



# EARTHJUSTICE

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***ANSWERS TO QUESTIONS ABOUT  
CRITICAL HABITAT AND THE ENDANGERED SPECIES ACT  
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***1. What is the Endangered Species Act?***

The federal Endangered Species Act (“ESA”) is the basic federal law that protects endangered and threatened species. Among other things, it prohibits federal agencies from authorizing, funding or carrying out any action that destroys or adversely modifies the “critical habitat” of any threatened or endangered species. This prohibition is necessary to achieve one of the central goals of the ESA: the preservation of the ecosystems upon which endangered and threatened species depend for their continued survival and recovery.

***2. What is critical habitat?***

The ESA defines “critical habitat” as those geographical areas that are essential for bringing an endangered or threatened species to the point where it no longer needs the legal protections of the ESA. In other words, critical habitat consists of those areas needed to permit an imperiled species to recover to a level where it is safe, for the foreseeable future, from the danger of extinction.

***3. How is critical habitat determined?***

Under the ESA, the Secretary of the Interior (“Secretary”) has the responsibility for identifying those areas that are critical habitat for terrestrial species like the Rota bridled white-eye. Generally speaking, the ESA requires that the Secretary designate this critical habitat at the same time that the species is listed as endangered or threatened. The Secretary has delegated this task to the U.S. Fish and Wildlife Service (“Service”).

In determining the critical habitat for a species, the Service is required to use the best scientific data available. In addition, before designating any particular area as critical habitat, the Service must consider the economic impact, and any other relevant impact, associated with this designation. If the costs associated with designating an area as critical habitat outweigh the benefits, the Service may exclude that area from critical habitat, unless excluding the area would result in the extinction of the species in question.

**4. *How will the Rota bridled white-eye benefit from critical habitat designation?***

Designating critical habitat will better protect the Rota bridled white-eye. Merely placing the bird on the endangered species list does not protect the habitat that the species needs for its eventual recovery. Congress recognized this, and, in the ESA, imposed two separate and distinct duties on federal agencies for the benefit of listed species: (1) each federal agency must insure that any action it authorizes, funds or carries out will not push any endangered species closer to extinction; and (2) each federal agency must insure that its actions will not destroy or adversely modify the critical habitat of such species. Without critical habitat, the Rota bridled white-eye does not enjoy the second of these two vital protections that Congress intended it to have.

Where critical habitat has been designated, federal agencies must consult the U.S. Fish and Wildlife Service before undertaking any action that might adversely affect this critical habitat. The consultation process forces federal agencies to explore more environmentally-friendly alternatives to their proposed actions and to devise mitigation measures that will avoid negative impacts on critical habitat. The end result is federal action that protects the habitat on which the Rota bridled white-eye depends for its recovery.

**5. *How does critical habitat designation affect private land owners?***

Critical habitat designation generally has little impact on private land owners since it is directed solely at federal agency action. Land owners are not required to consult the Service regarding projects in designated critical habitat if there is no federal involvement in the project (i.e., funding, permitting, or participation).

Designating critical habitat on private land does not turn it into a wildlife refuge. The land owner is free to do anything that was permitted before critical habitat was designated, unless the activity in question requires a federal agency's participation, funding or approval. In those limited cases, the private land owner can still carry out the proposed activity as long as it would not adversely modify or destroy the critical habitat, reducing its value for the recovery of the endangered species.

Even without critical habitat designation, federal law currently prohibits private land owners from harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting any endangered or threatened animal on their land, without a permit from the Service. This prohibition extends to significant habitat modification or degradation where it actually kills or injures endangered wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

**6. *Does critical habitat help endangered species?***

Yes. Data in six U.S. Fish and Wildlife Service reports submitted to Congress between 1990 and 2003 show that species with critical habitat are twice as likely to be recovering as species without it. In addition, a 2004 study of critical habitat by the National Academies of Science found that critical habitat was helping species on the Platte River to recover.

**7. *Why isn't enough money allocated to protect critical habitat for all species?***

The U.S. Fish and Wildlife Service has documented that it would require \$153 million to list all imperiled species as endangered and to designate critical habitat for all listed species. The Bush administration, however, allocated just \$12 million of the Service's budget for 2004 to listing and critical habitat designation. Moreover, in 2003, the administration turned down a congressional offer of additional funds. The administration has publicly admitted that it has placed a low priority on listing species and designating critical habitat. It has purposefully kept the Fish and Wildlife Service's funding for protecting imperiled species and their essential recovery habitat so low that the Service cannot get the job done.