed assistant secretaries to take steps, as appropriate, to suspend, revise, or rescind multiple actions that had been finalized under the prior administration.

The Secretary's Order specifically referenced taking these steps concerning revisions made to ESA implementing regulations in 2024, specifically, the joint Sections 7 and 4 implementing regulations promulgated by both NMFS and FWS, and FWS's rule to implement Section 4(d). E.O. 14219 also directs all departments and agencies to review and rescind regulations that are "based on anything other than the best reading of the underlying statutory authority." *See also Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369 (2024). In response to these orders, and considering recent case law and ongoing litigation, the Services have reviewed their respective rules and evaluated the specific regulatory revisions promulgated in 2024.

Following this careful review, the Interior and Commerce Departments propose revisions to the relevant regulations.

What do the proposed revisions address?

One rule proposes revisions to regulations for listing, delisting, and reclassifying species and the designation of critical habitat. Another rule addresses interagency cooperation (consultation) under

Section 7 of the ESA. The third rule applies only to the Fish and Wildlife Service and proposes revisions to regulations for protecting threatened species, primarily by rescinding certain regulatory options for protecting threatened species, referred to as "blanket 4(d) rules." The fourth rule applies only to the Fish and Wildlife Service and proposes revisions to regulations that pertain to the process for excluding areas from critical habitat designations.

What is the overall intent of these revisions?

The ESA is the nation's foremost conservation law, whose ultimate goals include preventing the extinction of species and providing for their recovery. The purposes of the ESA include providing a program for the conservation of endangered and threatened species and a means for conserving the ecosystems upon which those species depend (16 U.S.C. 1531(b)). These rules are intended to make the regulations addressing Section 7 consultations, species classifications, and critical habitat clearer, more straightforward, and more in line with the purposes of the ESA. These rules reaffirm the Services' commitment to meeting the ESA's goals of recovering listed species and protecting critical habitats such that species can be removed from the list.

Where can I find additional information?

The proposed rules and additional information are available on the U.S. Fish and Wildlife Service's Endangered Species Act Regulations website and are published in the *Federal Register* at https://www.federalregister.gov and https://www.regulations.gov. Search for the proposed rules using the following docket numbers:

- FWS–HQ–ES–2025–0039 (classification and critical habitat)
- FWS–HQ–ES–2025–0044 (interagency cooperation)
- FWS–HQ–ES–2025–0029 (protections for threatened species)
- FWS–HQ–ES–2025–0048 (critical habitat exclusions)

Proposed rule to clarify standards for listing, delisting, and reclassifying species, and revising some criteria for critical habitat designations under Section 4 of the ESA

What are the proposed changes to the ESA Section 4 regulations (50 CFR part 424)?

The proposed revisions to their joint regulations in 50 CFR part 424 clarify, interpret, and improve the implementation of their ESA authorities concerning listing, reclassifying, and delisting species, and designating critical habitat.

Key changes in the proposed rule include:

- Remove the phrase "without reference to possible economic or other impacts of such determination" from 50 CFR 424.11(b). In 2019, this phrase was removed to more closely align with the statutory language. In 2024, the Services reinserted this phrase into the regulations.
- Revise the current regulatory text in § 424.11(d) and revert to the 2019 regulation describing the "foreseeable future." The term "foreseeable future" is included in the ESA's definition of a "threatened species" and is the period over which the Services evaluate the threats to and responses of a species to inform an ESA status determination. The changes to the text of the foreseeable framework regulation in 2024 ultimately did not provide the

improved clarity intended, and since the Services' underlying basis and interpretation of this term had not changed, it is reasonable to revert to the 2019 version of this regulation.

- Revert to the 2019 version of § 424.11(e) that listed three circumstances in which it is appropriate to delist a species: the species is extinct, the species does not meet the definition of a threatened or endangered species, and the listed entity does not meet the definition of a species. The revisions made in 2019 better aligned the regulations with the statute and better achieved the fundamental objective of clarifying the standards and requirements that apply to delisting decisions.
- Revert to the 2019 version of § 424.12(a)(1), which provided circumstances in which the Services may, but were not required to, find it is not prudent to designate critical habitat. These proposed changes include:
    - Reinserting the specific circumstance into the regulations that had been removed in 2024 (i.e., "threats to a species' habitat that lead to endangered-species or threatened-species status stem solely from causes that cannot be addressed by management actions identified in a Section 7(a)(2) consultation"). It is clearer and more transparent to include this possible situation in the enumerated list of circumstances when designating critical habitat may not be prudent.
    - Moving the language regarding the non-exhaustive circumstances as one of the specific circumstances when a designation of critical habitat may not be prudent ("The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available"), instead of including it in the introductory language in the provision ("circumstances such as but not limited to the following"). The text, as framed in the 2019 regulations, more clearly explained that any such determination must be based on the best available data.
- Revert to the 2019 rule for designating unoccupied critical habitat. These proposed revisions include:
    - Requiring the two-step process of first evaluating occupied areas before considering unoccupied areas for designation. In the 2019 rule, the Services revised the criteria for designating unoccupied critical habitat to explicitly require a two-step process that prioritizes the designation of occupied areas over unoccupied areas by adding the following sentence: "The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied would be inadequate to ensure the conservation of the species." This proposed change would further Congress's intent, when it originally defined "critical habitat" in 1978, to place greater importance on habitat within the geographical area occupied by the species.
    - Requiring that for an area to be considered "essential," the Secretary must determine that there was reasonable certainty that a particular unoccupied area both will contribute to the conservation of the species and contains one or more of those physical or biological features essential to the conservation of the species. This proposed change would demonstrate how designations of unoccupied critical habitat will meet the higher statutory bar for unoccupied areas and be consistent with congressional intent and case law.

Would the proposed revisions change the number or frequency of listings and delistings?

No. The Services do not anticipate any change in the number or frequency of listings and delistings because of the revised regulations, as the revisions would clarify but not alter the standards and requirements for making listing and delisting decisions. For instance, although the proposed revision

would remove the phrase "without reference to possible economic or other impacts of such determination," which had been reinserted back into the regulations in 2024, the ESA does not permit listing decisions to be based on anything other than the best scientific and commercial data available.

Put simply, because the statute is clear on this point, additional interpretation in our regulations is not necessary. This change to the regulations would not change our existing, long-standing understanding and implementation of the Act on this point. The revisions would also better align the regulations with the statute and better achieve the fundamental objective of clarifying the standards and requirements that apply to delisting decisions.

The proposed revisions to the foreseeable future regulation, reverting to the regulatory text that was promulgated in 2019, also align with the DOI Solicitor's M-Opinion 37021, which has long guided the Services' interpretation of this term and clarifies that the foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. The Services will describe the foreseeable future on a case-by-case basis, using the best available data and considering considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability.

What is critical habitat?

Critical habitat is defined under the Endangered Species Act. The term includes the specific areas, within the geographical area occupied by the species at the time it was listed under the ESA, that contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. Critical habitat also includes specific areas outside the geographical area occupied by the species at the time it was listed that are essential for the conservation of the species. (16 U.S.C. 1532(5).) Critical habitat is only designated within the United States. It cannot be designated within foreign countries or in other areas outside of U.S. jurisdiction.

Critical habitat is a regulatory tool designed to further the conservation of a listed species, i.e., to help the endangered or threatened species to the point at which protections under the ESA are no longer necessary. More broadly, designation of critical habitat also serves as a tool for meeting one of the ESA's stated purposes: Providing a means for conserving the ecosystems upon which endangered and threatened species depend. Once critical habitat is designated, federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to result in destruction or adverse modification of the critical habitat (16 U.S.C. 1536(a)(2)).

Critical habitat designations affect only federal agency actions or federally funded or permitted activities. Critical habitat designations do not affect activities by private landowners if there is no federal "nexus" — that is, no federal funding or authorization. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness reserve, preserve, or other special conservation area. Critical habitat designations also do not mandate government or public access to private lands.

How do the Services designate critical habitat?

When evaluating what areas qualify as critical habitat for a species, the Services evaluate the best scientific data available to determine what physical or biological features are essential to support the life-history needs of the species within the geographical area where the species occurred at the time of listing. These features may, for example, include water characteristics, soil type, geological

features, sites, prey, vegetation, or symbiotic species, among other features. The Services also consider whether any specific areas outside the geographical area occupied by species at the time of listing are essential for the conservation of that species.

The Services then consider the probable economic, national security, and other relevant impacts of designating areas as critical habitat. If the benefits of excluding any area from a designation are found to outweigh the conservation benefits of designating the area, then the Services may propose to exclude that area from the designation. Areas owned or controlled by the U.S. Department of Defense that are covered by a signed Integrated Natural Resources Management Plan, which is required by the Sikes Act, are exempt from a critical habitat designation if we determine that the plan provides a benefit to the species.

Congress required the Services, to the maximum extent "prudent and determinable," to designate critical habitat concurrently with listing a species. However, if critical habitat is not yet determinable, the ESA also allows the Services up to one additional year after the date of the species listing to designate critical habitat for that species. The Services propose a critical habitat designation by publishing it in the *Federal Register* and requesting public comments over a minimum of 60 days and during any public hearings that may be held.

After reviewing the public comments and any relevant information received, the Services consider whether any changes to the proposed rule are appropriate and then develop a final rule that includes a summary of, and responses to, the public comments; a detailed description of the final critical habitat; and maps of the designated area. The final rule is then published in the *Federal Register* and codified in the *Code of Federal Regulations*.

More information and answers to frequently asked questions related to critical habitat can be found on our websites here: https://www.fws.gov/project/critical-habitat and https://www.fisheries.noaa.gov/national/endangered-species-conservation/critical-habitat.

Would the proposed revisions affect the amount of critical habitat designated?

The proposed revisions will not necessarily lead to an increase or decrease in the total amount or area of critical habitat designated by either Service. Because critical habitat designations are highly fact-specific and must be determined based on the best scientific data available for the species, the areas ultimately designated as critical habitat are dictated primarily by the information available and the life history needs of the species.

Would the proposed revisions allow the Services to designate critical habitat areas that are not habitat for a species?

No. The proposed revisions would not allow the Services to designate critical habitat areas that are not "habitat" for the species. In other words, the final revisions do not conflict with the Supreme Court's opinion in *Weyerhaeuser Co.* v. *U.S.F.W.S.*, 139 S. Ct. 361 (2018) that an area must be "habitat" to qualify as "critical habitat." As part of developing their critical habitat designations, the Services will ensure there is a basis and a record to support why any unoccupied areas are habitat for the species.

Proposed changes to protections for threatened species – Fish and Wildlife Service only

What are the proposed changes to threatened species protections (50 CFR 17)?

The proposed revisions to the FWS-only regulations in 50 CFR part 17 are to remove the "blanket rule" option for protecting threatened species under Section 4(d) of the Act. The FWS also proposes adding a new paragraph at 17.31 and 17.71 to explain that whenever the FWS proposes a species-specific 4(d) rule, the FWS will ensure that each rule complies with current case law and includes a necessary and advisable determination (including consideration of conservation and economic impacts) and will seek public comment on that determination.

What is a 4(d) rule?

A 4(d) rule is one of many tools in the ESA for protecting threatened species. These rules get their name from Section 4(d) of the ESA, which directs the Secretaries of the Interior and Commerce to issue protective regulations deemed "necessary and advisable to provide for the conservation of" threatened species.

Why is a 4(d) rule needed?

Section 9(a) of the ESA provides a specific list of prohibitions for endangered species but does not provide these same prohibitions for threatened species.

For example, it is illegal (without a permit or authorization), concerning any endangered wildlife species, to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, any of the following acts:

- Import any such species into or export any such species from the United States.
- Take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct – ESA Section 3(19)) any such species within the U.S. or the territorial sea of the U.S.
- Take any such species on the high seas.
- Possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of the ESA.
- Deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and during commercial activity, any such species.
- Sell or offer for sale in interstate or foreign commerce any such species.

Without a 4(d) rule, threatened species do not receive any of these protections (although federal agency ESA Section 7 consultation requirements, recovery requirements, etc., still apply for domestic species).

What are the "blanket rules"?

Beginning in 1975 until 2019, and again in 2024, FWS applied all endangered species prohibitions and several exceptions to those prohibitions to threatened species unless the Service issued a species-specific 4(d) rule (50 CFR 17.31(a), 17.71(a)).

Why is the Service proposing to rescind the "blanket rules"?

Rescinding the "blanket rule" option responds to Executive Order 14154, combined with the specific provision in Secretary's Order 3418 directing us to suspend, revise, or rescind the 2024 rule. As we have always explained, species-specific 4(d) rules can incentivize known beneficial actions for the species by removing or reducing regulatory burden associated with those actions and can also remove or reduce regulatory burden associated with permitting of otherwise prohibited actions or forms or amounts of "take" considered inconsequential to the conservation of the species. Species-specific 4(d) rules should apply protections that will both prevent the species from becoming endangered and promote the recovery of the species.

Can the Services issue a 4(d) rule for an endangered species?

No. The statutory authority to issue protective regulations under Section 4(d) is limited to species that are listed as threatened. The protections in ESA Section 9(a) also apply automatically to endangered species upon listing. The Services have regulations and permitting mechanisms that may authorize actions that are prohibited under Section 9(a) and 4(d).

Would the proposed regulations of 50 CFR part 17 affect currently listed threatened species protections?

No. Species that were listed as threatened before the effective date of a final rule would retain their same 4(d) protections, whether that was under previous versions of the "blanket rule" or species-specific 4(d) rules.

What is the relationship between the 4(d) rules, "take," and Section 10 of the Endangered Species Act?

Section 10 of the ESA provides the Services the ability to permit otherwise prohibited acts or forms of "take." Section 10 permits may be associated with recovery actions, conservation benefit agreements (previously candidate conservation agreements with assurances and safe harbor agreements), or habitat conservation plans.

4(d) rules explain what is prohibited for a threatened species (thus requiring an ESA permit or authorization unless otherwise excepted in the 4(d) rule). Therefore, 4(d) rules are directly related to identifying what actions may require Section 10 permits in the future. There are two categories of exceptions for otherwise prohibited actions or forms, or amounts of "take" that FWS frequently include in 4(d) rules:

- Unavoidable while conducting beneficial actions for the species; or
- Considered inconsequential (de minimis) to the conservation of the species.

Generally, 4(d) rules should not except incidental take that is related to the primary or cumulative factors affecting the species' status, or for which the exception would require project-specific information to develop appropriate minimization or mitigation measures to offset impacts. In addition, excepting activities or forms of "take" for recovery purposes in 4(d) rules is most appropriate when the FWS would not need to review the qualifications or methods of those conducting the activities because this oversight should occur under Section 10(a)(1)(A) permit procedures.

Do federal agencies still need to consult with the Services under Section 7 of the ESA for threatened species with species-specific 4(d) rules?

Yes. Section 7(a)(2) of the ESA requires federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or destroy or adversely modify its critical habitat. Before a federal agency takes an action (including authorizing, funding, or carrying out the action) that may affect a threatened species, consultation is required. A 4(d) rule does not remove that requirement.

A 4(d) rule does not change the process and criteria for informal or formal consultations and does not alter the analytical process used for biological opinions or concurrence letters. However, the Services may consider developing tools to streamline future intra-Service and inter-agency consultations for actions that result in forms of take that are excepted (or not prohibited) by the 4(d) rule (but that still require consultation). These tools may include, but are not limited to consultation guidance, template language for biological opinions, and programmatic consultations.

Proposed revisions to language, definitions, and responsibilities to revise the federal interagency consultation processes under Section 7 of the ESA

What are the proposed changes to the ESA Section 7 regulations (50 CFR part 402)?

The Services propose to revise the regulations at 50 CFR part 402 by replacing all provisions of the regulations promulgated in 2024 with those promulgated or otherwise in existence in 2019, with the exception of § 402.16 (Reinitiation of consultation). In addition, we propose to make additional clarifying edits to the definition of "environmental baseline" in § 402.02 and to provisions addressing the "reasonably certain to occur" standard in § 402.17.

How do the proposed revisions regarding reasonable and prudent measures affect consultations?

Under these proposed regulatory revisions, offsets would no longer be available to the Services for incorporation into reasonable and prudent measures, and the Services would only incorporate avoidance and minimization measures within the action area as part of the reasonable and prudent measures. This is in alignment with longstanding practice before the 2024 rule.

Consistent with prior practice, the Services note that federal action agencies can voluntarily incorporate offsets as part of their proposed action, in support of their obligations under the ESA. The 2024 revisions to the regulations had no impact on this longstanding practice; neither will the removal of the offset provisions.

These revisions do not apply retrospectively. If the proposed rule is finalized, consultations completed before the effective date would not require reevaluation.

What are the purposes of these proposed revisions regarding reasonable and prudent measures?

These revisions will change the implementation of the Endangered Species Act so that it aligns with the statutory requirements of the ESA. Adopting such revisions will return the Services' use of reasonable and prudent measures to avoid or minimize the impacts of incidental take on listed species, rather than mitigate or compensate for such impacts through compensatory measures specified inside or outside the action area (see Services' 1998 Consultation Handbook at 4-19).

Proposed changes to Section 4(b)(2) of the Endangered Species Act – Fish and Wildlife Service only

What are the proposed changes to the Section 4(b)(2) implementing regulations (50 CFR part 17)?

The proposed revisions clarify, interpret, and improve the implementation of their ESA authorities concerning the requirements of Section 4(b)(2) to consider the economic impact, the impact on national security, and any other relevant impact of designating any particular area as critical habitat and the authorization to exclude areas from critical habitat if the benefits of excluding the area outweigh the benefits of designating it as critical habitat. Further, this rule is intended to provide greater transparency and certainty for the public and stakeholders regarding the process of when and how we determine whether the benefits of excluding an area outweigh the benefits of designating the area as critical habitat (4(b)(2) exclusion analysis).

How do these proposed changes differ from current practices?

The U.S. Fish and Wildlife Service (FWS), jointly with the National Marine Fisheries Service (NMFS), currently has regulations that describe the standards and procedures for exclusions of areas of critical habitat (50 CFR 424.19). In addition, the Services developed the joint policy regarding implementation of Section 4(b)(2) of the ESA that provided direction regarding how we would exercise discretion to exclude areas from critical habitat designations ("2016 policy").

On Dec. 18, 2020, the FWS finalized regulations at 50 CFR 17.90 that set forth a process for excluding areas of critical habitat under Section 4(b)(2) of the ESA. Then, on July 21, 2022, the FWS rescinded those regulations. The FWS is again revising the implementing regulations about exclusions of areas of critical habitat under Section 4(b)(2) of the ESA. The proposed revisions would revert the regulations to their 2020 form and reinstate regulations at 50 CFR 17.90.

The FWS has concluded that adding elements of the 2016 policy into our implementing regulations would be more effective in guiding agency activities and would provide greater transparency and certainty to the public and stakeholders. The proposed regulations, however, would put into effect some differences in our approach relative to what was outlined in the 2016 policy.

These differences from the 2016 policy include an information standard for when the FWS enters a discretionary weighing analysis, a clarification of how considerations for exclusions will be conducted for federal lands, and an approach to assigning the weight of the benefits of inclusion or exclusion of any areas designated as critical habitat. If this proposed rule is finalized, NMFS will continue to implement the 2016 policy and regulations at 50 CFR 424.19.

Why does the Fish and Wildlife Service consider the probable economic, national security, and other relevant impacts of designating areas as critical habitat?

Section 4(b)(2) of the ESA requires consideration of the economic impact, the impact on national security, and any other relevant impact of designating any area as critical habitat. Section 4(b)(2) also provides the Secretary with the authority to exclude any area from a critical habitat designation if the benefits of exclusion outweigh the benefits of inclusion for that area, so long as

excluding it will not result in the extinction of the species. The proposed regulations revisions do not change the requirement to comply with Section 4(b)(2) of the ESA.

How does the proposed rule change and/or clarify the Secretary of the Interior's role in determining critical habitat exclusions?

Under the proposed rule, the Secretary is demonstrating responsiveness to public concerns about the impacts of critical habitat by committing to always undertaking an analysis when a proponent of an exclusion presents credible information supporting their case.

The proposed regulation describes the two circumstances the Fish and Wildlife Service would conduct an exclusion analysis for a particular area: either (1) when a proponent of excluding the area has presented credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion for that particular area in support of the request; or (2) where such information has not been presented, when the Secretary exercises his or her discretion to evaluate any particular area for potential exclusion. The proposed rule also describes how the Fish and Wildlife Service will assign weights to the benefits of inclusion or exclusion based on whether the impacts are outside or within the scope of the Fish and Wildlife Service's expertise.

The proposed regulation makes clear that proposed critical habitat rules will identify known relevant impacts of the proposed designation and will identify any areas the Secretary is considering for exclusion and why. The proposed regulation includes a non-exhaustive list of categories of potential impacts that the Secretary will identify, when known, at the proposed rule stage. Including this list of categories for consideration provides greater transparency and clarity to the public and stakeholders.

The proposed regulations would explain that economic impacts may include, for example, the economy of a particular area, productivity, creation or elimination of jobs, opportunity costs potentially arising from critical habitat designation, and potential benefits from a potential designation such as outdoor recreation or ecosystem services.

The proposed regulations would also explain that the Secretary will consider impacts at a scale that the Secretary determines to be appropriate and that impacts may be qualitatively or quantitatively described.

How would the proposed rule change our consideration of partnerships when designating critical habitat?

The proposed regulations generally follow practices from the 2016 policy. The Fish and Wildlife Service frequently excludes specific areas from critical habitat designations based on the existence of private or other non-federal conservation plans or agreements and their attendant partnerships when the benefits of exclusion outweigh the benefits of inclusion.

How would the proposed rule change our consideration of excluding federal lands from the designation of critical habitat?

The proposed revisions would not substantially differ from the Fish and Wildlife Service's current practice in considering the benefits of including or excluding certain areas as critical

habitat. However, this regulation revision reverses the current practice of generally not excluding federal lands from the designation of critical habitat (except for instances of national security).

Specifically, this proposed revision addresses nonbiological impacts identified by non-federal entities that have a permit, lease, contract, or other authorization for use on federal lands. The Fish and Wildlife Service will now consider the avoidance of the administrative or transactional costs as a benefit of the exclusion of a particular area of federal land. The Fish and Wildlife Service will also consider the extent to which Section 7 consultation would produce an outcome that has economic or other impacts, such as requiring project modifications and additional conservation measures by the federal agency or other affected parties. While the Fish and Wildlife Service acknowledges that federal lands are important areas for the conservation of species habitat, they do not wish to foreclose the potential to exclude areas under federal ownership.

There is nothing in the ESA that states that lands could not be excluded from designation of critical habitat simply because that land is managed by the federal government. In some instances, the benefits of excluding federal lands from a critical habitat designation may outweigh the benefits of including them.

Federal land managers will continue to have unique obligations under the ESA, and Congress declared as its policy that "all federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act" (Section 2(c)(1)). Further, all federal agencies have responsibilities under Section 7 of the ESA to carry out programs for the conservation of listed species and to ensure that their actions are not likely to jeopardize the continued existence of listed species.