



Critical Habitat*

What is it?

When the Fish and Wildlife Service proposes a species for listing under the Endangered Species Act, we are required to consider whether there are geographic areas that contain essential features on areas that are essential to conserve the species. If so, we may propose designating these areas as critical habitat.

Here are answers to some of the most frequently asked questions about critical habitat.

What is critical habitat?

Critical habitat is the specific areas within the geographic area, occupied by the species at the time it was listed, that contain the physical or biological features that are essential to the conservation of endangered and threatened species and that may need special management or protection. Critical habitat may also include areas that were not occupied by the species at the time of listing but are essential to its conservation.

An area may be excluded from critical habitat designation based on economic impact, the impact on national security, or any other relevant impact, if we determine that the benefits of excluding it outweigh the benefits of including it, unless failure to designate the area as critical habitat may lead to extinction of the species.

Critical habitat designations affect only Federal agency actions or federally funded or permitted activities. Critical habitat designations do not affect activities by private landowners if there is no Federal “nexus”—that is, no Federal funding or authorization. Federal agencies are required to avoid “destruction” or “adverse modification” of designated critical habitat. The ESA requires the designation of “critical habitat” for listed species when “prudent and determinable.”

What provisions of the Endangered Species Act relate to critical habitat?

To protect endangered and threatened species, the ESA makes unlawful

Common Acronyms & Terms Associated With Critical Habitats

“4(d) rule”: Under the ESA, prohibited activities are defined for endangered species; however, the ESA allows the FWS to define the prohibited activities for threatened species. These “4(d)” or “special rules” allow the FWS to customize the protections of the ESA to match the conservation needs of the species.

Habitat Conservation Plan(HCP): Section 10 of the ESA may be used by landowners including private citizens, corporations, Tribes, States, and counties who want to develop property inhabited by listed species. Landowners may receive a permit to take such species incidental to otherwise legal activities, provided they have developed an approved habitat conservation plan. HCPs include an assessment of the likely impacts on the species from the proposed action, the steps that the permit holder will take to avoid, minimize, and mitigate the impacts, and the funding available to carry out the steps.

Recovery Take Permits Section 10(a)(1)(A): Recovery and interstate commerce permits are issued to allow for take as part of activities intended to foster the recovery of listed species (e.g. abundance surveys, genetic research)

Incidental Take Permits Section 10(a)(1)(B): Permits for an otherwise lawful activity where a listed species may be adversely affected, e.g. construction and/or development activities or in-stream or watershed activities that may impact listed species.

a range of activities involving such species without a permit for purposes consistent with conservation goals of the ESA. These activities include take, import, export, and interstate or foreign commerce. “Take” includes kill, harm, harass, pursue, hunt, capture, or collect or to attempt to engage in any such conduct.

The ESA requires Federal agencies to use their authorities to conserve endangered and threatened species and to consult with the Fish and Wildlife Service about actions that they carry out, fund, or authorize to ensure that they will not destroy or adversely modify critical habitat. The prohibition against destruction and adverse modification of critical habitat protects such areas in the interest of conservation.

How does the Fish and Wildlife Service determine areas to designate as critical habitat?

Biologists consider physical and biological features that the species needs for life processes and successful reproduction. These features include:

- space for individual and population growth and for normal behavior;
- cover or shelter;
- food, water, air, light, minerals, or other nutritional or physiological requirements;
- sites for breeding and rearing offspring, germination, or seed dispersal; and

Myths & Realities

Does designating critical habitat mean no further development can occur?

No. A critical habitat designation does not necessarily restrict further development. It is a reminder to Federal agencies of their responsibility to protect the important characteristics of these areas.

Does a critical habitat designation affect all activities that occur within the designated area?

No. Only activities that involve a Federal permit, license, or funding, and are likely to destroy or adversely modify critical habitat will be affected. If this is the case, we will work with the Federal agency and landowners—including private landowners—to amend their project to enable it to proceed without adversely affecting critical habitat. Most Federal projects are likely to go forward, but some may be modified to minimize harm.

■ habitats that are protected from disturbances or are representative of the historical geographical and ecological distributions of the species.

What is the process for designating critical habitat?

The Service may propose to list a species and concurrently propose to designate critical habitat, or it can address a species' critical habitat up to a year after the date of its listing. The Service proposes a critical habitat designation, publishing it in the *Federal Register* and requesting public comments. We may modify a proposal as a result of information provided in public comments. We base our final designation of critical habitat on the best scientific data available, after taking into consideration the probable economic and other impacts of the designation. After reviewing the comments, the Service responds to them and publishes a rule, including final boundaries, in the *Federal Register*.

Are Federal agencies required to consult with the Fish and Wildlife Service outside critical habitat areas?

Yes, even when there is no critical habitat designation, Federal agencies are required to fulfill their conservation responsibilities by consulting with the Service if their actions “may affect” listed species. The requirement helps to ensure that Federal agencies do not contribute to the decline of endangered and threatened species or their potential for recovery.

What is the purpose of designating critical habitat?

Designating areas as critical habitat does not establish a refuge or sanctuary for a species. Critical habitat is a tool to guide Federal agencies in fulfilling their conservation responsibilities by requiring them to consult with the Service if their actions may “destroy or adversely modify” critical habitat for listed species. A critical habitat designation helps to protect areas—occupied and unoccupied—necessary to conserve a species. Critical habitat has value in requiring the Service to gather more detailed information about a species than what is required for listing, thereby increasing knowledge to share with Federal agencies—and, in turn, increasing their effectiveness to conserve a listed species.

Are all the areas within the mapped boundaries considered critical habitat?

No. Our rules typically exclude developed areas such as buildings, roads, airports, parking lots, piers, and similar facilities. Accompanying text describes those areas.

Critical habitat is designed to protect the essential physical and biological features of a landscape and essential areas in the appropriate quantity and spatial arrangement that a species needs to survive and reproduce and ultimately be conserved.

Does the ESA require consideration of economic impacts as part of designating critical habitat?

Yes. The Service is required to consider potential economic impacts, as well as any other benefits or impacts of designating critical habitat—and may exclude an area if the benefits of excluding it outweigh the benefits of including it unless that would result in the extinction of the species.

Do economic considerations affect decisions to list a species as an endangered or threatened species?

No, the Act requires listing decisions to be made solely on the basis of the best available scientific and commercial information.

What is the impact of a critical habitat designation on economic development?

Most activities that require consultation by Federal agencies proceed without modification. In areas where the species is not present, some project modifications that would not have occurred without the critical habitat designation may be required. For example, the U. S. Army Corps of Engineers may schedule a beach renourishment project—that is, adding sand to a beach to stabilize it—before or after the nesting season of sea turtles to avoid harm to the sea turtles, their eggs, or their hatchlings.

Which species have critical habitat designated?

A list of all ESA protected species with designated critical habitat can be viewed online at <https://ecos.fws.gov/ecp/report/table/critical-habitat.html>

**This document compiles data from "ESA Basics 40 Years of Conserving Endangered Species", FWS Jan 2013; and "Critical Habitat: What is it?", FWS Mar 2017.*