



Questions and Answers: Final Rule to List and Designate Critical Habitat for Two East Texas Plants

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

A: The Service is publishing a final rule to list the Texas golden gladeceess (*Leavenworthia texana*) as endangered and the Neches River rose-mallow (*Hibiscus dasycalyx*) as threatened under the Endangered Species Act (ESA).

The Service is also designating approximately 1,519 acres of critical habitat in east Texas for both plants. The Service is designating four units of critical habitat comprising approximately 1,353 acres for the Texas golden gladeceess in Sabine and San Augustine Counties, Texas. Critical habitat for the Neches River rose-mallow includes 11 units comprising approximately 166.5 acres in Houston, Trinity, Cherokee, Nacogdoches and Harrison Counties, Texas.

The Service's listing and critical habitat determinations for the two plant species are based on the best available science.

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

A: The Texas golden gladeceess is threatened by glauconite quarrying activities; oil and gas development; and potentially by excavations resulting from service line improvements such as installation of lines for utilities and communications. Additional threats include habitat degradation as a result of competition from native and nonnative woody plants, some herbicide applications and potentially by planting pine trees in close proximity to occupied habitat.

The Neches River rose-mallow is threatened by activities that would alter the hydrology of wetland areas; habitat loss through encroachment of native and nonnative plant species; trampling from feral hogs; drought; and effects of herbicide spraying. Threats may be exacerbated by future road and bridge construction and maintenance projects.

Q: Where are the Texas golden gladeceess and the Neches River rose-mallow found?

A: The Texas golden gladeceess is a winter annual plant that is known to occur naturally in San Augustine and Sabine Counties in east Texas. The Texas golden gladeceess is a habitat specialist, occurring only on isolated outcrops of the Weches Geologic Formation (a specific

type of geology and soils). There are only eight documented Texas golden glade cress occurrences, including four historic sites where the plants have been eliminated. All historic and current sites are primarily on private lands with two populations extending onto State highway rights-of-way.

The Neches River rose-mallow is a non-woody perennial plant known to occur naturally in Cherokee, Houston, Harrison and Trinity Counties in east Texas. The species has also been introduced in Nacogdoches and Houston Counties. There are only 12 documented occurrences of this species, including one site that has been eliminated. The species is found in wetland areas. Populations are found on private, State and Federal lands (Davy Crockett National Forest).

Q: What is critical habitat?

A. Critical habitat is a term in the Endangered Species Act that identifies geographic areas containing features essential for the conservation of a threatened or endangered species, and which may require special management considerations or protection. The ESA defines “conservation” as the actions leading towards the eventual recovery of a species to the point where it is no longer threatened or endangered.

Critical habitat provides a 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. Are the protections afforded to listed plants different from listed animals?

A. The prohibitions and protections afforded listed plants may be different than those provided to listed animals.

- 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. For wildlife species, the ESA also makes "take" illegal -- forbidding the killing, harming, harassing, pursuing or removing the species from the wild. The ESA does not prohibit the destruction, damage, or movement of listed plants UNLESS such activities involve an endangered species on Federal land or if the action occurs in violation of State laws. If a person wishes to develop private land, with no Federal jurisdiction involved, in accordance with State law, then the potential destruction, damage, or movement of endangered or threatened plants does not violate the ESA.

- The ESA requires that federal agencies conduct their activities in such a way as to conserve listed species.

Q. Do listed plants receive more protection if they are located within critical habitat?

A. Listed species and their habitat are protected by the ESA whether or not they are in an area designated as critical habitat. 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 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. For plants listed as endangered the section 7 provisions, including the jeopardy standard, are the same as those for wildlife species. For areas under federal jurisdiction it is illegal to remove or reduce to possession or maliciously damage or destroy the endangered plant. It is a violation to damage, destroy or dig up endangered plants in violation of any state law including state trespass law. Also, it is unlawful to import, export, deliver, carry, transport or ship endangered plants from the U.S. by any means whatsoever in the course of a commercial activity. Nor can they be sold in interstate or foreign commerce.

Plant species that are listed as threatened under the ESA are covered by the section 7 provisions. However, under the ESA plants listed as threatened are not covered by the same suite of prohibitions as those for endangered species. The ESA does not protect threatened plants from activities that maliciously damage or destroy them on Federal property, removing, cutting, digging up, damaging or destroying private property in violation of any law or regulation of any state including state criminal trespass law.

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: If a person wishes to develop private land, with no Federal jurisdiction involved, in accordance with State law, then the potential destruction, damage or movement of endangered or threatened plants does not violate the ESA. While there is an Incidental Take Permit process under section 10 for wildlife, there is no such process for plants.

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.