



Mexican Spotted Owl Critical Habitat Designation

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Questions and Answers

These are some of the most frequently asked questions about critical habitat and the Mexican spotted owl:

What actions led to the current proposed critical habitat rule?

The U.S. Fish and Wildlife Service listed the Mexican spotted owl as threatened in 1993. Two critical habitat designations have been completed since then but were challenged in court. This third one revises a previous proposal made on July 2000 (65 FR 45336).

What is critical habitat?

When a species is listed under the Endangered Species Act we must consider whether there are areas of habitat we believe are essential to the species' conservation. If so, then we must designate critical habitat which identifies those areas. Under a critical habitat designation any Federally funded or permitted projects must be reviewed to determine if the project may adversely affect or modify the habitat. Often just a few changes in the project's approach will make the difference between a project harming habitat and a project that has negligible affect.

Critical habitat is defined as areas of land and water with physical and biological features that are essential to the conservation of a threatened or endangered species, and that may require special management considerations or protection.

In 30 years of implementing the Endangered Species Act, the Service has found that the designation of critical habitat provides little additional protection to most listed species, while preventing the Service from using scarce conservation resources for activities with greater conservation benefits.

In almost all cases, recovery of listed species will come through voluntary cooperative partnerships, not regulatory measures such as critical habitat. Habitat is also protected through cooperative measures under the Endangered Species Act including habitat conservation plans, safe harbor agreements, candidate conservation agreements, and state programs. In addition, voluntary partnership programs such as the Service's private stewardship grants and partners for fish and wildlife program also restore habitat. Habitat for endangered species is provided on many national wildlife refuges managed by the Fish and Wildlife Service and on state lands administered by the Department of Land and Natural Resources.

Why does the Service see designation of critical habitat as redundant?

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Even when there is no critical habitat designation, Federal agencies must consult with us to

ensure any action they carry out, fund, or authorize is not likely to jeopardize the continued existence of a listed species. More often than not, these consultations will protect the habitat needs as well.

Does a critical habitat designation mean that an area has been designated a sanctuary and the owl "comes before anything else"?

No. A critical habitat designation identifies areas that are important to the species and essential for its conservation and requires special management protection. A critical habitat designation requires Federal agencies to consult with the Fish and Wildlife Service on any of their actions that may affect critical habitat. The Service can then recommend ways to minimize any adverse effects.

How does this critical habitat designation affect private, State or tribal lands?

These lands have been excluded from the final rule. Generally critical habitat applies only to the federally funded or permitted activities. Projects proposed on private or tribal lands are evaluated only if they involve a Federal agency through either permits, or funding or some other mechanism.

Does the Fish and Wildlife Service evaluate all projects in critical habitat areas?

No. Projects are evaluated only when a Federal agency believes its action may affect the designated critical habitat. The Federal agency must first analyze the project and determine if critical habitat will be affected. If appropriate, it must request consultation with the Service.

Do you have a breakdown of federal acres that have been designated as critical habitat?

Table 2. Critical Habitat By Land Ownership and State in Acres

	Arizona	New Mexico	Colorado	Utah	Total
Forest Service	3,228,145	2,056,536	263,026	156,732	5,704,438
Bureau of Land Management	1,541	2,171	59,299	362,135	425,145
National Park Service	751,261	30,817	0	1,720,727	2,502,805
Department of Defense	2,041	0	0	0	2,041
Bureau of Reclamation	0	0	0	0	0
Other Federal ^a	55	0	0	13,264	13,319
Total	3,983,042	2,089,523	322,326	2,252,857	8,647,749
Total critical habitat units	25	20	3	5	52 ^b

^a Includes land identified in the current Utah land ownership file as Forest Service or BLM; Federal land ownership is unclear.

^b Critical habitat unit UGM-7 is shared by Arizona and New Mexico.

What changes does the final rule contain compared to the draft?

Based upon our review of the public comments, the economic analysis, and issues addressed at the informational meeting, we reevaluated our critical habitat proposal and made changes as

necessary. Other than minor clarifications and incorporation of additional information on the species' biology, this final rule differs from the proposal as follows:

- (1) We attempted to clarify the definitions and use of protected and restricted habitat and the attributes of primary constituent elements of critical habitat in this rule. As stated in the critical habitat designation section, critical habitat is limited to areas within the mapped boundaries that meet the definition of protected or restricted habitat and primary constituent elements currently exist.
- (2) In the proposed rule we stated that all "reserved" lands would be considered critical habitat and included "designated" wilderness areas. In this final rule, we included only lands that are within critical habitat boundaries and that meet the definition of protected or restricted habitat as critical habitat, regardless of whether they are currently designated as wilderness. The designation includes habitat identified as either protected or restricted. In protected areas, owls are known to occur or are likely to occur. Restricted areas are outside the protected areas, and owls forage and disperse in them. Restricted areas include mixed conifer forest, pine-oak forest and riparian habitats.
- (3) We modified some of our critical habitat unit boundaries based upon information submitted during the public comment period. Some critical habitat units were not designated because they did not contain areas essential to the conservation of the owl. The majority of refinements were conducted to eliminate, to the extent possible, those areas that did not contain protected or restricted habitat and primary constituent elements;
- (4) We excluded 157 Wildland Urban Interface project areas on FS lands in Arizona and New Mexico (under 4(b)(2) of the Act because of human health and safety concerns related to possible delays of fire reduction treatments.
- (5) Neither Canyon de Chelly and Navajo National Monument administered by the National Park Service (NPS) – nor any other Tribal lands are designated because the benefits of exclusions outweigh the benefits of inclusion;
- (6) Fort Huachuca and the U.S. Naval Observatory Flagstaff Station in Arizona and Fort Carson in Colorado are not included because they have final Integrated Natural Resource Management Plans that are consistent with the 2004 National Defense Authorization Act (Pub. L. 108-136, November 2003), Section 318 Military Readiness and Conservation of Protected Species that amended section 4(a)(3) of the Act; and,
- (7) Fort Wingate Army Depot, New Mexico is not included because it does not contain areas essential to the conservation of the species.

Will this designation stop the Forest Service or others from clearing their lands to make them safer from catastrophic fire?

The owl's threatened status is a result of out-of-control fire. Loss of habitat from wildfires is cited as one of the leading causes of the owl's diminished numbers.

During the comment period, we received requests to exclude lands that are included within the wildland/urban interface (WUI) areas of National Forests. Pursuant to section 4(b)(2) of the Act, this request prompted us to take into consideration the health and human safety risk of lands adjacent to FS lands that are at imminent risk of catastrophic wildfire (FS 2001; Service 2001). As a result we deleted 157 WUI project areas that have already been evaluated (programmatic BA) (FS 2001; <http://www.fs.fed.us/r3/wui/>). Including them in a critical habitat designation would be duplicative.

Why did you exclude state and private lands?

The majority of owl locations are from federal and tribal lands. State and private lands were not considered essential to the owl's recovery.

How do I find detailed information about the critical habitat areas?

The rule breaks the designation down into critical habitat units by county and state. Each unit contains a short description of the critical habitat within that unit. Detailed GIS maps are also available on the internet at <http://mso.fws.gov> or by calling the New Mexico Ecological Services office at 800-299-0196. Written requests may be faxed to 505-346-2542 or mailed to the office at 2105 Osuna NE, Albuquerque, New Mexico, 87113.

Please remember that not all land within the unit is considered critical habitat. Only those areas within the mapped boundaries that meet the definition of protected or restricted habitat and include the primary constituent elements are included. Protected habitat is areas where owls are known to occur or are likely to occur. Protected habitat includes, 1) 600 acres around known owl sites within mixed conifer forests or 2) pine-oak forests with slopes greater than 40 percent and where timber harvest has not occurred in the past 20 years. Restricted habitat includes areas outside of protected habitat which owls utilize for foraging and dispersing. Restricted habitat includes mixed conifer forest, pine-oak forest and riparian habitat types.