

Revising Regulations for Designating Critical Habitat Under Part 424 of the ESA Implementing Regulations Questions and Answers

Q: What actions are the U.S. Fish and Wildlife Service and National Oceanic Atmospheric Administration's National Marine Fisheries Service taking?

A: The U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (together, the Services) are revising the implementing regulations under the Endangered Species Act (ESA) that relate to designating critical habitat for endangered and threatened species. The amendments make minor edits to the scope and purpose, add and remove some definitions, and clarify the criteria and procedures for designating critical habitat.

Q: What is critical habitat?

A: Under the ESA, critical habitat is generally defined as a specific geographic area(s) that contains features essential to the conservation of a threatened or endangered species and that may require special management considerations and protection. In other words, critical habitat represents the habitat essential for the species' recovery. Critical habitat may include areas that are not currently occupied by the species but that will be needed for its recovery. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness reserve, preserve or other special conservation area. It does not mandate government or public access to private lands. A critical habitat designation has no effect in situations that do not involve a federal agency—for example, a private landowner undertaking a project that involves no federal funding or permitting.

Q: Why are the Services taking this action at this time?

A: These regulation changes are intended to provide for a more predictable and transparent critical habitat designation process.

Q: Why is this change to the implementing regulations necessary?

A: There have been no comprehensive amendments to the ESA since 1988 and no comprehensive revisions to these implementing regulations since 1984. In the years since those changes took place, there have been numerous court decisions regarding the designation of critical habitat and the Services have gained considerable experience in the designation process. The changes eliminate confusing and redundant wording and ensure language is consistent with court decisions.

Q: Why are we removing the term “primary constituent elements” from the regulations?

A: The language used in the implementing regulations refers to “primary constituent elements,” but the term used in the ESA is “physical or biological features.” Having different terms describing the same thing has proven confusing and added an unnecessary layer of complication during the designation process. Removing reference to this term in the regulation simplifies and clarifies the critical habitat designation process and eliminates redundancy without substantially changing the manner in which critical habitat is designated.

Q: Will areas that have been previously designated as critical habitat have to be reevaluated using these proposed new regulations?

A: No. Nothing in these final revised regulations is intended to require that any previously designated critical habitat be reevaluated.

Q. Did the Services seek public comment on the proposed amendments?

A. Yes. The Services opened a public comment period on May 12, 2014, for 60 days until July 11, 2014, and on June 26, 2014, we extended the comment period for an additional 90 days until October 9, 2014, for a total of 150 days. We received comments from 176 individuals representing private individuals, state entities, Tribes and federal interests. We have provided a summary of these comments and our responses in the final rule.

A: For more information, including the final rule submitted to the *Federal Register*, visit www.fws.gov/angered/improving_esa/reg_reform.html.