

***Questions and Answers
Regarding the Critical Habitat Designation for
Bull Trout in Montana***

What it Means to Montana's Landowners and Recreationists

What action is the Fish and Wildlife Service taking?

The Service revised the 2005 critical habitat designation for bull trout, a threatened species protected under the Endangered Species Act. The range of the bull trout includes Montana, Idaho, Oregon, Washington, and Nevada.

What is critical habitat?

Under the Endangered Species Act, critical habitat is defined as a specific geographic area that is essential for the conservation of a threatened or endangered species and that may require special management considerations or protection. A critical habitat designation does not affect land ownership or set up a preserve or refuge and only applies to situations where federal funding, permitting, or land is involved.

What are the regulatory consequences of a critical habitat designation?

Federal agencies must consult with the Service before undertaking actions with a ***federal nexus*** (for example, projects or activities that require a Federal authorization, permit, license, or funding) that are likely to adversely affect critical habitat. Because the bull trout is already listed as a threatened species under the Endangered Species Act, these consultations have been taking place since 1998. In addition, the 1,058 miles of Montana streams and 31,916 acres of Montana lakes previously designated as bull trout critical habitat in 2005 are, for the most part, included in the revised total under the 2010 designation and have been subject to consultations since 2005. Since consultations have been ongoing, little or no additional regulatory burden is anticipated. There will be no regulatory impact on private landowners taking actions on their lands which do not have a federal connection.

What areas in Montana are designated as critical habitat for bull trout?

In Montana, the Service designated as critical habitat approximately 3,056 stream miles and approximately 221,471 acres of lakes or reservoirs in Deer Lodge, Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Mineral, Missoula, Powell, Ravalli, and Sanders Counties. Of the total designation, approximately 53% is bordered by Federal lands, 41% by private lands, 4% by State lands, and 2% by Tribal lands.

The critical habitat includes only lake and river habitat that is below the bankfull elevation (streams) or high water mark (lakes). The high water mark or bankfull elevation is generally recognized as the point where permanent terrestrial vegetation begins to occur.

Adjacent floodplains and lands above the high water mark are not designated as critical habitat. However, the quality of aquatic habitat within stream channels can be affected by human activities in the floodplains and associated riparian zones. We will continue to consult with Federal agencies on projects occurring within floodplains or riparian zones that may affect bull trout.

The Service designated critical habitat in only those areas that currently have the physical and biological characteristics necessary for the conservation and recovery of bull trout. In Montana, this includes streams where bull trout spawning and rearing or migratory connections presently occur as well as downstream lakes and reservoirs where foraging and overwintering habitat exist.

How does this revised designation differ from the 2005 designation?

The 2005 designation which consisted of 1,058 stream miles and 31,916 acres of lake/reservoir habitat was a series of disconnected patches of stream, lake, and reservoir habitat that occur primarily on State and private land. Under the revised designation, the major change is the inclusion of Federal lands, which will largely connect those patches into a continuous overlay that better represents and defines the extent of important occupied habitat for bull trout.

Do listed species in critical habitat areas receive more protection?

An area designated as critical habitat is not a refuge or special conservation area; and a critical habitat designation only affects activities with Federal involvement. Listed species and their habitat are protected by the Endangered Species Act whether or not they are in an area designated as critical habitat. The Act requires Federal agencies to consult with the Service on actions they carry out, fund, or authorize that may adversely affect that critical habitat.

However, even when there is no critical habitat designation, Federal agencies must consult with the Service whenever they carry out, fund, or authorize any activity that are likely to adversely affect a listed species.

What are the benefits of a critical habitat designation?

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of the species. A critical habitat designation alerts the public as well as land managing agencies to the importance of these areas, but the Endangered Species Act only imposes restrictions on the actions or programs that are authorized, funded, permitted, or carried out by a Federal agency that may adversely affect critical habitat.

How does the critical habitat designation affect landowners in Montana?

As a listed species since 1998, the bull trout is already protected under the Endangered Species Act wherever it occurs. Landowner development or building projects that require Federal authorization, permits, licensing, or funding already require consultation; therefore, a critical habitat designation would have minimal and largely unnoticeable effects on landowners beyond those measures already required to protect the species.

Does the critical habitat designation for bull trout affect use of my personal property?

The designation of critical habitat on privately-owned land does not mean the government wants to acquire or control the land. Activities on private land that do not require Federal permits or funding are not affected by a critical habitat designation. Critical habitat does not require landowners to carry out any special management actions nor does it restrict the use of the land.

If a landowner needs a Federal permit or receives Federal funding for a specific activity, the agency responsible for issuing the permit or providing the funds will consult with the Service to determine how the action may affect the bull trout or its designated critical habitat. We will work with the Federal agency and private landowner to minimize the impacts, if necessary. In many cases, we conduct programmatic consultations for routine activities ahead of time, so that future permit actions which meet certain standards are not delayed or modified. This process may involve minor changes to the proposed project, such as to the timing of the work.

The obligation to protect bull trout and its habitat came when the bull trout was listed as a threatened species under the Endangered Species Act in 1998. The Act prohibits any individual from engaging in unauthorized activities that will actually “take” (defined as to kill, harm, harass, trap, or wound) listed species. A designation of critical habitat does not add additional regulatory considerations.

Will the critical habitat designation prohibit boating, fishing, and other recreational uses of lakes, reservoirs, and streams in Montana?

No. The designation of critical habitat does not restrict or prohibit landowners and other people from accessing rivers, lakes, or reservoir areas for recreational and other activities. However, since the species was listed in 1998, the bull trout has been protected from “take” (defined as to kill, harm, harass, trap, or wound) under the Endangered Species Act. Since that time, the Service and other agencies with land and water management responsibility have attempted to minimize impacts to bull trout habitat, especially in riparian areas and through management of water delivery and hydropower systems.

How will this designation affect lakeshore property owners?

In general, routine management activities by lakeshore property owners are not known to adversely impact bull trout. Protection of clean, cold water is in the best interests of both lakeshore property owners and bull trout. If a property owner is undertaking an activity requiring a Federal permit, we will work with the Federal agency and the landowner to minimize any adverse impacts to bull trout.

How will the critical habitat designation affect reservoir and lake levels on systems regulated by dams?

Water level fluctuations under existing regulatory regimes in reservoirs (for example, Hungry Horse or Koocanusa) or in Flathead Lake are not known to have negatively impacted bull trout. However, unnatural water level manipulation of the associated rivers is a greater concern for bull trout. To provide for normal "river like" flows to critical habitat downstream of the dams, manipulation of reservoir levels may be necessary to provide water for releases at appropriate times of the year. Most consultations regarding activities of this nature have already occurred, through prior actions that were associated with the listing of the species in 1998.

Do Federal agencies have to consult with the Service outside critical habitat areas?

Even when there is not a critical habitat designation, Federal agencies must consult with the Service, if an action that they fund, or authorize, or permit may adversely affect listed species. Since bull trout do occur in some Montana waters that are not designated as critical habitat, consultation on projects in those areas will continue.

How are State lands affected by the critical habitat designation for bull trout?

Non-Federal activities are not affected by critical habitat designation. Designation of critical habitat requires Federal agencies to review activities they fund, authorize, or carry out, to assess the likely effects of the activities on critical habitat. So, projects on State lands that involve a Federal nexus would continue to be subject to consultation. Projects with no Federal nexus would be treated like any other on non-Federal lands and would not be subject to consultation.

Does the Endangered Species Act require an economic analysis as part of a critical habitat proposal?

Yes. The Service must take into account the economic impact of specifying any particular area as critical habitat. The Service may exclude any area from designation if it determines that the benefits of such exclusion outweigh the benefits of designation, unless it determines that failure to designate the area as critical habitat will result in the extinction of the species.

An economic analysis has been prepared and is posted to the Service's web site:
<http://www.fws.gov/pacific/bulltrout>

What activities could adversely affect critical habitat?

Any activities that adversely affect the basic elements of healthy bull trout habitat - especially those that contribute sediment to spawning and rearing streams or that alter the quantity or quality of clean, cold water and the connectivity of migratory corridors - have the potential to adversely affect critical habitat. In addition, activities that enhance or aid further spread certain nonnative fish species, especially other *Salvelinus* species (e.g., brook trout and lake trout) are considered detrimental.

Why did the U. S. Fish and Wildlife revise the 2005 critical habitat designation for bull trout?

The Service revised the critical habitat designation for bull trout to address irregularities in the 2005 designation as identified in a report by the Department of the Interior Inspector General. The report found a former Department of the Interior political appointee had inappropriately influenced the outcome of the final 2005 designation by directing large areas of habitat to be excluded from what was proposed in 2004.

What information was considered when making this revision?

The revision is the result of an extensive review of the Service's previous bull trout critical habitat proposals and designation, as well as comments and new information received during the 2010 public review process. In all, the Service received 1,111 comments from 350 people or organizations across the five states where bull trout occur. Nine public information meetings were held: eight throughout the Service's Pacific Region and one in Missoula Montana. A formal public hearing was held in Boise, Idaho.