



U.S. Fish & Wildlife Service

*Mountain-Prairie Region*

## Bull Trout News and Information

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### *Questions and Answers*

#### *Regarding the Proposed Critical Habitat Designation for Bull Trout*

#### *--What it Means to Montana's Landowners and Recreationists--*

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##### *Why is the U. S. Fish and Wildlife Service proposing critical habitat for the bull trout?*

As the result of a lawsuit settlement, the U.S. Fish and Wildlife Service (Service) is required by propose critical habitat for the Klamath River and Columbia River Distinct Population Segments of bull trout. The Service will make a final decision on the proposed designation based on the best available scientific and economic information as well as public input.

##### *What is critical habitat?*

Under the Endangered Species Act (ESA), 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, authorization, or land is involved.

##### *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, consultations are already taking place. 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 involve a federal nexus.

##### *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 Act only imposes restrictions on the actions or programs that are authorized, funded, permitted, or carried out by a federal agency that may adversely modify critical habitat.

### ***What areas in Montana are being proposed for bull trout critical habitat?***

The Service is proposing a total of 3,319 miles of streams and 217,577 acres of lakes and reservoirs in northwestern Montana.

In total, this is approximately 10% of the total stream miles in western Montana and approximately two-thirds of all currently occupied stream habitat. This includes the entire mainstem of the Kootenai River, Lake Koocanusa, Bull and Sophie Lakes, and several important spawning and rearing streams in the Kootenai drainage. In the Clark Fork River drainage the proposed critical habitat designation includes the entire mainstem of the Clark Fork River, the upper Flathead River and its forks, Jocko River, Blackfoot River, Rock Creek, Bitterroot River, and Saint Regis River as well as Flathead Lake and 37 other lakes and reservoirs in their entirety. It also includes portions of the lower Flathead River, Swan River, Clearwater River, and over 200 smaller bull trout spawning and rearing streams in these drainages.

All critical habitat being proposed in Montana is currently considered occupied by bull trout and includes lake and river habitat 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 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 only those areas that currently have the physical and biological characteristics necessary for the conservation and recovery of bull trout.

### ***How would a critical habitat designation affect landowners in Montana?***

As a listed species, the bull trout is already protected under the ESA 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 not have much effect 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. This may involve minor changes, such as to the timing of the work or the configuration of the project.

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 (Hungry Horse or Koocanusa) or in Flathead Lake have negatively impacted bull trout. However, water level manipulation of the associated rivers are a greater concern for bull trout, based on our available scientific information. To provide for those "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.

***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 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.

***How would a critical habitat designation affect local economic development?***

Approximately 99.9% of all economic projects that require a consultation with the U.S. Fish and Wildlife Service proceed with little or no modification. In most cases, solutions are identified that will avoid harm to the species and habitat and the projects proceed forward.

Because many federal actions already take into account species' habitat needs, there should be little effect beyond that which is already being considered.

***Does the 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.

The Service has contracted with Bioeconomics Associates, an independent consulting firm in Missoula, Montana to prepare the draft economic analysis which is scheduled to be released for public review in March 2003.

***Is an economic analysis required when a species is added to the list of threatened and endangered species?***

No. Under the ESA, a decision to list a species is made solely on the basis of biological data and analysis.

***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.

***Why did the court order the service to propose critical habitat for bull trout?***

Section 4(a)(3) of the Endangered Species Act states that when the Service adds a species to the endangered species list, it must designate critical habitat "to the maximum extent prudent." This section makes it clear that Congress expected the Service to routinely designate critical habitat. History shows that judicial decisions have been based on a strict interpretation of this section of the Act resulting in a requirement that the Service complete critical habitat designations.

***Why wasn't critical habitat designated when the bull trout was listed?***

The Service has given designation of critical habitat the lowest priority in the listing process because it is expensive, time-consuming, and usually offers relatively little conservation benefit. Because of limited financial and staffing resources, the Service has given higher priority to more effective approaches to species recovery.

At the time of the bull trout listing, the Service determined that the recovery plan should be completed first, so that the plan could serve as guidance for the critical habitat designation.

***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, natural conservation organizations, wildlife conservation agencies, Tribal organizations, congressional groups, counties, and municipalities on the proposed critical habitat designation. An in-depth economic analysis of the critical habitat proposal also will be done and made available for public comment before a final decision is made.

The public is also invited to attend a series of public meetings to be held at various locations in Montana where Service employees will provide information and answer questions. The public can also provide official testimony at a public hearing in Polson, Montana on January 7, 2003 from 6 p.m. to 8 p.m. at KwaTaqNuq Resort, 303 US Hwy 93. That meeting will be preceded by an informational session from 1p.m. to -4 p.m. Other public information meetings will be publicized as they are scheduled.

The public can also submit written comments to John Young, Bull Trout Coordinator, U.S. Fish and Wildlife Service, 911 N.E. 11<sup>th</sup> Avenue, Portland, OR 97232. Comments may also be submitted on our Bull Trout Website at <http://pacific.fws.gov/bulltrout> or faxed to John Young at 503-231-6243.

***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 the Service's Creston Fish and Wildlife Center at 406-758-6872 or Anne Vandehey at the Service's Montana Field Office in Helena (406-449-5225 ext. 212) or visit our web site at [MountainPrairie.fws.gov/species/fish/bulltrout](http://MountainPrairie.fws.gov/species/fish/bulltrout).

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Contact: [MountainPrairie@fws.gov](mailto:MountainPrairie@fws.gov)