

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

What it Means to Montana's Landowners and Recreationists

What action is the Fish and Wildlife Service taking?

The Service is proposing to revise the critical habitat designation for bull trout throughout its range in five Pacific Northwest states.

Why is the U. S. Fish and Wildlife Service proposing to revise the critical habitat designation for the bull trout?

The Service is proposing to revise 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 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 areas in Montana are being proposed for bull trout critical habitat?

In Montana, approximately 3,094 stream miles and approximately 223,762 acres of lakes or reservoirs are being proposed in Deer Lodge, Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Mineral, Missoula, Powell, Ravalli, and Sanders Counties.

All critical habitat being proposed in Montana is currently considered occupied by bull trout. The proposed critical habitat includes only that 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 proposed as critical habitat. However, it should be recognized that the quality of aquatic habitat within stream channels is intrinsically related to the character of the floodplains and associated riparian zones, and human activities that occur outside the river channels can affect the physical and biological features of the aquatic environment. We will continue to consult with Federal agencies on projects occurring within floodplains or riparian zones that may affect bull trout.

The Service is proposing 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 only occupied 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.

What are the regulatory consequences of a critical habitat designation?

Regulatory consequences of a designation of critical habitat are that 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 might destroy or adversely modify critical habitat. Because the bull trout is already listed as a threatened species under the Endangered Species Act, these consultations are already taking place and have been since 1998. Therefore 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.

How does the current proposed rule differ from the 2005 final rule, which is currently in effect?

Under the 2005 bull trout critical habitat final rule, which is currently in effect, a series of disconnected patches of stream, lake, and reservoir habitat that occur primarily on State and private land were designated. The existing critical habitat in Montana totals 1,058 stream miles and 31,916 acres of lake/reservoir habitat. Under this new proposal, the inclusion of Federal lands would largely connect those patches into a continuous overlay that better represents 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 it 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 modify 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 could potentially jeopardize 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 would a 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.

How would a critical habitat designation for bull trout affect use of my personal property? Would this result in any taking of my 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 would 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, programmatic type consultations for routine activities occur up front, so that future permit actions which meet certain standards are not delayed or modified. This 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 bull trout were 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 would not add additional regulatory considerations.

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

No. A designation of critical habitat will 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 affect lakeshore property owners?

In general, routine property management activities of 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?

There is little evidence that existing water level fluctuations in reservoirs (for example, Hungry Horse or Koocanusa) or in Flathead Lake have negatively impacted bull trout. However, water level manipulation of the associated rivers is a greater concern for bull trout, based on available scientific information. To provide for adequate "river like" flows to designated 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.

What does this critical habitat designation mean to Tribes?

Any adverse effects that this critical habitat proposal might have on Tribal trust resources, Tribally-owned fee lands, or the exercise of Tribal rights will be taken into consideration before the final decision is made. Tribes will be contacted on a government-to-government basis for their input into the rule.

How would a designation of critical habitat affect Federal agencies that undertake, permit or fund projects?

Because Federal agencies are already required to consult on actions that may affect bull trout, we anticipate little or no additional regulatory burden will be placed on Federal agencies as a result of a designation of critical habitat.

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 proposed for designation as critical habitat, consultation on projects in those areas would continue.

How would State lands be affected by a 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 consulted on. Projects with no Federal nexus would be treated like any other on non-Federal lands and would be exempt from Section 7 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 available for public comment and is posted to the Service's web site: <http://mountain-prairie.fws.gov/fish/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.

Will the public have an opportunity to comment on the proposed critical habitat designation for bull trout?

Yes - The Service is currently soliciting comments and information from the general public, Federal and state agencies, private landowners, conservation organizations, user groups, Tribal organizations, congressional groups, counties, and municipalities on the proposed critical habitat designation. An in-depth economic analysis of the critical habitat proposal was also prepared and is available for public comment along with this proposed rule.

The public is also invited to attend an informational meeting in Missoula, Montana on February 16, 2010 from 3p.m. to 8 p.m. at Montana Fish, Wildlife and Parks Headquarters, 3201 Spurgin Road. The informational meeting will provide an opportunity for people to learn more about the critical habitat proposal and to submit written comments. Two structured presentations will be given (at 3 p.m. and 6 p.m.) along with ample opportunity for individual interaction. This public meeting will not be a formal public hearing, but there will be a public hearing in Boise, Idaho on February 25, 2010.

Written comments on the proposed critical habitat revision and on the draft economic analysis can also be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

In the box that reads "Enter Keyword or ID," enter the docket number for this proposed rule, which is FWS-R1-ES-2009-0085. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon

that reads “Submit a Comment.” Please ensure that you have found the correct rulemaking before submitting your comment.

- *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS-R1-ES-2009-0085; *Division of Policy and Directives Management*; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

How can I get more information concerning habitat in Montana that is being proposed as critical habitat for bull trout?

For more information specific to proposed habitat in Montana, you may contact Wade Fredenberg at Creston Fish and Wildlife Center at 406-758-6872 or Shawn Sartorius at FWS Montana Field Office in Helena (406-449-5225 ext. 208) or visit our web site at:

<http://mountain-prairie.fws.gov/fish/bulltrout>