



## Questions and Answers: Draft Economic Analysis for Two East Texas Plants

**Southwest Region (Arizona • New Mexico • Oklahoma • Texas)** [www.fws.gov/southwest/](http://www.fws.gov/southwest/)

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

**A:** The Service is announcing the Notice of Availability of the draft economic analysis (DEA) for the proposed critical habitat for the Texas golden gladdess and the Neches River rose-mallow. The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the two East Texas plants over the next 20 years. The Service is also announcing the reopening of the comment period on the proposal to list the plants and designate critical habitat for 30 days and will hold a public meeting and a public hearing on Wednesday, May 1, 2013, in the Kennedy Auditorium at Stephen F. Austin State University, 1906 Alumni Drive S., Nacogdoches, Texas.

### **Q: What information is the Service requesting?**

**A:** We request that you provide comments specifically on our listing determination under the existing docket number FWS–R2–ES–2012–0064. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.
- (2) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of either species.
- (3) Any information on the biological or ecological requirements of these species and ongoing conservation measures for the species and their habitats.
- (4) Current or planned activities in the areas occupied by these species and possible impacts of these activities on these species.

We request that you provide comments specifically on the critical habitat determination and draft economic analysis under docket number FWS–R2–ES–2013–0027. We will consider

information and recommendations from all interested parties. We are particularly interested in comments concerning:

(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 whether there are threats to the gladecress or the rose-mallow from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(6) Specific information on:

(a) The amount and distribution of the gladecress and the rose-mallow and their habitat;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain 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 and why.

(7) Land use designations and current or planned activities in the subject areas and the possible impacts of these designations or activities on both species and their proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on these species and proposed critical habitat.

(9) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(10) Information on the extent to which the description of economic impacts in the draft economic analysis is complete and accurate.

(11) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(12) 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.

(13) 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.

**Q: How can the public submit information?**

**A:** The Service is requesting comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry or any other interested parties.

On Wednesday, May 1, 2013, the Service will hold a public informational session and a public hearing. The informational session and public hearing will be held in the Kennedy Auditorium at Stephen F. Austin State University, 1906 Alumni Drive S., Nacogdoches, Texas. The informational meeting will be held from 5:30 p.m. – 6:30 p.m. followed by a break and the public hearing will be held from 7:00 p.m. – 8:30 p.m.

Written comments and information concerning this finding will be accepted until May 16, 2013, and may be submitted by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>, Submit comments on the listing proposal to Docket No. FWS–R2–ES–2012–0064, and submit comments on the critical habitat proposal and associated draft economic analysis to Docket No. FWS–R2–ES–2013–0027.; or
- By hard copy: U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R2–ES–2012–0064; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. Submit comments on the critical habitat proposal and draft economic analysis by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R2-ES-2013-0027; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule. The Service will post all comments on <http://www.regulations.gov>. This generally means the agency will post any personal information provided through the process. The Service is not able to accept email or faxes.

For further information contact Dawn Whitehead, U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, 6300 Ocean Drive, USFWS Unit 5837, Corpus Christi, Texas, 78412–5837, by telephone 361–994–9005 or by fax 361–994–8262. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**Q: What is critical habitat?**

**A.** Critical habitat is a term in the Endangered Species Act (ESA) 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: What is an economic analysis?**

**A:** Under the Endangered Species Act, 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 two East Texas plants?**

**A:** The draft economic analysis provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the two East Texas plants over the next 20 years. The draft economic analysis quantifies economic impacts of the two East Texas plants conservation efforts associated with the following categories of activity if these activities are federally assisted or carried out: routine transportation projects, utility related activities and installation of interstate natural gas pipelines; land management; and water management. Total present value impacts anticipated to result from the critical habitat designation of all units for the gladecress are approximately \$478,000 and approximately \$29,000 for the rose-mallow over 20 years.

**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. 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 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.

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 plant 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 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.

**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.