



Module 3: Section 4—Determination of Endangered and Threatened Species
Critical Habitat

Module 3: Section 4—Determination of Endangered and Threatened Species—Critical Habitat

Objective

Given a scenario involving an area with the necessary environmental factors to support a species, recognize if the area is "critical" based on the requirements listed in Section 4 of the ESA of 1973.



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Topics

- General Critical Habitat Information
- Critical Habitat Designation
- Exercises



Credit: Craig Satter

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General Critical Habitat Information



Credit: USFWS

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Critical Habitat



- Habitat relevant to species conservation
- Tool for recovery
- Public review and comment
- Only for species within the United States

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Critical habitat defined in 3(5)(A):

- “(i) the specific areas within the geographical area occupied by the species at the time it is listed...on which are found those physical or biological features (I) essential to the conservation of the species **and** (II) which may require special management considerations or protection; **and**
- (ii) specific areas outside the geographical area occupied by the species at the time it is listed...that such areas are essential for the conservation of the species.”

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Critical Habitat Designation



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The physical and biological features essential to species conservation (50 CFR 424.12 (b)):

1. Space for individual and population growth
2. Food, water, air, light, minerals – physiological requirements
3. Cover and shelter
4. Sites for reproduction, rearing of offspring, germination, seed dispersal, etc.
5. Habitat protected from disturbance or representative of historical geographical and ecological distribution of the species.

[Click here to learn more about 50 CFR 424.12](#)

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...and which may require special management consideration or protection



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- Based on the best scientific data available (4(b)(2))
- Exemptions for DOD under section 4(a)(3)(B)(i)
- Potential impacts considered for exclusions under section 4(b)(2). Requires balancing analysis:
 - economic impact
 - national security
 - other relevant impacts
- The designation describes activities that may adversely modify such habitat or be affected by the designation (4(b)(8))

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The rulemaking process of designating critical habitat generally includes:

- A notice of proposed rule published in the Federal Register
- Public comment periods
- A notice to the availability of the economic analysis and NEPA documentation, where appropriate
- A final rule

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Benefits of designation:

- Federal agencies have to assess the impacts of their actions on the species and its habitat
- Provides important information on the conservation needs of the species and/or highlights opportunities to work with partners



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Critical habitat shall be specified to the maximum extent prudent and determinable at the time a species is proposed for listing. [4(a)(3)(A)]

The designation of critical habitat does not occur concurrently with the species listing if the Services find that

- (i) "it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or
- (ii) critical habitat of such species is not then determinable...the Secretary (Services)...may extend the one-year period...by not more than one additional year." 4(b)(6)(C)(i)-(iii)

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Is NOT prudent when one or both of the following situations exist [50 CFR 424.12(a)(1)]	Is NOT determinable when one or both of the following situations exist [50 CFR 424.12(a)(2)]
Identification of critical habitat can be expected to increase the degree of such threat	Information sufficient to perform required analyses of the impacts of the designation is lacking
Such designation ... would not be beneficial to the species	The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (provides for a 1-year delay)

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Credit: Scott Schlobo

Critical Habitat on Federal Land vs. Private Land

- Federal Land or Federal Activities
 - Evaluated to determine if critical habitat may be affected
- Private land included in critical habitat designation
 - Private activities are not affected
 - Federal activities occurring on private lands are required to consult with the Service to determine if the activity may affect the critical habitat

It's Exercise Time!



Conclusion



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Review

1. Critical Habitat must be considered for all domestic listed species, if prudent and determinable
2. If designated, identifies features essential for the species conservation of the species
3. Critical habitat is a recovery tool
4. Critical habitat does not create a preserve or park
5. Critical habitat only has regulatory effect on Federal agencies



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Recovery, Planning and Implementation
