



Questions and Answers: Final Critical Habitat Designation for the Zuni Bluehead Sucker

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

A: The U.S. Fish and Wildlife Service has designated 35 stream miles in northwestern New Mexico as critical habitat for the endangered Zuni bluehead sucker. In 2013, the Service originally proposed to designate 297 miles as critical habitat. However, refined genetic information on the subspecies, ground-truthing of current habitat and hydrologic conditions, and the assessment of tribal habitat management have resulted in a reduced final designation. The final rule will publish in the *Federal Register* on June 7 and will become effective July 7, 2016.

In total, approximately 34.6 stream miles in McKinley and Cibola Counties, New Mexico have been designated as critical habitat – 1.3 stream miles on State land, 12.1 miles of Forest Service streams and 21.1 miles on private land. No critical habitat was designated in Arizona, largely as a result of tribal management and genetic/taxonomic clarification.

Q: What is the Zuni bluehead sucker?

A: The Zuni bluehead sucker is a 3 to 14-inch fish that occupies moderate to fast-flowing headwater streams. Young fish prefer quiet, shallow areas near the shore line. Their coloration varies from dark green to dirty white, depending on habitat conditions, but their head is a bluish cast and mature males will sport a bright red strip at spawning season. The subspecies was added to list of endangered species in 2014.

Q: The Service initially proposed 297 stream miles of critical habitat, yet the final rule includes only 35 miles. Why?

A: On January 25, 2013, the Service concurrently published a proposed rule to list the Zuni bluehead sucker as endangered and to designate approximately 297 miles in three units in McKinley, Cibola, and San Juan Counties, New Mexico, and Apache County, Arizona as critical habitat. On July 24, 2014, we published a final listing determination for the Zuni bluehead sucker. Based on new genetic information, that final listing rule revised the range of the species from the

time of the proposal such the San Juan River Unit populations were no longer included as part of the listed species. As a result, the areas have also been removed from the proposed critical habitat designation, reducing the total amount of proposed critical habitat for the Zuni bluehead sucker from approximately 297 miles to 141 miles.

Since 2014, new information resulted in the removal of a portion of the proposed Zuni River Unit. Based upon further investigation, a section of Cebolla Creek (from Pescado Reservoir upstream on Cebolla Creek to Ramah Reservoir) is a dry wash with no running water or stream channel present except during periods of rain; this reach is unlikely to have perennial or intermittent flows. As a result, 4.9 miles were removed because this section of Cebolla Creek is not essential to the conservation of the species and does not meet the definition of critical habitat.

The Service worked closely with the Zuni Tribe and the Navajo Nation to develop fisheries management plans for their lands and subsequently excluded lands of both tribes from the final designation. (When specifying an area as critical habitat, the Act requires the Service to consider economic and other relevant impacts of the designation. If the benefits of excluding an area outweigh the benefits of designating it, the Secretary may exclude an area from critical habitat, unless doing so would jeopardize the existence of a threatened or endangered species.)

Q: How has the Zuni bluehead sucker benefited from Endangered Species Act (ESA) listing?

A: The subspecies was added to list of endangered species in July 2014. Species listed as endangered or threatened under the ESA benefit from conservation measures that include recognition of threats to the species, implementation of recovery actions, and federal protection from harmful practices.

Recognition under the ESA results in public awareness and conservation by federal, state, tribal, and local agencies; private organizations; and individuals. The ESA encourages cooperation with the States and other partners to conserve listed species.

The ESA also requires the Service to develop and implement recovery plans for the conservation of threatened and endangered species. Recovery plans outline actions that are needed to improve the species' status such that it no longer requires protection under the ESA. The Service develops and implements these plans in partnership with the species experts; other federal, state, and local agencies; Tribes; nongovernmental organizations; academia; and other stakeholders. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Examples of typical recovery actions include habitat protection, habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction and outreach and education.

Under the ESA, federal agencies must ensure that actions they approve, fund, or carry out do not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. In addition, under the ESA, endangered animal species cannot be killed, hunted, collected, injured, or otherwise subjected to "harm." Endangered species cannot be purchased or sold in interstate or foreign commerce without a federal permit.

Q: What is critical habitat?

A: Critical habitat is a term in the ESA that identifies geographic areas occupied at the time a species is listed that contain the physical or biological features essential for the species' conservation. Critical habitat may also include areas outside the geographic area occupied by the species at the time of listing that are essential for the conservation of the species. The ESA defines "conservation" as the actions leading to the eventual recovery of a species so that it no longer requires the ESA.

Critical habitat provides protection 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. Under such consultations, the Service reviews federal actions for how they affect the "physical or biological features essential to the conservation of a listed species," and the ability of that habitat to support the species throughout its life cycle, and to meet the species' recovery needs.

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 designated critical habitat. 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.

Critical habitat designation has several benefits including: (1) Triggering consultation under section 7 of the ESA in designated areas for actions in which there may be a federal nexus and where it would not otherwise occur. For example, the area has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to state or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

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: Was an economic analysis of the critical habitat designation conducted?

A: Yes. Under the ESA, the Service is required to take into consideration the economic impact, and any other relevant impact, of designating particular areas as critical habitat. An economic analysis provides estimated costs of the foreseeable economic impacts of a critical habitat designation.

Q: What are the potential economic impacts of designating critical habitat for the Zuni bluehead sucker?

A: The draft economic analysis provided estimated costs of the foreseeable potential economic impacts resulting from the proposed critical habitat designation for the Zuni bluehead sucker. The draft economic analysis quantified the probable incremental economic impacts of critical habitat designation to be limited to the additional administrative efforts and the minor costs of conservation efforts resulting from a small number of future section 7 consultations. The total present value impacts anticipated from the designation of critical habitat for the Zuni bluehead sucker is likely to be less than \$10,000 per consultation.

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. 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. Subunit 1b is the only presently unoccupied area designated as critical habitat for the Zuni bluehead sucker.

Q: How does 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. The federal action agencies are responsible for consulting with the Service.

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 Zuni bluehead sucker. 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>.