



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

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For Release: September 11, 2012

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

A: The Service is proposing 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 (Act). In addition we are proposing to designate critical habitat for both plants. The Service is proposing to designate approximately 1,353 acres as critical habitat for the Texas golden gladeceess in Sabine and San Augustine Counties and approximately 187.8 acres as critical habitat for the Neches River rose-mallow in Houston, Trinity, Cherokee, Nacogdoches, and Harrison Counties. A 60-day public comment period will begin upon publication of this proposal in the *Federal Register*.

The Service agreed to review the status of two plant species as part of the Multi-District Litigation settlement between the Service, the Center for Biological Diversity (CBD), and Wild Earth Guardians.

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, including, pipeline construction; competition from native and nonnative species; herbicide spraying; and conversion of pastures or forest with native prairie patches to pine plantations.

The Neches River rose-mallow is threatened by activities that would alter the hydrology of wetland areas; competition with native and nonnative species; drought; and effects of herbicide spraying.

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. There are only eight documented Texas golden gladeceess occurrences, including four historic sites where the plants have been eliminated. 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).

Populations are found on private land and, in two instances, extend onto State highway right-of-ways.

The Neches River rose-mallow is a non-woody perennial plant that is known to occur naturally in Cherokee, Houston, and Trinity Counties in east Texas. The species has also been introduced in Nacogdoches and Harrison counties. The species is found in wetlands and populations are located on private, State, and Federal lands (Davy Crockett National Forest).

Q: What information is the Service requesting?

A: Any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. With respect to the listing and critical habitat proposal for the two plant species the Service is seeking information regarding:

- (1) These species' biology, range, and population trends, including:
 - (a) Habitat requirements for pollination, reproduction, and dispersal;
 - (b) Genetics and taxonomy;
 - (c) Historical and current range including distribution patterns;
 - (d) Historical and current population levels, and current and projected trends; and
 - (e) Past and ongoing conservation measures for these species, their habitat or both.

- (2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 et seq.), which are:
 - (a) The present or threatened destruction, modification, or curtailment of their habitat or range;
 - (b) Overutilization for commercial, recreational, scientific, or educational purposes;
 - (c) Disease or predation;
 - (d) The inadequacy of existing regulatory mechanisms; or
 - (e) Other natural or manmade factors affecting their continued existence.

- (3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and existing regulations that may be addressing those threats;

- (4) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of these species;

- (5) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and their habitat;

- (6) 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 these species from human activity, the degree of which can be expected to increase

due to the designation, and whether that increase in threats outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(7) Specific information on:

- (a) The amount and distribution of the Texas golden glade cress and Neches River rose-mallow and their habitat;
- (b) What may constitute “physical or biological features essential to the conservation of these species,” within the geographical range currently occupied by these species;
- (c) Where these features are currently found;
- (d) Whether any of these features may require special management considerations or protection;
- (e) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of these species, should be included in the designation and why;
- (f) What areas not occupied at the time of listing are essential for the conservation of these species and why;

(8) Land use designations and current or planned activities in the areas occupied by these species or proposed to be designated as critical habitat, and possible impacts of these activities on these species and proposed critical habitat;

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

(10) 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;

(11) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(12) The likelihood of adverse social reactions to the designation of critical habitat and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designations.

Q: How can the public submit information on the proposal?

A: The Service will accept comments received or postmarked by or before November 13, 2012. 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>.

For additional information, contact Allan Strand, Field Supervisor, 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 facsimile 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 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. 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. 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.