

Technical Comments Pertaining to Bull Trout and Critical Habitat For the St. Mary River DPS

Presented to the International Joint Commission (IJC), Havre, Montana, July 26, 2004 at the public consultation session to gather information on issues related to the apportionment of water between the United States and Canada from the St. Mary and Milk Rivers.

Introduction

Good evening. My name is Mark Wilson. I am the Supervisor of the U.S. Fish and Wildlife Service office in Helena, Montana. One facet of our mission is to conserve Federally-listed threatened and endangered fish and wildlife. In keeping with that task, I am here this evening to inform you about the bull trout, a fish species listed as threatened in 1999, under the Federal Endangered Species Act of 1973. In addition, I want to inform you about the Fish and Wildlife Service's current proposal to list portions of the St. Mary River system as critical habitat for bull trout.

Bull Trout Life History Overview

The bull trout is a member of the char group of the salmonid family of fishes. They are the largest native trout in the headwaters of the Columbia River Basin of western Montana and were historically known as "salmon trout" to early settlers in the area who valued their large size, sporting attributes and table qualities. Historically, bull trout were also culturally significant to a number of Native American tribes in northwestern North America. The only population of bull trout found in the lower 48 states east of the Continental Divide occurs in Montana's Saint Mary and Belly Rivers, the southern headwaters of Canada's South Saskatchewan River system. Bull trout require very cold, clean water to thrive and their presence is an indication of good water quality and stream health. Bull trout typically inhabit larger rivers and streams, as well as lakes in the northwestern United States, Alaska and Canada. Bull trout are known for their extensive migratory movements. Populations in Flathead Lake, for example, swim as far as 150 miles upstream to spawn. Bull trout can grow quite large, exceeding 36 inches in length and over 30 pounds in weight.

Reasons for Listing Bull Trout

The Fish and Wildlife Service (Service) published a rule listing the coterminous US populations of bull trout as threatened on November 1, 1999. Factors contributing to the decline of bull trout, and leading to the Fish and Wildlife Service's decision to list the fish, include restriction of migratory connectivity due to construction of dams, diversions and other barriers and various land and water management activities that have adversely modified bull trout habitat; including forestry, livestock grazing, agricultural practices, road construction, and mining. Introduction of nonnative fish species are also problematic, especially brook trout which are in the same genus as bull trout and readily hybridize with bull trout, and lake trout (native in the St. Mary but not native west of the Continental Divide) that compete with bull trout and largely replace bull trout in lake habitat. In some cases, angler over-harvest and poaching have also resulted in adverse impacts to the species.

St. Mary/Belly Critical Habitat Proposal

At the time that bull trout was listed as a threatened species, we made the finding that critical habitat was not determinable. However, the Court's ruling on a January 26, 2001, lawsuit brought by the Alliance for the Wild Rockies, Inc. and Friends of the Wild Swan, required the Fish and Wildlife Service to publish a proposal to list bull trout critical habitat for the St. Mary and Belly River drainages. The draft proposal to list bull trout critical habitat for these two streams was published in the June 25th, 2004 Federal Register and includes 88 miles of streams and four lakes, including all of the mainstem Saint Mary River, Saint Mary Lakes, and several major tributaries. I have copies of that proposal with me tonight, and will submit them for the record. The Service is taking public comment on that proposal until August 25, 2004.

Definition of 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, federal authorization, or federal land is involved.

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 for the threatened or endangered species.

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. Because the bull trout is already listed as a threatened species under the Endangered Species Act, consultation discussions and activities related to the St. Mary River component of the Milk River Irrigation Project, and planned activities related to the maintenance and refurbishing of project facilities are already taking place with the U.S. Bureau of Reclamation, the federal agency which, in this case, must comply with the Endangered Species Act. Therefore, little or no additional regulatory burden is anticipated from the Critical Habitat proposal. Furthermore, there will be no regulatory impact on private landowners taking actions on their lands which do not involve a federal nexus.

Implications for Economic Development

The record indicates that more than 99.5% of all economic development 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 go forward. Because most federal actions already take into account habitat needs for threatened and endangered species as part of their overall planning to address all fish, wildlife and environmental issues, there should be little effect beyond that which would normally occur anyway.

Benefits of Critical Habitat

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 and land managing agencies to the importance of these areas, but the Endangered Species Act only imposes restrictions on the actions or programs that may adversely modify critical habitat and are authorized, funded, permitted, or carried out by a federal agency.

Area-Specific Implications of Critical Habitat

The Fish and Wildlife Service's proposed critical habitat designation for bull trout would encompass 88 miles of streams and 6,295 acres of lakes in the Saint Mary and Belly River drainages of northwest Montana. Both streams flow northward into Alberta, Canada where they join the South Saskatchewan River system and eventually flow to Hudson Bay. The Saint Mary – Belly Critical Habitat Unit is unique, as it hosts the only bull trout population in the contiguous United States that is located east of the continental divide. Six bull trout core areas and nine local populations of bull trout are recognized in the St. Mary-Belly River distinct population segment. Details of the proposed rule, along with maps and other information, are contained in the critical habitat proposal. The public has until August 25, 2004, to comment on the proposal and provide additional information. Northwest Economic Associates of Vancouver Washington is currently preparing an economic analysis of the critical habitat proposal and their report will be made available for public comment prior to the Service's decision on whether to list critical habitat for bull trout in the St. Mary and Belly Rivers.

Implications of Critical Habitat for Tribes

The eastern portion of the Saint Mary River watershed lies entirely within the boundaries of the Blackfeet Indian Reservation. On April 5, 2004 a government-to-government meeting was held in Browning, MT between the Blackfeet Tribe and the U.S. Fish and Wildlife Service. The purpose of the meeting was to apprise the Tribe of the bull trout critical habitat proposal, as well as to discuss bull trout recovery efforts. The Tribal representatives present at that meeting, including the Blackfeet Fish and Wildlife Director and a Tribal Council member, participated in information exchange. The Tribal representatives expressed satisfaction with the critical habitat and recovery process to date, but also expressed that both the Tribe and the Service need to take a more direct role in Milk River Irrigation Project issues. 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 Service makes a final decision.

Implications of Bull Trout and Critical Habitat to St. Mary River Water Planning

The trans-basin diversion of water from the Saint Mary River, through the operations of the U.S. Bureau of Reclamation's Milk River Project, was described in the 2003 Draft Recovery Plan for Bull Trout as the most significant threat to bull trout within the Saint Mary and Belly River Critical Habitat Unit. Realizing the implications of their project operations, for the past 7 years the Bureau of Reclamation has funded biological and physical studies of habitat, instream flow, entrainment of bull trout in the canal, and fish passage needs.

If a federal project is developed to upgrade or enhance the existing Milk River project that diverts water from the St. Mary River, the Bureau of Reclamation will need to consult with the U.S. Fish and Wildlife Service. One purpose of the consultation will be to cooperate in designing a project that does not jeopardize the continued existence of the bull trout in the St. Mary River. Again, we emphasize that this action would be necessary with or without the pending designation of critical habitat because the bull trout is a listed species under the federal Endangered Species Act and occurs in the project area. Any consultation that takes place will be made more difficult if an increased amount of water is planned for diversion from the St. Mary River into the Milk River basin.

We are aware that additional water diversions and developments that may threaten bull trout are also being planned in Canada, and will require continuing close coordination with Canadian authorities. Our studies have clearly shown that the St. Mary River bull trout population routinely migrates across the international border, between spawning and rearing habitat in Montana and feeding and over-wintering habitat in Canada. When considering the further allocation, appropriation and distribution of St. Mary River water, we ask the IJC to consider fish and wildlife conservation as part of the international equation. In particular, we ask that the threatened status of the bull trout be given consideration, as this species is important to conservation and Native American Tribal interests of both Canada and the United States.

Thank you.

NEWS RELEASE
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Critical Habitat Proposed for the Saint Mary and Belly Rivers in Northwest Montana

Proposed rule will publish in the Federal Register on June 25

Draft *Federal Register* Notice

Questions and Answers

Map

The U. S. Fish and Wildlife Service is proposing critical habitat for bull trout that encompasses 88 miles of streams and 6,295 acres of lakes in the Saint Mary River and Belly River drainages in northwest Montana. This designation encompasses the Saint Mary River–Belly River population of the species.

Bull trout (*Salvelinus confluentus*) was listed as a threatened species under the Federal Endangered Species Act in 1999. The Service's action is in response to a lawsuit filed by the Alliance for the Wild Rockies and Friends of the Wild Swan.

Approximately one-half of the Saint Mary River drainage and the entire headwaters of the Belly River watershed are in Glacier National Park. Both streams flow northward into Alberta, Canada where they join the South Saskatchewan River system and eventually flow to Hudson Bay. The eastern (downstream) reaches of the Saint Mary River watershed lie entirely within the boundaries of the Blackfeet Indian Reservation. Details of the critical habitat proposal will be included in the maps and documents that are published along with the rule in the *Federal Register*.

When considering which areas to include in the proposed critical habitat rule, the Service required that areas contain one or both of the following: (1) spawning, rearing, foraging, or over-wintering habitat to support essential existing bull trout local populations; (2) movement corridors necessary for maintaining essential migratory life-history forms of the species.

"The Service is proposing only those specific areas determined to be essential to the bull trout's conservation, based on the best scientific information currently available," said Ralph Morgenweck, the Service's Director for the Mountain-Prairie Region. "To ensure that the final critical habitat designation is as accurate as possible we encourage people to review our proposal and provide comments and any additional information they believe is relevant. The Service will consider all available information before making a final decision."

The public will have until August 25, 2004, to comment on the proposal and provide comments and additional information. An economic analysis of the critical habitat proposal will be prepared and made available for public comment before a final decision is made. The Service may exclude areas from the final description if the benefit of exclusion outweighs the benefit of inclusion. Over the next few months, the Service will be considering whether all the areas proposed for designation are essential to the conservation of the species.

Critical habitat is a term in the Endangered Species Act. It identifies geographic areas that contain features essential for the conservation of a threatened or endangered species and may require special management considerations. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands.

In 30 years of implementing the Endangered Species Act, the Service has found that the designation of critical habitat provides little additional protection to most listed species, while preventing the Service from using scarce conservation resources for activities with greater conservation benefits.

In almost all cases, recovery of listed species will come through voluntary cooperative partnerships, not regulatory measures such as critical habitat. Habitat is also protected through cooperative measures under the Endangered Species Act including Habitat Conservation Plans, Safe Harbor Agreements, Candidate Conservation Agreements and state programs. In addition, voluntary partnership programs such as the Service's Private Stewardship Grants and Partners for Fish and Wildlife program also restore habitat. Habitat for endangered species is provided on many national wildlife refuges, managed by the U.S. Fish and Wildlife Service and state wildlife management areas.

In January 2002, the Service and the Alliance for the Wild Rockies and Friends of the Wild Swan reached a court settlement establishing a schedule for the proposal of critical habitat for bull trout. The two environmental groups sued the Service for not designating critical habitat after listing bull trout in 1999 as threatened throughout its range in the lower 48 states. At the time, the Service had been unable to complete critical habitat determinations because of budget constraints.

In accordance with the court settlement, the Service also proposed to designate critical habitat for the Coastal-Puget Sound (Washington) population of bull trout and the Jarbidge River (Nevada) populations of bull trout. For the Coastal-Puget Sound population, the Service proposed 2,290 miles of streams, 52,540 acres of lakes and 985 miles of marine habitat that parallels 985 miles of shoreline in western Washington as bull trout critical habitat. For the Jarbidge River population, 131 miles of streams in Idaho and Nevada are proposed as critical habitat for bull trout are under consideration as critical habitat for bull trout.

In November 2001, also in accordance with the court settlement, the Service proposed to designate 18,175 miles of rivers and streams and 498,782 acres of lakes and reservoirs in Oregon, Washington, Idaho and Montana as critical habitat for the Columbia River population of bull trout. The Service also proposed at that time to designate 396 miles of streams and 33,939 acres of lakes and marshes in Oregon as critical habitat for the Klamath River Basin population of bull trout. Those proposals are expected to be finalized in September 2004.

Bull trout have declined due to habitat degradation and fragmentation, blockage of migratory corridors, poor water quality, past fisheries management, and the introduction of non-native species such as brown, lake, and brook trout. While bull trout occur over a large area, many of the populations are small and isolated from each other, making them more susceptible to local extinctions.

Bull trout are members of the char subgroup of the salmon family. They require very cold, clean water to thrive and are excellent indicators of water quality and stream health. Char have light-colored spots on a darker background, reversing the dark-spots-on-light-background pattern of trout and salmon. Bull trout have a large, flattened head and pale-yellow to crimson body spots on an olive green to brown background. They lack teeth in the roof of the mouth.

Some bull trout populations are migratory, spending portions of their life cycle in larger rivers, lakes or marine environments before returning to smaller streams to spawn, while others complete their entire life cycle in the same stream. They can grow to more than 20 pounds in lake environments and live up to 12 years. Under exceptional circumstances, they can live more than 20 years.

The critical habitat proposal for the St. Mary-Belly River, Coastal-Puget Sound and Jarbidge River populations of bull trout will be published in the *Federal Register* on June 25, 2004 initiating a 60-day comment period that ends on August 25, 2004. Comments may be sent to John Young, Bull Trout Coordinator, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, OR 97232. Comments may also be submitted on our Bull Trout Website at or faxed to r1bulltroutch@r1.fws.gov John Young at 503-231-6243.

The U.S. Fish and Wildlife Service is the principal Federal agency responsible for conserving, protecting and enhancing fish, wildlife and plants and their habitats for the continuing benefit of the American people. The Service manages the 95-million-acre National Wildlife Refuge System, which encompasses 544 national wildlife refuges, thousands of small wetlands and other special management areas. It also operates 69 national fish hatcheries, 64 fishery resources offices and 81 ecological services field stations. The agency enforces federal wildlife laws, administers the Endangered Species Act, manages migratory bird populations, restores nationally significant fisheries, conserves and restores wildlife habitat such as wetlands, and helps foreign and Native American tribal governments with their conservation efforts. It also oversees the Federal Assistance program, which distributes hundreds of millions of dollars in excise taxes on fishing and hunting equipment to state fish and wildlife agencies.

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