



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Colorado Field Office
755 Parfet Street, Suite 361
Lakewood, Colorado 80215

IN REPLY REFER TO:
ES/CO: T&E/PMJM/Survey
Mail Stop 65412

AUG 10 2000

Tom Ryon
Greystone Environmental Consultants, Inc.
5231 South Quebec Street
Greenwood Village, Colorado 80111


Dear Mr. Ryon:

Based on the authority conferred to the U.S. Fish and Wildlife Service (Service) by the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), the Service reviewed the Preble's meadow jumping mouse, *Zapus hudsonius preblei*, (Preble's) survey report submitted with your letter of July 13, 2000. This report regards the **Highland Park Property** in El Paso County, Colorado (Section 29, Township 12 South, Range 65 West). The project, as proposed, may disturb wetlands and other riparian habitats.

Given your compliance with the Preble's survey guidelines, the Service finds the report acceptable and agrees that a population of Preble's is not likely to be present within the subject area. Thus, the Service concludes that development or other actions on this site should not directly affect the continued existence of Preble's. Should Preble's populations exist downstream from the site, actions on the site that result in significant modification of Preble's habitat downstream (for example, through alteration of existing flow regimes, or sedimentation) may be subject to provisions of the ESA.

If the Service can be of further assistance, please contact Peter Plage of my staff at (303) 275-2370.

Sincerely,


LeRoy W. Carlson
Colorado Field Supervisor

cc: U.S. Army COE, Pueblo, CO
Plage

Reference: Peter/PMJM/2000.115

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U.S. Fish & Wildlife Service

Mountain-Prairie Region

PREBLE'S MEADOW JUMPING MOUSE

Frequently Asked Questions of Landowners and Developers Regarding the Preble's Meadow Jumping Mouse

What laws protect the Preble's mouse?

The Preble's meadow jumping mouse has been federally-listed as a threatened species since 1998 and is protected under the Endangered Species Act (ESA). It is a violation of the ESA to "take" a Preble's without an appropriate permit. "Take" is defined by the Endangered Species Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct." "Harm" is further defined by the U.S. Fish and Wildlife Service (FWS) to include significant habitat modification or degradation that results in death or injury to listed species. "Harass" is defined by FWS as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. The FWS recommends that sites in or near stream channels, riparian habitats, floodplains, wetlands including wet meadows, vegetated ditches, or moist hayfields be considered potential Preble's habitat.

Where is Preble's found? How do I know if it is on my property?

Preble's is likely to be found in suitable habitat in the following Colorado counties: Adams, Arapahoe, Boulder, Denver, Douglas, El Paso, Elbert, Jefferson, Larimer, Morgan, and Weld, from 7,600 feet on the western boundary to a north/south line through Ft. Morgan on the eastern boundary. In Wyoming, Preble's is likely to occur in Albany, Converse, Goshen, Laramie and Platte Counties east of the Laramie Mountains and south of the North Platte River (northwest to approximately Douglas).

Ideal habitat of Preble's consists of well-developed riparian (streamside) vegetation with a variety of grasses, forbs, and thick shrubs, and a water source in close proximity. Where a population is present in a drainage, they may also use adjacent upland habitats. The FWS recommends that sites in or near stream channels, riparian habitats, floodplains, wetlands including wet meadows, vegetated ditches, or wet hayfields be considered potential Preble's habitat. Preble's move outward from these wetlands and riparian habitats to use adjacent upland habitats. Projects in vegetated areas within 300 feet of 100-year floodplains associated with rivers and creeks (and projects that may have secondary impact to these areas) should be assessed for their potential impacts to Preble's and its habitat.

Does the FWS recommend surveys even in cities?

The FWS has established two "block clearance" areas. One includes much of the City of Denver and closely adjacent suburbs, and the other includes Monument Creek through Colorado Springs (see Block Clearance Areas: Denver, Colorado Springs). Within these areas, FWS believes that Preble's is unlikely to occur and does not require surveys to assess potential Preble's habitat. In the future, block clearance areas may be changed as more information on Preble's distribution becomes available.

What if I take a Preble's by accident?

The ESA prohibits take even when it is accidental. However, the Service has established a special rule (under section 4 (d) of the ESA) to temporarily (until May 2004) exempt take associated with certain activities. These exemptions

include incidental take associated with continuation of existing agricultural operations, continued use of established water rights, maintenance of landscaped areas, and rodent control in or near man-made structures (see Special Rule on this web site).

What if my plans may impact potential or established Preble's habitat? What if the county or town has informed me that there is a Preble's issue at my site?

If direct and secondary impacts to Preble's habitat, as described above and in our 1999 Survey Guidelines can be avoided (see General Information: 1999 Survey Guidelines for the Preble's Meadow Jumping Mouse on this web site), land use or development can proceed without likelihood of violating the ESA. Avoidance of impacts to Preble's and its habitat is the strategy recommended by the FWS. If questions regarding the presence of Preble's or the extent of its habitat need to be resolved, the FWS recommends that a consultant knowledgeable about Preble's be contacted to assess the site. A list of individuals holding permits to trap Preble's can be found on this web site at Consultant and Researcher Permits. Many of those listed are available to conduct habitat assessments, trapping studies, or to provide recommendations regarding options available to the landowner under the ESA. Often, a conclusion may be reached that Preble's is not present or that development would not cause take. In such cases, a consultant can provide a report to FWS summarizing their findings. The FWS will reply in writing as to whether they agree with the consultant's conclusions.

If Preble's or Preble's habitat is present on my property, does that mean I can't use or develop it?

Not necessarily, you may be able to avoid impacts to areas used by Preble's. In addition, there are provisions in the ESA that allow a property owner or developer to "take" Preble's under certain circumstances. These provisions occur under section 7 of the ESA (on Federal land, where a Federal permit is needed, or where Federal funding occurs) or under sections 9 and 10 (for activities with no Federal nexus). Consultations under section 7 of the ESA are conducted between the Service and a Federal agency. For example, if Preble's is present along a creek on your property and you need an Army Corps of Engineers permit for work in waters of the U.S., the Service and the Army Corps of Engineers would enter into section 7 consultation under the ESA. The Service would assess the proposed work and its potential to jeopardize Preble's. Any Corps of Engineers permit issued for the project after such consultation would have provisions to address impacts on Preble's.

To obtain a take permit for development or other activities under section 10 of the ESA, a project proponent must develop a Habitat Conservation Plan (HCP). An HCP must conform to specific guidelines developed by the Service. The HCP undergoes review by the Service and is available for review and comment by the public. Then a decision is made by the Service whether to allow the proposed take. Obtaining permission to take Preble's under section 7 or section 10 may be a complex process, and we suggest that you employ a qualified consultant to represent your interests in these matters.

What if I have additional questions?

Contact Peter Plage or Kathleen Linder at the FWS's Colorado Field Office (303-275-2370), or Mary Jennings at the FWS's Wyoming Field Office (703-722-2374).

Do you live near streams, creeks, or drainageways in El Paso County?

Are you building a structure or developing property near streams, creeks, or drainages in El Paso County?

If so, you may be in the preferred habitat of the Preble's meadow jumping mouse, a federally listed threatened species. The Preble's meadow jumping mouse (mouse) is typically found in thick vegetation within stream corridors, in adjacent uplands and along drainageways on the Front Range of Colorado and the southern portion of Wyoming. El Paso County represents the southern limit of the range of the mouse. Impacts to mouse habitat from increased urbanization, agriculture, and infrastructure projects have reduced the mouse populations such that in order to protect the mouse the U.S. Fish and Wildlife Service listed the mouse as "threatened" under the Endangered Species Act on May 13, 1998. **Before you make any ground changes disturbing or native vegetation removal to your property in places where the mouse might live or where its habitat might exist, you should contact the U.S. Fish & Wildlife Service.**

The Endangered Species Act ("Act") prohibits the "take" of listed species. Take, as defined under the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. This also applies to the knowing removal of habitat that is necessary for the survival of the mouse including suitable streamside vegetation and adjacent uplands. **Civil penalties** for violations under the Act include a civil penalty of up to \$25,000 for each violation. **Any person who knowingly violates any provision of any other regulation issued under the Act may be assessed a civil penalty of up to \$12,000 for each violation.** **Criminal penalties** for violations under the Act include a fine of up to \$50,000 or imprisonment of up to one year, or both. **Any person who knowingly violates any provision of any other regulation issued under the Act, upon conviction, may be fined up to \$25,000 or imprisoned for up to than six months, or both.**

As a result of the listing, no federal agencies may undertake any action that might result in the further jeopardizing of the continued existence of the mouse. Actions requiring federal support or approval, such as a right-of-way across federal land or a Section 404 permit for dredging or filling in streams or wetlands, must be addressed for potential impacts to the mouse or its habitat.

Under the Act, all activities throughout the County occurring on either public or private lands on which the mouse or its habitat might exist are prohibited from adversely impacting the mouse or its habitat. If the activity includes new construction, ground disturbing activities (grading, removal of vegetation, streambank stabilization, etc.), changes in the existing landscape (both native and planted), or increased use by humans or domestic animals, the activity may be a potential violation of the Act.

What does this mean to your project? Current guidelines from the U.S. Fish and Wildlife Service state that any projects occurring within 300-feet of the 100-year floodplain require notification of the Service to comply with the Endangered Species Act. There are several options to achieve compliance:

First, all project related impacts can be kept at least 300-feet from the edge of the 100-year FEMA floodplain or the edge of riparian habitat if the floodplain has not been mapped.

Second, individuals may send the following information to the U.S. Fish and Wildlife Service at the address listed below and request direction as to how to proceed:

- A map of the general project area showing major creeks, roads, or other landmarks that describe the project location;
- A map of the project area showing where all ground-disturbing activities will occur in relation to the 100-year floodplain;
- Photographs of the area; and
- A topographic map of the project area (U.S. Geologic Survey 7.5 minute topography map).

Third, individuals may hire a consultant familiar with mouse issues to work with the U.S. Fish and Wildlife Service to address its concerns related to the project. A list of U.S. Fish and Wildlife permitted consultants is attached.

Finally, once one has concluded their discussions with the U.S. Fish and Wildlife Service, documentation in the form of a letter will be requested by the El Paso County Planning Department prior to final plat approval and/or approval of any permits. It is not El Paso County's intent to administer or enforce the Endangered Species Act. Compliance with the Act is the responsibility of the individual.

El Paso County, in cooperation with the City of Colorado Springs, Colorado Springs Utilities, and the Towns of Palmer Lake and Monument, are currently collaborating on a Regional Habitat Conservation Plan to address conservation of the mouse while allowing for continued development in the county. Once the Habitat Conservation Plan is in place, individuals may be able to work within a county-level process to address Endangered Species Act compliance as it relates to the mouse.

ANY LAND USE APPROVAL GIVEN BY EL PASO COUNTY DOES NOT ELIMINATE THE NEED TO COMPLY WITH APPLICABLE FEDERAL, STATE, OR LOCAL LAWS AND/OR REGULATIONS—PARTICULARLY AS THEY MAY RELATE TO THE ENDANGERED SPECIES ACT.

Contact Information

Kathleen Linder, U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood Colorado, 80215, 303.275.2370.

Additional Information may be found on the county website: www.co.el-paso.co.us/preble/

Or by e-mail at: PMJMRHCP@co.el-paso.co.us