



Questions and Answers

Devils River Minnow Critical Habitat

Is the Devils River minnow a rare fish?

The Devils River minnow (*Dionda diaboli*) was federally listed as a threatened species in 1999. The historic range of this small fish once included Rio Grande tributary streams in Val Verde and Kinney counties, Texas, (Devils River, San Felipe, Sycamore, Pinto, and Las Moras creeks) and several streams in northern Mexico. However, the fish has been eliminated or reduced throughout much of its range. The primary threats to the species include habitat loss and degradation (water quantity and quality) and impacts from non-native species. The 2005 Devils River Minnow Recovery Plan (Recovery Plan) outlines the actions needed to recover the fish—including maintaining or restoring the fish in all five Texas streams (if scientifically feasible) where it once occurred.



Devils River minnow. Photo by Garold Sneegas.

For more information on the Devils River minnow, including links to the Recovery Plan and *Federal Register* documents, visit the website:
<http://ecos.fws.gov/speciesProfile/SpeciesReport.do?sPCODE=E03V>

What was designated as critical habitat for the Devils River minnow?

The U.S. Fish and Wildlife Service (Service) designated critical habitat for the Devils River minnow along 5.6 stream miles of San Felipe Creek in Val Verde County, Texas, and 10.9 stream miles of Pinto Creek in Kinney County, Texas. The final critical habitat finding was published in the *Federal Register* on August 12, 2008 (73 FR 46988).

What does “critical habitat” mean?

Critical habitat is a term defined and used in the Endangered Species Act (ESA). It is a specific geographic area(s) that contains features essential for the conservation of a threatened or endangered species and that may require special management or protection. The Service is generally required by the ESA to designate critical habitat for listed species. Critical habitat is only designated through a formal rule-making process involving public review and comment and an economic analysis. Critical habitat can only be designated within the United States.

An area designated as critical habitat is not a refuge or a sanctuary for the species. Federal agencies are required to consult with us 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 receives extra attention from federal agencies that carry out, fund, or authorize projects in areas necessary for the conservation of the species.

For more information on critical habitat, you can download the Critical Habitat Fact Sheet online at:
http://www.fws.gov/endangered/factsheets/Critical_Habitat_12_05.pdf

How does critical habitat designation affect my land?

The purpose of critical habitat is to provide extra protection for a species' essential habitat when federal agencies are involved. While critical habitat may be designated on either public or private land, it only comes into play when a federal permit is needed, a federal agency is conducting an activity or federal dollars are funding the activity. A critical habitat designation has no impact on private actions on private lands.

The Devils River minnow occurs in streams on non-federal lands. Historically, there has been little to no federal involvement on these streams so the critical habitat designation is unlikely to affect most activities.

The legal protections of critical habitat apply during interagency consultation by federal agencies. Activities that are federally funded, permitted or executed and may affect a listed species or its critical habitat (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act) receive additional review. Through the consultation, the Service advises federal agencies whether the proposed actions would likely jeopardize the continued existence of the species or adversely modify its critical habitat.

Why are we designating critical habitat now?

We did not designate critical habitat when the Devils River minnow was listed in 1999 because we believed it was not prudent to do so. However, in 2005 several groups filed a lawsuit against the Service for not designating critical habitat at the time of listing. We settled the lawsuit by agreeing to reevaluate our critical habitat finding. This review led to our proposal for critical habitat, published on July 31, 2007 (72 FR 41679), and the final critical habitat designation published on August 12, 2008.

What is Devils River minnow habitat?

The Devils River minnow is only found in spring-fed streams with shallow to moderate depths, slow to moderate water velocity over gravel substrates, and in or nearby emergent or submerged vegetation or similar structure from stream bank vegetation that extends into the water. Based on laboratory observations, the species reproduces by releasing eggs that adhere to the gravel substrate. The eggs hatch as early as two weeks after they are deposited, generally during the spring and summer. Clean, flowing water over gravel substrates with nearby vegetation are generally habitat features for the Devils River minnow.



Example of Devils River minnow habitat in Dolan Creek on The Nature Conservancy's Dolan Falls Preserve. Photo by USFWS.

How did the Service gather information from the public regarding critical habitat?

- We published a proposed rule in the *Federal Register* (72 FR 41679) on July 31, 2007, and notified interested parties to comment over a 60-day period. We also received peer review of our proposal from seven independent reviewers.
- We published another notice in the *Federal Register* (73 FR 7237) on February 7, 2008, announcing the draft economic analysis for the proposed designation. At the same time, we reopened the comment period for 30 days and provided notice of a public hearing. We held the public hearing in Del Rio on February 27, 2008. Over 60 people attended.
- The final critical habitat rule includes our responses to all substantive comments provided during the public comment period.

How did the Service decide where to designate critical habitat?

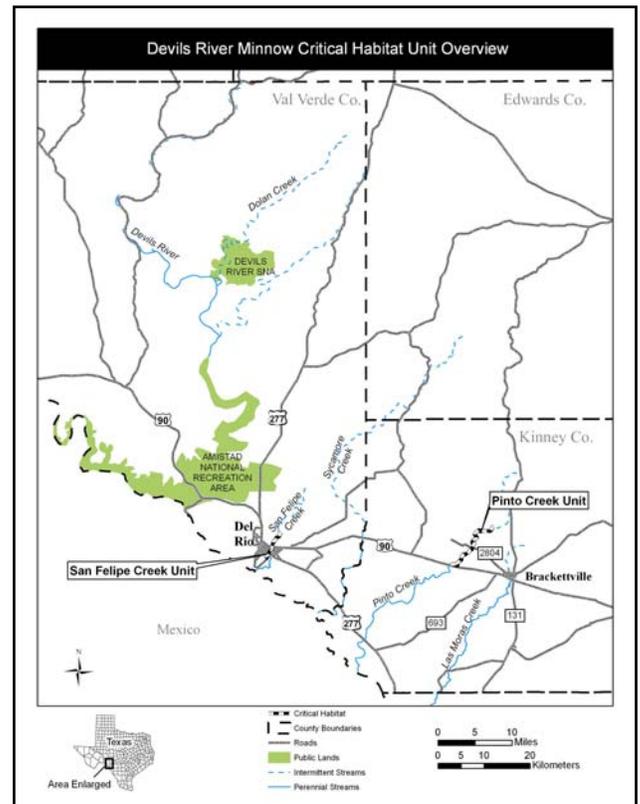
Our final critical habitat designation covers 5.6 stream miles of San Felipe Creek in Val Verde County and 10.9 stream miles of Pinto Creek in Kinney County.

We analyzed the five streams where the Devils River minnow historically occurred in the U.S. We first evaluated Devils River and San Felipe Creek, as they were the streams known to be occupied by the fish when it was listed. We considered stream reaches that contained sufficient essential habitat features and that may require special management considerations or protections. We then considered the other three streams (Sycamore, Pinto and Las Moras creeks) that were not known to be occupied by the species at the time of listing. With these three, we evaluated whether any areas were “essential for the conservation of the species.” Based on the above reviews, we initially proposed critical habitat for parts of the Devils River, San Felipe Creek, and Pinto Creek.

We received several comments that Sycamore and Las Moras creeks should also be considered essential based on the information in the Recovery Plan. We concurred that Sycamore, Pinto and Las Moras creeks were all essential for the conservation of the Devils River minnow.

A second level of review was completed to decide if areas should be excluded. Section 4(b)(2) of the ESA requires that potential critical habitat areas be examined from the viewpoint that excluding an area could prove more beneficial to the conservation of the species. Specifically, we found that the conservation benefits of maintaining positive landowner relationships along the Devils River in Val Verde County was greater than the benefits derived through a critical habitat designation. We also did not include Sycamore and Las Moras creeks in Kinney County in the designation. We felt that the opportunities for future cooperative efforts to restore the fish to those two streams outweighed the benefits of critical habitat designation. However, we found that conservation actions by non-federal partners on San Felipe Creek in Val Verde County and Pinto Creek in Kinney County would continue regardless of a creek’s designation.

Overall, we found few benefits in designating critical habitat for Devils River minnow because most areas are on non-federal lands and have little or no opportunity for interagency consultations (where critical habitat is relevant). We also recognized that maintaining voluntary, non-federal partnerships is necessary for Devils River minnow conservation throughout its range.



How were economic considerations factored in?

We conducted an economic analysis to determine the projected economic impacts associated with designating the proposed critical habitat (including portions of all five streams under consideration), as well as all of the costs related to conservation of the species. Because so few federal actions occur within the range of the Devils River minnow, the overall costs of critical habitat designation were relatively minor. Total incremental economic impacts of critical habitat designation (from all five streams combined) were estimated to total \$47,600 over the next 20 years. Therefore, the estimated economic cost of the designation was low enough that it was not a deciding factor in our final determination for critical habitat.

How will critical habitat affect other ongoing conservation efforts?

The Service and the Texas Parks and Wildlife Department have ongoing partnerships for conservation of the Devils River minnow. We are committed to maintaining and enhancing these partnerships to work together with landowners and local agencies and organizations for opportunities to conserve the Devils River minnow and its habitats.

For information on critical habitat or recovery planning contact: Nathan Allan, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758.
Email: nathan_allan@fws.gov. Phone: 512-490-0057 x237.

For information on the biology of the Devils River minnow contact: Dr. Gary Garrett, Texas Parks and Wildlife Department, Heart of the Hills Fisheries Science Center, 5103 Junction Highway, Mountain Home, Texas 78058.
Email: gary.garrett@tpwd.state.tx.us. Phone: 830-866-3356.

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