Questions and Answers: Final Rule to List and Designate Critical Habitat for Six Aquatic Invertebrates from West Texas

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

A: The Service is listing as endangered under the Endangered Species Act (ESA) six aquatic invertebrate species occurring in west Texas. The six species are the Phantom springsnail (*Pyrgulopsis texana*), Phantom tryonia (*Tryonia cheatumi*), diminutive amphipod (*Gammarus hyalleloides*), Diamond tryonia (*Pseudotryonia adamantina*), Gonzales tryonia (*Tryonia circumstriata*) and Pecos amphipod (*Gammarus pecos*). The Service is also designating a total of 450.6 acres (182.3 ha) as critical habitat in five units in Reeves, Jeff Davis and Pecos counties.

Q: Why is the Service listing the six aquatic invertebrate species as endangered?

A: The Service has found that the Phantom springsnail, Phantom tryonia, diminutive amphipod, Diamond tryonia, Gonzales tryonia and Pecos amphipod are presently in danger of extinction throughout their entire ranges, based on the immediacy, severity and scope of the threats from the loss of habitat due to reduced water quantity and quality. In addition, a lack of existing regulatory mechanisms and isolated populations make them susceptible to extinction.

Q: What are the primary threats to the six species?

A: The most significant threat to the six aquatic invertebrate species survival is the historic and future declines in regional groundwater levels that impact the amount of water flowing from the springs. All six species are entirely aquatic and occur in spring habitats dependent upon surface flows from groundwater sources for survival, growth and reproduction.

Q: Where are the six aquatic invertebrate species found?

A: The Phantom springsnail, Phantom tryonia and diminutive amphipod occur in four springs of the San Solomon Spring system, near Balmorhea, Texas, and the Diamond tryonia, Gonzales tryonia and Pecos amphipod occur in the springs and seeps associated with Diamond Y Spring, north of Fort Stockton, Texas. The majority of lands included in this proposal are currently

managed by The Nature Conservancy, the Bureau of Reclamation or the Texas Parks and Wildlife Department. Only one site occurs on private land owned by an individual.

Q: What is critical habitat?

A: Critical habitat is a term in the ESA that identifies geographic areas that are necessary for the conservation of a threatened or endangered species. The ESA defines "conservation" as the actions leading towards the eventual recovery of a species to the point where it is no longer meets the definition of an endangered or threatened species under the ESA.

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 carried out through required consultation under section 7 of the ESA.

Q. What is the purpose of designating critical habitat?

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 critical habitat is not designated for it.

The ESA forbids anyone to import, export, or engage in 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 can no longer serve its conservation role in the species' recovery. In many cases, this level of protection is similar to that already provided to species by the "jeopardy standard." However, areas that are currently unoccupied by the species, but are needed for its recovery are protected by the prohibition against destruction and adverse modification of critical habitat. For the six aquatic invertebrates, all the areas proposed as critical habitat are currently occupied by one or more of the species proposed for listing.

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: The Service has proposed as critical habitat only one small area of private land (around Giffin Spring), other than areas owned by The Nature Conservancy. 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 section 7 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 six aquatic invertebrate species. 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 six west Texas invertebrate species. The consultation process supports the 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.