

## **Frequently asked questions about the proposal to designate or revise critical habitat for nine invertebrates found in Bexar County, Texas**

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

**A.** The U.S. Fish and Wildlife Service (Service) is proposing to revise or designate critical habitat for nine invertebrates - *Rhadine exilis* (ground beetle, no common name); *Rhadine infernalis* (ground beetle, no common name); Helotes mold beetle (*Batrisodes venyivi*); Cokendolpher Cave harvestman (*Texella cokendolpheri*); Robber Baron Cave meshweaver (*Cicurina baronia*); Madla Cave meshweaver (*Cicurina madla*); Braken Bat Cave meshweaver (*Cicurina venii*); the Government Canyon Bat Cave meshweaver (*Cicurina vespera*); and Government Canyon Bat Cave spider (*Neoleptoneta microps*) - under the Endangered Species Act of 1973, as amended (Act). Publication of this proposal in the *Federal Register* begins a 60-day public comment period ending on April 25, 2011.

### **Q. How many acres is the Service proposing for critical habitat?**

**A.** In total, approximately 6,906 acres (ac) (2,795 hectares (ha)) are being proposed for revised or designated critical habitat. This does not include 4,104 acres (1,661 ha) of land that is protected by the Camp Bullis Military Reservation's Integrated Natural Resource Management Plan.

### **Q. Why is the Fish and Wildlife Service taking this action now?**

**A.** On January 14, 2009, the Center for Biological Diversity, Citizens Alliance for Smart Expansion, and Aquifer Guardians in Urban Areas filed suit against the Service alleging that the Service failed to use the best available science with respect to the critical habitat designation and relied on sections 3(5)(a) and 4(b)(2) of the Endangered Species Act to make exclusions. Plaintiffs claimed that the 4(b)(2) analysis was less than robust and would not withstand scrutiny. On December 18, 2009, the Service agreed to submit a revised proposed critical habitat determination for publication in the *Federal Register* on or before February 7, 2011, and a final revised determination by February 7, 2012. This proposed rule is being submitted for publication in accordance with that agreement.

### **Q. What type of habitat do these invertebrates need, and where is it found?**

**A.** The nine invertebrates inhabit caves or other features known as "karst." The term karst refers to a type of terrain that is formed by the slow dissolution of calcium carbonate from limestone bedrock by mildly acidic groundwater. This process creates numerous cave openings, cracks, fissures, fractures, and sinkholes, and the bedrock resembles Swiss cheese. All of these species are subterranean-dwelling, non-aquatic species of local distribution in north and northwest Bexar County, Texas. They spend their entire lives underground, but surface features are very important as they provide links to drainage and pathways for nutrients to enter the caves.

**Q. What are the significant differences between the 2003 rule and this proposal?**

A. This proposal includes 35 units, totaling 6,906 ac (2,795 ha), with 17 units that were not previously designated. This proposed rule results in an increase of 5,843 ac (2,365 ha) from the currently designated critical habitat (1,063 ac in 22 units). Seven new units are being proposed around Camp Bullis. The Service is also proposing four new units that were previously excluded on Government Canyon State Natural Area (GCSNA). In addition the proposal includes a larger subterranean area (including mesocaverns or humanly impassable areas) around occupied features; an increase in the size of the cave cricket foraging area; an increase in the minimum vegetation area in each unit; and the inclusion of all occupied sites for the nine Bexar County invertebrates except those that meet the criteria for exclusion. These changes were made based on the availability of new information and the recommendations of the Bexar County Invertebrates Recovery Team.

**Q. What is critical habitat?**

A. Critical habitat is a term defined and used in the Endangered Species Act. It is a specific geographic area(s) that contains features essential for the conservation of a threatened or endangered species and that may require special management and protection. Critical habitat may include an area that is not currently occupied by the species but that will be needed for its recovery. An area is designated as "critical habitat" after the Service publishes a proposed Federal regulation in the *Federal Register* and then we receive and consider public comments on the proposal. The final boundaries of the critical habitat area are also published in the *Federal Register*.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve or other conservation area. Critical habitat designation does not impose restrictions on private lands unless federal funds, permits or activities are involved.

**Q. What is the purpose of designating critical habitat?**

A. 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. 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.

**Q. Do listed species in critical habitat areas receive more protection?**

A. Listed species and their habitat are protected by the Act 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 Act forbids the import, export, or 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 Act requires that Federal agencies conduct their activities in such a way as to conserve species.
- The Act 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 will no longer aid in the species' recovery. In many cases, this level of protection is similar to that already provided to species by the "jeopardy standard." However, areas that are currently unoccupied by the species, but are needed for its recovery are protected by the prohibition against destruction and adverse modification of critical habitat.

**Q. Must Federal agencies consult with the Service outside critical habitat areas?**

**A.** Yes, even when there is no critical habitat designation, Federal agencies must consult with the Service to ensure any action they carry out, fund, or authorize is not likely to jeopardize the continued existence of a listed species.

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

**A.** Most activities that require a Federal agency to consult with the Service can proceed. If modification of the project is necessary, it is likely that those changes would have been needed anyway, in order to avoid jeopardy. However, in areas where the species is not currently present, there may be some project modifications that would not have occurred without the critical habitat designation.

**Q. How does the Service determine what areas to designate as critical habitat?**

**A.** Biologists consider physical and biological features needed for life processes and successful reproduction of the species.

These 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; and
- habitats that are protected from disturbances or are representative of the historic geographical and ecological distributions of a species.

**Q. How can I comment?**

**A.** The Service will accept comments received or postmarked on or before April 25, 2011. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by April 8, 2011.

For more information on this proposal, what to comment on, or how to submit comments, see the Federal Register notice on our web site at <http://www.fws.gov/southwest>. The proposal will be available on our web site on Tuesday, February 22, 2011.

For further information contact Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758; by telephone at 512-490-0057 x248; or by facsimile at 512-490-0974. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

## **Q. What information is the Service asking for?**

**A.** The Service is requesting comments or information from the public, other concerned government agencies, the scientific community, industry, or other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species 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 may not be prudent;

(2) Specific information on:

- The amount and distribution of any of the nine Bexar County invertebrates’ habitat;
- What areas occupied at the time of listing and that contain features essential to the conservation of the species should be included in the designation and why;
- Special management considerations or protections that the features essential to the conservation of the nine Bexar County invertebrates that have been identified in this proposal may require, including managing for the potential effects of climate change;
- What areas not occupied at the time of listing are essential for the conservation of the species and why;
- Site-specific information on subsurface geologic barriers to movement of the species or lack thereof; and
- The taxonomy and status of the ground beetle previously identified as *Rhadine exilis* in Black Cat Cave (proposed Unit 13) and the value of the cave and unit for conservation of the species.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts;

(5) Information on whether the benefit of an exclusion of any particular area outweighs the benefit of inclusion under section 4(b)(2) of the Act, in particular for those management plans covering specified lands used as mitigation under the La Cantera Habitat Conservation Plan (HCP) and lands on which impacts to the species have been authorized under that HCP. Copies of the La Cantera HCP are available from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**);

(6) Information on the projected and reasonably likely impacts of climate change on any of the nine Bexar County invertebrates and the critical habitat areas we are proposing; and

(7) 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.