



Frequently Asked Questions: Revised Proposed Critical Habitat for the Georgetown and Salado Salamanders

For Release: September 15, 2020

Contacts: Aubry Buzek, (210) 542-1468, aubry_buzek@fws.gov

Q. What action is the U.S. Fish and Wildlife Service taking?

A. The Service is opening a 60-day public comment period on revised critical habitat proposals for the Georgetown salamander and the Salado salamander.

We have revised our previously proposed critical habitat for these species based on additional locations identified through a peer-reviewed study published since the original proposal. The proposed critical habitat designation for the Georgetown and Salado salamanders is now approximately 1,519 acres in 19 critical habitat units in Bell and Williamson counties, Texas. For the Georgetown salamander, these proposed revisions decrease the total proposed critical habitat designation by five units for a total area of approximately 300 acres. For the Salado salamander, these proposed revisions increase the total proposed critical habitat designation by six units for a total area of approximately 415 acres.

Q. Where are the Georgetown and Salado salamander species found?

A. The Georgetown and Salado salamanders are entirely aquatic and depend on water from the Edwards Aquifer in sufficient quantity and quality for survival, growth and reproduction. The species reside in habitat dependent on the Northern Segment of the Edwards Aquifer, including springs and spaces in the subsurface aquifer.

Q. What is critical habitat?

A. Critical habitat is a term in the Endangered Species Act (ESA) that identifies geographic areas essential for the conservation of an endangered or threatened species. The ESA defines “conservation” as the actions leading towards the eventual recovery of a species to the point where it is no longer endangered or threatened.

Critical habitat provides protection from the prohibition against destruction or adverse modification from actions carried out, funded or authorized by a federal agency and is implemented through required consultation under section 7 of the ESA. Due to legal challenges, the Service no longer relies on the regulatory definition of “destruction or adverse modification” of critical habitat. Instead, the Service relies on the statutory provisions of the ESA to complete adverse modification analysis.

Q. How does critical habitat impact landowners?

A. 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. Federal agencies are required to consult with the 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.

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

A. Listed species and their habitat are protected by the 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 no critical habitat is designated.

The ESA applies a set of protections to species that are listed as endangered. These protections include forbidding anyone to import, export, or engage in interstate or foreign sale of endangered animals and plants without a special permit. It also makes “take” of endangered species illegal – forbidding the killing, harming, harassing, pursuing, or removing the species from the wild. For species listed as threatened, the prohibitions above may be applied by a special rule under Section 4(d) of the Endangered Species Act. This special 4(d) rule may apply some or all of the prohibitions that apply to endangered species.

The Salado salamander does not have a special 4(d) rule, and at the time that it was listed, such species were covered under a blanket 4(d) rule that applies all of the prohibitions of an endangered species to a threatened species. The Georgetown salamander does have a special rule under Section 4(d) that specifies which prohibitions apply to that species. The ESA 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 section 7 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 can no longer serve its conservation role in the species' recovery. The greatest benefit of critical habitat occurs in areas that are currently unoccupied by the species, but are needed for its recovery. With critical habitat designations, these unoccupied areas are protected by the prohibition against destruction and adverse modification of critical habitat.

Q. Does a critical habitat designation mean an area is considered a wildlife refuge or sanctuary?

A. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. A critical habitat designation identifies areas that are important to the conservation of federally listed threatened or endangered species. A critical habitat designation requires federal agencies to consult with the Service on any of their actions that may affect critical habitat in designated areas. The Service can then recommend ways to minimize any adverse effects. It imposes no requirements on state or private actions on state or private lands where no federal funding, permits or approvals are required.

Q. How would a critical habitat designation affect my private land?

A. Requirements for consultation on critical habitat do not apply to entirely private actions on private lands. Critical habitat designations only apply to federal lands or federally funded or permitted activities on private lands. Activities on private or state lands that are funded, permitted or carried out by a federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or a section 402 permit under the Clean Water Act from the Environmental Protection Agency, will be subject to the section 7 consultation process with the Service if those actions may affect critical habitat or a listed species.

Through this consultation, the Service would advise agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat. Federal actions not affecting critical habitat or otherwise affecting species or their habitat (e.g., suitable habitat outside of critical habitat), and actions on non-federal lands that are not federally funded, permitted or carried out, will not require section 7 consultation.

Q. When an area is designated as critical habitat, are all human activities in the area prohibited?

A. No. The only activities prohibited in these areas are federal actions that are likely to result in destruction or adverse modification of the critical habitat for the listed salamander species. The consultation process supports the protection and recovery of species and their ecosystems. Consultations provide ways to implement recovery tasks by addressing threats to listed species that may result from federal agency programs and activities through a collaborative process. For more information go to: <http://www.fws.gov/endangered/esa-library/pdf/consultations.pdf>.

Q. What information is the Service requesting regarding the Georgetown and Salado salamanders?

A. We request that you provide comments specifically on the critical habitat determination and related economic analysis under Docket No. FWS–R2–ES–2012–0035.

We particularly seek comments concerning:

- (1) The species' biology, range, and population trends, including:
 - (a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;
 - (b) Genetics and taxonomy;
 - (c) Historical and current range including distribution patterns;
 - (d) Historical and current population levels, and current and projected trends; and
 - (e) Past and ongoing conservation measures for the species, its habitat or both.
- (2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.
- (3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

- (4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.
- (5) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 et seq.), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:
 - (a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;
 - (b) The present or threatened destruction, modification, or curtailment of a species’ habitat or range is not a threat to the species, or threats to the species’ habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;
 - (c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or
 - (d) No areas meet the definition of critical habitat.
- (6) Specific information on:
 - (a) The amount and distribution of Georgetown and Salado salamander habitat,
 - (b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why,
 - (c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change, and
 - (d) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments regarding:
 - i. Whether occupied areas are inadequate for the conservation of the species; and,
 - ii. Specific information that supports the determination that unoccupied areas will, with reasonable certainty, contribute to the conservation of the species and, contain at least one physical or biological feature essential to the conservation of the species
- (7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.
- (8) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.
- (9) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts,
- (10) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

- (11) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Previously submitted comments or information on the proposed listing/critical habitat rule do not need to be resubmitted. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Our final determinations will take into consideration all written comments and any additional information we receive.

Q. How can the public submit information on the revised proposed critical habitat proposals for the Georgetown and Salado salamanders?

A. We will accept comments received or postmarked on or before November 15, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see ADDRESSES, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown by November 1, 2020. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

You may submit comments by one of the following methods:

- (1) Electronically: Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter FWS–R2–ES–2012–0035, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2012–0035, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Q. When were the public comment periods open previously?

A. On August 22, 2012, we published a proposed rule in the Federal Register to list the Georgetown salamander (*Eurycea naufragia*), Salado salamander (*Eurycea chisholmensis*), Jollyville Plateau salamander (*Eurycea tonkawae*), and Austin blind salamander (*Eurycea waterlooensis*) as endangered species and to designate critical habitat for these species under the Endangered Species Act. We proposed to designate approximately 1,031 acres in 14 units located in Williamson County, Texas, as critical habitat for the Georgetown salamander, and approximately 372 acres in 4 units located in Bell County, Texas, as critical habitat for the Salado salamander. That proposal had a 60-day comment period, ending October 22, 2012. We held a public meeting and hearing in Round Rock, Texas, on September 5, 2012, and a second public meeting and hearing in Austin, Texas, on September 6, 2012. On January 25, 2013, we adjusted the locations of proposed critical habitat Units 2, 3, 5, 8, and 12 for the Georgetown salamander based on new information. We reopened the public comment period for 45 days to allow comments on the revisions to the proposed critical habitat and the draft economic

analysis. On August 20, 2013, we extended our final listing and critical habitat determination six months and reopened the comment period for 30 days. The comment period was reopened for 30 days one additional time on January 7, 2014. On February 24, 2014, we published a final determination to list the Georgetown and Salado salamanders as threatened species under the Act and a proposed rule under section 4(d) of the Act (a proposed 4(d) rule) for the Georgetown salamander at 50 CFR 17.43. On April 9, 2015, we revised the proposed 4(d) rule for the Georgetown salamander and reopened the public comment period for 30 days, ending May 11, 2015. A final 4(d) rule for the Georgetown salamander was published on August 7, 2015.

-FWS-