



Questions and Answers: Proposed Rules to List and Designate Critical Habitat for Guadalupe fescue

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

A: The Service is proposing to list Guadalupe fescue as endangered under the Endangered Species Act (Act). In addition we are proposing to designate approximately 7,815 acres as critical habitat in Brewster County, Texas. The proposed critical habitat is entirely within Big Bend National Park and does not include any private lands. A 60-day public comment period will begin upon publication of the proposals in the *Federal Register*.

Q: What is Guadalupe fescue and where is it found?

A: Guadalupe fescue is a short-lived perennial grass species that is found only in the high mountains of the Chihuahuan Desert in the Trans-Pecos region of Texas and in the State of Coahuila, Mexico. These “sky island” habitats are conifer-oak woodlands at elevations above 5,900 feet. The species has been reported from only six locations, and only two of these populations are known to remain: one population in the Chisos Mountains within Big Bend National Park, and one population in the Maderas del Carmen Mountains in northern Mexico.

Q: What are the primary threats to the species?

A: Guadalupe fescue is threatened by the scarcity and small size of its populations, and their isolation from each other, all of which can negatively affect its genetic variation; reduced frequency of wildfires; livestock grazing (direct predation of plants); invasive species; effects of climate change such as higher temperatures and changes in the amount and seasonal pattern of rainfall; fungal infection of seeds; and runoff from trails.

Q: Are there any conservation efforts focused on Guadalupe fescue?

A: The Service has been working for many years with the National Park Service and agencies in Mexico to conserve Guadalupe fescue. We are implementing a Candidate Conservation Agreement (CCA) with Big Bend National Park and Guadalupe Mountains National Park. CCAs are formal, voluntary agreements between the Service and one or more parties to address the conservation needs of candidate species or species likely to become candidates in the near future. Participants voluntarily commit to implement specific actions designed to remove or reduce threats to the covered species, so that listing may not be necessary. The Service has entered into many CCAs over the years, primarily with other

Federal agencies and States. Local governments, Tribes, private property owners, and other entities may also participate.

The Guadalupe fescue CCA was updated in August 2008 and is a 10-year agreement. The CCA focuses on monitoring and surveys; seed and germ plasm banking; fire and invasive species management; trail management; educating staff and visitors; establishing an advisory team of experts; and cooperation with Mexican agencies and researchers to conserve the known Guadalupe fescue populations and identify new ones.

What information is the Service requesting?

A: Any final action resulting from these proposed rules 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 proposals for the Guadalupe fescue the Service is seeking information regarding:

- (1) Guadalupe fescue's biology, range, and population trends.
- (2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.
- (3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.
- (4) Specific information such as the amount and distribution of habitat, other occupied or unoccupied areas that should be included in the critical habitat designation, and special management considerations for critical habitat areas.
- (5) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.
- (6) Information on the projected and reasonably likely impacts of climate change on Guadalupe fescue and proposed critical habitat.
- (7) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.
- (8) Information on the extent to which the description of economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.
- (9) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of 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.

(10) 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.

(11) 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 on the listing and critical habitat proposals?

A: The Service is requesting comments or information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rules. Comments must be received within 60 days, on or before November 8, 2016. You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS–R2–ES–2016-0099 (listing proposal) or FWS-R2-ES-2016-0100 (critical habitat proposal), which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2016-0099 (listing proposal) or FWS-R2-ES-2016-0100 (critical habitat proposal); U.S. Fish & Wildlife Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

For additional information, contact Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd, Suite 200, Austin, Texas 78758, by telephone 512–490–0057, or by fax 512–490–0974. 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 Act 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 Act.

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 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 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 Act also makes "take" illegal -- forbidding the killing, harming, harassing, pursuing, or removing the species from the wild. The Act 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. This is the case with Guadalupe fescue on Big Bend National Park. 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 Act.

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 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 Act are covered by the section 7 provisions. However, under the Act plants listed as threatened are not covered by the same suite of prohibitions as those for endangered species. The Act 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. If Guadalupe fescue is listed and critical habitat is designated for the species will it affect management actions or access at Big Bend National Park?

A. If Guadalupe fescue is listed and we finalize the proposed critical habitat we do not expect there to be any changes at Big Bend National Park that would impact management activities and access beyond what is already in place at the Park and included in the CCA.