

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AH06

**Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Kootenai River Population of the White Sturgeon****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule; availability of supplementary information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended, for the Kootenai River population of the white sturgeon (*Acipenser transmontanus*). We are proposing as critical habitat a total of 18 river kilometers (11.2 river miles) of the Kootenai River in Idaho. If this proposed action is finalized, Federal agencies proposing actions that may affect the area designated as critical habitat must consult with us on the effects of the proposed actions on critical habitat, pursuant to section 7(a)(2) of the Act.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the proposed designation. We may revise this proposal to incorporate or address new information received during the comment period.

**DATES:** We will consider all comments on the proposed rule received from interested parties by February 20, 2001. We will hold a public hearing in Bonners Ferry, Idaho, on Thursday, January 18, 2001, from 6:00 p.m. until 8:00 p.m.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office, 11103 East Montgomery, Spokane, Washington 99206.

You may send comments by electronic mail (e-mail) to: FW1SPOK\_crithab\_stur@R1.fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

You may hand-deliver written comments to our Upper Columbia Fish and Wildlife Office, 11103 East Montgomery, Spokane, Washington.

You may provide comments at the public hearing on January 18, 2001, at the Bonners Ferry Kootenai River Inn, 7160 Plaza Street, Bonners Ferry, Idaho.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at our Upper Columbia Fish and Wildlife Office. The draft economic analysis will be available during the public comment period. We will provide notice of its availability in local newspapers as well as the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Bob Hallock, Upper Columbia River Fish and Wildlife Office, at the above address; telephone 509-891-6839, facsimile 509-891-6748.

**SUPPLEMENTARY INFORMATION:****Background**

The Kootenai River population of the white sturgeon (*Acipenser transmontanus*) is 1 of 18 land-locked populations of white sturgeon known to occur in western North America. The Kootenai River originates in Kootenay National Park in British Columbia, Canada, then flows south into Montana, northwest into Idaho, then north through the Kootenai Valley back into British Columbia, where it flows through Kootenay Lake and joins the Columbia River at Castlegar, British Columbia. Kootenai River white sturgeon occur in Idaho, Montana, and British Columbia, and are restricted to approximately 270 river kilometers (km) (168 river miles (mi)) of the Kootenai River extending from Kootenai Falls, Montana, located 50 river km (31 mi) below Libby Dam, Montana, downstream through Kootenay Lake to Corra Lynn Dam at the outflow from Kootenay Lake in British Columbia.

Bonnington Falls, a natural barrier downstream of Kootenay Lake, has isolated the Kootenai River population of white sturgeon since the last glacial advance roughly 10,000 years ago (Apperson 1992). Approximately 45 percent of the species' range, based on river kilometers, is located within British Columbia. Apperson and Anders (1991) found that at least 36 percent of the sturgeon tracked during 1989 overwintered in Kootenay Lake. They further believe that sturgeon do not commonly occur upstream of Bonners Ferry, Idaho, which includes most of the Kootenai River watershed in the United States.

The Kootenai River population of white sturgeon is threatened by factors including hydropower operations, flood

control operations, poor recruitment, loss of habitat, and, possibly, contaminants (water quality impacts). For more detailed discussions of the ecology of the Kootenai River population of white sturgeon, see the September 6, 1994, **Federal Register** notice listing this population as endangered (59 FR 45989), and the September 30, 1999, "Recovery Plan for the White Sturgeon (*Acipenser transmontanus*): Kootenai River Population" (USFWS 1999). The final rule and the recovery plan incorporate the best available biological information on Kootenai River white sturgeon.

In the September 6, 1994, final rule listing the Kootenai River population of white sturgeon as endangered, we, the U.S. Fish and Wildlife Service (Service), stated that the designation of critical habitat was not determinable. We believed there was insufficient biological information to accurately delineate the habitat essential to the species, and, in the absence of this delineation, the required analysis of impacts could not be completed accurately.

**In the final listing rule we stated the following:**

"\* \* \* the Service identified the lack of natural flows in the Kootenai River below Libby Dam as the primary threat to this white sturgeon population. Other than a need for basic understanding of stream flow conditions necessary for providing spawning and early rearing habitat during the normal May through July sturgeon spawning season, the life history requirements for other life stages of white sturgeon are not sufficiently well known to permit identification of an area in the Kootenai River basin as designated critical habitat. Additionally, many Kootenai River white sturgeon migrate freely throughout the Kootenai River system and spend part of their life in Kootenay Lake in British Columbia, Canada. Critical habitat designation is not allowed outside the United States since only Federal agencies are under the jurisdiction of section 7 of the Endangered Species Act (Act).

"The Service is still gathering and reviewing information on the life history needs of the Kootenai River population of the white sturgeon and the potential economic consequences of designation of critical habitat. Additional biological information that may be useful in designating critical habitat for Kootenai River white sturgeon may include identification of specific river areas necessary for spawning, reproduction, and rearing of offspring; and water quality, temperature, and velocity in the Kootenai River required to meet some life history need (e.g., spawning and early rearing)."

**Previous Federal Action**

Federal action on the Kootenai River population of white sturgeon began on

November 21, 1991, when we included this population as a candidate species in the Animal Notice of Review (56 FR 58804), based on field studies conducted by the Idaho Department of Fish and Game. Candidate species are taxa for which the Service has on file enough substantial information on biological vulnerability and threats to propose them for endangered or threatened status. On June 11, 1992, the Service received a petition from the Idaho Conservation League, North Idaho Audubon, and the Boundary Backpackers to list the Kootenai River population of white sturgeon as threatened or endangered under the Act. The petition cited the lack of natural flows affecting juvenile recruitment as the primary threat to the continued existence of the wild sturgeon population. Pursuant to section 4(b)(A) of the Act, the Service determined that the petition presented substantial information indicating that the requested action may be warranted, and published this finding in the **Federal Register** on April 14, 1993 (58 FR 19401). A proposed rule to list the Kootenai River population of white sturgeon as endangered was published on July 7, 1993 (58 FR 36379), with a final rule following on September 6, 1994 (59 FR 45989).

Section 4(a)(3) of the Act and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)) state that designation of critical habitat is not determinable if information sufficient to perform required analysis of the impacts of designation are not sufficiently well known to permit identification of an area as critical habitat. Our regulations (50 CFR 424.12(a)(1)) also state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

At the time of listing, we found critical habitat not determinable because the necessary information to perform the required impacts analyses of such a designation was lacking. In addition, specific areas of critical habitat could not be identified without additional information on the life history and habitat requirements of the sturgeon. Biological information needs then

identified by the Service included information concerning specific river reaches or areas necessary for spawning, reproduction, and rearing of offspring; and water quality, temperature, and velocity required to meet the needs of various life history stages (e.g., spawning, early rearing, and juvenile migration).

We published a final recovery plan on September 30, 1999 (USFWS 1999). The recovery strategy identified in this recovery plan emphasized the importance of reestablishing successful, natural spawning of Kootenai River white sturgeon, minimizing the loss of genetic variability, and successfully mitigating the biological and physical habitat changes caused by human development within the Kootenai River basin.

#### Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as “(i) the specific areas within the geographic area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for conservation of the species”. The term “conservation” as defined in section 3(3) of the Act means “to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary” (*i.e.*, the species is recovered and removed from the list of endangered and threatened species). Section 3 of the Act further states that, except where determined by the Secretary of the Interior, critical habitat shall not include the entire geographic area which can be occupied by threatened or endangered species. In addition, critical habitat shall not be designated in foreign countries (50 CFR 424.12 (h)).

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or

adverse modification as “\* \* \* the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be “essential to the conservation of the species.” Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short, court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what we know, at the time of designation, to be essential to the conservation of the species.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that the "Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

The Service's Policy on Information Standards Under the Act, published in the **Federal Register** on July 1, 1994 (Vol. 59, p. 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (*i.e.*, "gray literature").

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations *do not* signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best information available at the time of the designation will not control the

direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

As part of a court decision of August 30, 2000, in *Center for Biological Diversity v. Bruce Babbitt, Secretary of the Department of the Interior, and the United States Fish and Wildlife Service*, C99-3202 SC, we have entered into a court approved settlement agreement to submit a proposed rule for designation of critical habitat for the Kootenai River population of white sturgeon to the **Federal Register** by December 15, 2000.

Although the Service, in cooperation with other agencies, has gained important life history information during the 6 years since listing the species, considerable uncertainty remains in accurately delineating critical habitat for the Kootenai River population of white sturgeon. However, we rely on the best currently available information, including our 1999 recovery plan for the species, to designate critical habitat; we will now summarize the recent findings and remaining areas of uncertainty. Information being gathered now and in the future may require substantially amending this rule, the associated analyses of impacts, and any recommendations under section 7 of the Act.

In 1997, Paragamian *et al.* (1997) estimated that there may be 1,468 adult sturgeon remaining in the Kootenai River population, with a male-to-female ratio of 1.7:1, or about 539 females. With 7 percent of these females reproductively active in a given year (Apperson 1992), and an assumed average of 100,000 eggs per female, there may be as many as 3.8 million eggs released on average annually. To increase the probability of survival of fertilized eggs, the U.S. Army Corps of Engineers has provided various augmentation flows from Libby Dam. However, during the last 10 years of intensive monitoring, only one hatching fry has been found, and no free swimming larvae or young-of-the-year have been captured. To date, only 17 juvenile sturgeon have been captured that can be associated with the experimental augmentation flows between 1991 and 1997. Because of sampling gear limitations, the success of sturgeon recruitment during the 1998 and 1999 augmentation flows cannot be assessed at this time. Considering the extent of occupied habitat in the United States and Canada, we believe that we have not yet accounted for other naturally recruited sturgeon from these

same year classes that are present in the system. However, because of the high incidence of recapture of marked juvenile sturgeon in this system, the number of additional juvenile sturgeon is believed to be small.

There is evidence that very high levels of mortality of sturgeon eggs and sac fry are occurring annually. While we anticipate high levels of mortality at early life stages of a highly fecund species such as the Kootenai River white sturgeon, during 10 years of intensive monitoring we have never captured a free swimming larvae or young-of-the-year sturgeon, and have captured a total of only 17 juveniles. Thus, exceptionally high levels of mortality are likely occurring at the sites now being used for spawning, egg incubation, and yolk sac fry development.

White sturgeon are broadcast spawners that release adhesive eggs which then sink to the river bottom (Stockley 1981, Brannon *et al.* 1984). In the lower Columbia River, most sturgeon eggs are sheltered by attaching themselves and incubating on rocky substrate near the spawning site (Parsley *et al.* 1993). Rocky substrates also provide cover for yolk sac larvae before they become free swimming. However, in the Kootenai River, most of the current sturgeon spawning sites are over sandy substrate, and most eggs are found drifting along the river bottom covered with fine sand particles (Paragamian *et al.* in press).

When significant sturgeon recruitment last occurred in 1974, the Kootenai River recorded the preferred spawning temperatures, near 10 degrees Celsius (50 degrees Fahrenheit); base flows of 40,000 cubic feet per second (cfs) (1,120 cubic meters per second (cms)); peak flows of 55,000 cfs (1,540 cms); and a water surface elevation at Bonners Ferry of 1,765.5 feet (538.5 meters) above sea level. We do not know the locations or the substrate composition of the spawning sites selected by adults under these 1974 conditions. The more extreme flow events common in the unregulated Kootenai River prior to impoundment may have caused gravel to be exposed within the spawning area. Rocky substrates are needed for attachment, and provide shelter for incubating eggs and cover for yolk sac larvae in inter-gravel spaces. For example, the flood of record at Bonners Ferry, Idaho, was estimated to have been 157,000 (4,396 cubic meters per second), and peak flows in the range of 70,000 cubic feet per second (1,960 cubic meters per second) were not unusual prior to construction of Libby Dam, which

became fully operational in 1975. These flow, water surface elevation, and temperature conditions have not all been replicated at one time since 1974.

In the Kootenai River, spawning has not resulted in significant levels of recruitment, and it is unclear whether this is due to: 1) the current spawning site selection is a behavioral response to changed river velocities and depths from the operations of Libby Dam, which may be causing the sturgeon to spawn primarily at new sites below Bonners Ferry with unsuitable sandy riverbed substrates; or 2) spawning sites have remained unchanged, but the operations of Libby Dam have reduced peak flood flows and associated stream energy, which may be causing rocky substrate, otherwise suitable for egg incubation and sac fry development, to be covered with sand.

Suitable water and sediment quality are necessary for viability of early life stages of Kootenai River white sturgeon, including both incubating eggs and yolk sac larvae, and normal breeding behavior. In 1992, Apperson documented elevated levels of copper in both Kootenai River sediments and sturgeon oocytes and found low levels of the PCB Arochlor 1260 in river water. Because offspring of wild sturgeon captured and spawned in the hatchery appeared to survive and develop normally on filtered hatchery water, the question regarding quality of the river habitat remains. Subsequent studies of biota and survival (egg and larvae) has continued the concern as to the role water and sediment quality is playing in the lack of recruitment to the KRWS population. Although most sturgeon eggs released in the Kootenai River are not believed to live long enough to begin feeding, various constituents nutrients trapped in Lake Koocanusa, above Libby Dam, including nutrients, nitrogen and phosphorus, may affect the food base of those larvae that do hatch. The operations of Libby Dam can effect water temperatures in the spawning reach, especially during intermediate and low water years. Water temperature may effect spawning behavior. Optimum spawning temperature is near 10 degrees Celsius, and sudden drops of 2 to 3 degrees Celsius cause males to become reproductively inactive. Water and sediment quality and the effects of contaminants on sturgeon recruitment remain an area of concern and uncertainty.

Researchers with the U.S. Geological Survey (USGS) are beginning a study of possible changes in riverbed substrate and water depths in the Kootenai River from Kootenay Lake, British Columbia, to above Bonners Ferry, Idaho, which

may have resulted from the last 26 years of operations at Libby Dam. Further, there is an ongoing study involving the releases of large numbers (over 100,000) of four-day-old, hatchery-reared, yolk sac larvae over both sandy and rocky substrates in the Kootenai River, which is also intended to address uncertainties involving the sturgeon population's riverbed substrate needs.

#### Primary Constituent Elements

Regulations in 50 CFR 424.12 provide that in identifying areas as critical habitat within the geographic area occupied by the species, we consider those physical and biological features which are essential to conservation of the species, and that may require special management considerations or protection. These physical and biological features, as outlined in 50 CFR 424.12, include but are not limited to the following:

- Space for individual and population growth, and for normal behavior;
- Food, water, or other nutritional or physiological requirements;
- Cover or shelter;
- Sites for breeding, reproduction, or rearing of offspring; and
- Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

The important habitat features that provide for breeding and rearing of offspring through the free-swimming larvae stage include: water temperatures, depths, and flows sufficient to trigger sturgeon breeding, and water volumes and substrates sufficient to cover and shelter incubating eggs and yolk sac larvae.

We have determined the primary constituent elements of critical habitat for the Kootenai River population of white sturgeon from studies of their habitats, life history, and population biology described and referenced above. As noted, Kootenai River flows may affect the sturgeon in two ways and, based on the best available information, we recognize each for identification of the primary constituent elements. Flows may affect normal breeding behavior, including site selection, and/or alter the riverbed substrate, which may affect survival of eggs and cover for yolk sac larvae. Flows may also affect the efficiency of predators to locate eggs and sac fry larvae. The four primary constituent elements of Kootenai River sturgeon critical habitat are:

1. A flow regime that creates a hydrologic profile characterized by flow magnitude, timing, and velocity, and

water depth and quality (including temperatures) necessary for normal behavior involving breeding site selection, breeding and fertilization, and cover for egg incubation and yolk sac fry development.

2. A flow regime that creates a hydrologic profile characterized by water of sufficient duration and magnitude to restore or maintain riverbed substrate necessary for attachment and shelter of incubating eggs and cover for yolk sac fry in inter-gravel spaces.

3. A flow regime that creates a hydrologic profile characterized by flow magnitude, time, velocity, depth, and duration necessary for the normal behavior of adult and juvenile sturgeon.

4. Water and sediment quality necessary for normal behavior, including breeding behavior, and viability of all life stages of the Kootenai River white sturgeon, including incubating eggs and yolk sac larvae.

The area we are proposing for designation as critical habitat for the Kootenai River population of white sturgeon provides the above constituent elements and requires special management considerations or protection to ensure their contribution to the species' conservation.

#### Criteria Used to Identify Critical Habitat

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat.

In an effort to map areas essential to the conservation of the species, we used data on known Kootenai River sturgeon spawning and early life stage rearing areas. In the lower Columbia River, where white sturgeon continue to spawn successfully, egg incubation sites and yolk sac fry development sites are at or slightly downstream of spawning sites (Parsley *et al.* 1993). In the Kootenai River, eggs at all stages of development and one hatching yolk sac fry have been found at or downstream of the spawning sites. Since 1991, sturgeon eggs have been recovered in the Kootenai River between river kilometer 228 (river mile 141.4), below Shorty's Island (Paramagian *et al.* 1995), and river kilometer 246 (river mile 152.6), above the Highway 95 bridge at Bonner's Ferry, Idaho (Paragamian *et al.* in press). Although many of the eggs

found were unattached and drifting along the river bottom, Paragamian *et al.* (in press) support the assumption that the Kootenai River sturgeon egg collection sites are in the vicinity of the spawning sites. Further, since no other spawning sites have been identified in 10 years of monitoring, we believe these are the same sites where at least some successful egg incubation and yolk sac fry development has occurred, as evidenced by the 17 wild juveniles captured and aged to year classes within this same 10 year study period.

Existing structures within the proposed critical habitat boundaries, such as highway and railroad bridges, do not contain one or more of the primary constituent elements, and therefore are not included in this critical habitat designation.

### Proposed Critical Habitat Designation

We propose the following as critical habitat for the Kootenai River population of white sturgeon: that portion of the Kootenai River within Boundary County, Idaho, from river kilometer 228 (river mile 141.4) to river kilometer 246 (river mile 152.6). The lateral extent of proposed critical habitat is up to the ordinary high water line (as defined by the Corps in 33 CFR Part 329.11) on each bank of the Kootenai River within the 18 kilometer (11.2 mile) reach.

### Land Ownership

The reach of the Kootenai River proposed as critical habitat lies within the ordinary high water lines as defined for regulatory purposes (33 CFR part 329.11). Upon statehood in 1890, the State of Idaho claimed ownership of the bed of the Kootenai River up to ordinary high water lines. Numerous private-, public-, and tribally-owned parcels abut this State-owned riverbed, including lands managed by the Service at the Kootenai National Wildlife Refuge and trust lands managed by the Kootenai Tribe of Idaho.

Based upon early U.S. Forest Service (USFS) maps from 1916, USGS maps from 1928, and the confining effects of the Corps' levees constructed in 1961, it appears that within this reach of the Kootenai River the ordinary high water lines originally delineating State lands are essentially unchanged. Because of the scales of the available maps, it is possible that minor river channel changes have occurred since statehood, and that some small portions of private lands now occur within the ordinary high water lines. However, we understand that most of the lands where these changes may have occurred lie within the flowage and seepage

easements purchased by the Federal government under Public Law 93-251, Section 56, passed in 1974. In addition, when the river meanders, the "government lot" or parcel owners abutting State-owned riverbed may request parcel boundary adjustments to the new ordinary high water line, and corresponding adjustments in taxable acreage. Although the elevations of ordinary high water have been lowered by the operations of Libby Dam since 1974, the lateral extent of the State-owned riverbed along the steep levees may be closely approximated today through the Corps' definition of ordinary high water line cited above. Thus, we believe the lands proposed here as critical habitat are within lands owned by the State of Idaho.

### Effect of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for both the survival and recovery of the species. Individuals, organizations, State, Tribal, and local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding. Thus, activities on Federal lands that may affect the Kootenai River white sturgeon or its critical habitat, if designated, will require section 7 consultation. Actions on private or State lands receiving funding or requiring a permit from a Federal agency also will be subject to the section 7 consultation process if the action may affect the species or its critical habitat, if designated. Federal actions not affecting the species or its critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation.

Federal agencies are required to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its proposed or designated critical habitat. Regulations implementing these interagency cooperation provisions of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species, or to result in destruction or adverse modification of proposed critical habitat. A section 7 conference on

proposed critical habitat results in a report that may provide conservation recommendations to assist the action agency in eliminating or minimizing adverse effects to the proposed critical habitat that may be caused by the proposed agency action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a conference opinion as to whether the proposed action is likely to destroy or adversely modify proposed critical habitat. This conference opinion is prepared as if critical habitat were designated as final, in accordance with 50 CFR 402.13.

If we finalize this proposed critical habitat designation, section 7(a)(1) will require Federal agencies to enter into consultation with us on agency actions that may affect critical habitat. Consultations on agency actions that will likely adversely affect critical habitat will result in issuance of a biological opinion. We may adopt a formal conference report as the biological opinion if no significant new information or changes in the action alter the content or the opinion (see 50 CFR 402.10(d)).

If we find a proposed agency action is likely to destroy or adversely modify the critical habitat, our biological opinion may include reasonable and prudent alternatives to the action that are designed to avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that we believe would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative vary accordingly.

Regulations at 50 CFR 402.16 also require Federal agencies to reinstate consultation in instances where we have already reviewed an action for its effects on listed species if critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinstatement of

conferencing with us on actions likely to destroy or adversely modify proposed critical habitat, or consultation if their actions may affect designated critical habitat.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Kootenai River population of white sturgeon is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. A wide range of Federal activities may include land and water management actions of Federal agencies (e.g., U.S. Army Corps of Engineers (COE), Bonneville Power Administration, Natural Resources Conservation Service, U.S. Forest Service, U.S. Environmental Protection Agency (EPA), Bureau of Indian Affairs, and U.S. Fish and Wildlife Service), and related or similar actions of other federally regulated projects (e.g., road and bridge construction or maintenance activities by the Federal Highway Administration; dredge and fill projects, sand and gravel mining, bank stabilization activities conducted by the COE; and National Pollutant Discharge Elimination System permits authorized by the EPA). These activities may destroy or adversely modify critical habitat if they alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the Kootenai River population of white sturgeon is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Altering the flow regime within the proposed critical habitat in ways that prevent the necessary conditions for breeding and fertilization. For example, flood control and hydroelectric operations and water release configuration limitations of Libby Dam may destroy or adversely modify proposed critical habitat by altering habitat for normal breeding behavior, shelter for incubating eggs, and cover for yolk sac larvae.

(2) Altering the flow regime within the proposed critical habitat in ways that prevent the necessary conditions for incubating eggs and developing yolk

sac larvae. Flood control and hydroelectric operations combined with the water release configuration limitations of Libby Dam may destroy or adversely modify proposed critical habitat necessary for incubation of eggs and development of yolk sac larvae by altering riverbed substrate composition, through reduced bed load transport energy and unnatural distribution of stream bed sand and silt. Land management activities accelerating sediment releases from watersheds entering the Kootenai River below Libby Dam, and above or within proposed critical habitat, may also destroy or adversely modify this proposed critical habitat through increased deposition of sand and silt in the stream bed. Other actions, including channelization, levee reconstruction, stream bank stabilization, gravel removal, and road and bridge construction, could also have this result.

(3) Altering water chemistry. Possible actions include the release of chemicals or biological pollutants into the waters passing through the proposed critical habitat from point sources or by dispersed releases (non-point sources).

These examples indicate the types of activities that will require consultation in the future and, therefore, that may be affected by critical habitat designation. These kinds of activities would also generally require consultation when they affect a listed species, irrespective of impacts to critical habitat. As discussed above, the standards for "jeopardy" and "adverse modification" are essentially identical. As a result, we do not expect that designation of critical habitat in this area, occupied by the Kootenai River population of white sturgeon, will result in a regulatory burden substantially above that already in place, due to the presence of the already-listed species.

Federal actions that are found likely to destroy or adversely modify critical habitat (or to jeopardize the continued existence of the species) may often be modified, through development of reasonable and prudent alternatives, in ways that will remove the likelihood of destruction or adverse modification of critical habitat (or jeopardy). Project modifications may include, but are not limited to, adjustment in timing of projects to avoid sensitive periods for the species and its habitat; minimization of work and vehicle use in the wetted channel; avoidance of pollution; use of alternative material sources; sediment barriers; and use of best land management and construction practices.

If you have questions regarding whether specific activities will likely constitute destruction or adverse

modification of critical habitat, contact the Field Supervisor, Upper Columbia River Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the Division of Endangered Species, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (telephone 503-231-6158; facsimile 503-231-6243).

#### Economic Analysis

Section 4(b)(2) of the Act requires we designate critical habitat on the basis of the best available scientific and commercial information available and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. The economic impacts to be considered in critical habitat designation are the incremental effects of the designation over and above the economic impacts attributable to listing of the species.

We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying those areas as critical habitat; however, we cannot exclude areas from critical habitat when the exclusion will result in extinction of the species. A draft economic analysis will be made available for public review and comment (see **ADDRESSES** section). The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers. We will utilize the economic analysis, and take into consideration all comments and information submitted during the public hearing and comment period, to determine whether areas should be excluded from final critical habitat designation.

American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we understand that federally recognized Tribes must be related to on a government-to-government basis. We support tribal measures that preclude the need for conservation regulations, and we provide technical assistance to tribes who wish assistance in developing and expanding tribal programs for the management of healthy ecosystems so that Federal conservation regulations, such as designation of critical habitat, on tribal lands are unnecessary.

The Presidential Memorandum of April 29, 1994, also requires us to consult with the tribes on matters that affect them, and section 4(b)(2) of the Act requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including the tribes. Recognizing a government-to-government relationship with tribes and our Federal trust responsibilities, we consulted representatives of the Kootenai Tribe of Idaho with regard to trust resources, tribal lands, or tribal rights that might be affected by the designation of critical habitat.

In our deliberations over this critical habitat proposal, we identified possible effects to the Kootenai Tribe of Idaho or tribal resources. These include: (1) effects of designation of critical habitat on State lands adjacent to tribal lands; and (2) the effects on tribal resources, such as water deliveries and aquatic resources such as the Kootenai River white sturgeon. The Kootenai Tribe of Idaho is directly involved in the conservation of the Kootenai River white sturgeon, and conducts a conservation aquaculture program. To do this, the Tribe diverts a small amount of water directly from the Kootenai River within the area of proposed critical habitat. We do not anticipate any indirect adverse effects to Tribal lands through management actions intended to enhance or maintain proposed critical habitat on adjacent State of Idaho lands. However, we do anticipate beneficial effects to Tribal resources, including water quality and the sturgeon, from the designation of critical habitat on adjacent non-tribal lands.

In complying with our tribal trust responsibilities, we must communicate with all tribes potentially affected by the designation. Therefore, we are soliciting information during the comment period on potential effects to tribes or tribal resources that may result from critical habitat designation.

#### Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding areas will

outweigh the benefits of including areas as critical habitat;

(2) Specific information on any habitat changes which may have occurred in the Kootenai River since 1961;

(3) Areas that are essential to the conservation of the species and that may require special management considerations or protections;

(4) Land or water use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from proposed critical habitat; and

(6) Economic and other values associated with designating critical habitat for the Kootenai River white sturgeon, such as those derived from non-consumptive uses (e.g., enhanced watershed protection, "existence values", increased soil retention, water quality, and reductions in administrative costs).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office, 11103 East Montgomery, Spokane, Washington 99206.

(2) You may send comments by electronic mail (e-mail) to FW1SPOK\_crithab\_stur@R1.fws.gov. If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [1018-AH06]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Upper Columbia Fish and Wildlife Office at phone number 509-891-6839. Please note that this e-mail address will be closed out at the termination of the public comment period.

(3) You may hand-deliver written comments to our Upper Columbia Fish and Wildlife Office, 11103 East Montgomery, Spokane, Washington.

(4) You may provide comments at the public hearing on January 18, 2001, at the Bonners Ferry Kootenai River Inn, 7160 Plaza Street, Bonners Ferry, Idaho.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by

law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

#### Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during the preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

#### Public Hearings

In anticipation of public interest in this issue, a public hearing has been scheduled for Thursday, January 18, 2001, from 6:00 p.m. until 8:00 p.m. at the Kootenai River Inn, 7160 Plaza Street, Bonners Ferry, Idaho.

Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

#### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with

clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

**Required Determinations**

**Regulatory Planning and Review**

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB). We will prepare a draft economic analysis of this proposed action to determine the economic consequences of designating the specific area of critical habitat. The draft economic analysis will be available for public review and comment.

(a) This rule will not have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required for the purposes of executive Order 12866. The Kootenai River Population of white

sturgeon was listed as endangered in 1994. We are currently conducting one formal section 7 consultation with the Corps, Bonneville Power Administration, and the Bureau of Reclamation on operations of the Federal Columbia River Power System, in part, to ensure that their actions would not jeopardize the continued existence of the Kootenai River population of white sturgeon. Based on the proposed action, we have issued a draft non-jeopardy biological opinion on the sturgeon. We plan to finalize this biological opinion by December 2000.

Under the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; it does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 1 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of designated critical habitat would currently be considered as “jeopardy” under the Act. Accordingly, the designation of areas within the geographic range occupied by the Kootenai River population of white sturgeon does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a

Federal “sponsorship” of their actions are not restricted by the designation of critical habitat although they continue to be bound by the provisions of the Act concerning “take” of the species.

(b) This rule will not create inconsistencies with other agencies’ actions. Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Kootenai River white sturgeon since its listing in 1994. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in occupied areas of proposed critical habitat. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This proposed rule, if made final, will not significantly impact entitlements, grants, user fees, loan programs, or the rights and obligations of recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 1.—ACTIVITIES POTENTIALLY IMPACTED BY KOOTENAI RIVER POPULATION OF WHITE STURGEON LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only <sup>1</sup>	Additional activities potentially affected by critical habitat designation <sup>2</sup>
Potentially Affected Activities that are Initiated by a Federal Agency.	Operation of dams, reservoirs, and other water control facilities in the Kootenai River watershed. Federal issuance of scientific permits, operation of captive propagation facilities, sturgeon habitat restoration.	None.
Potentially Affected Activities Initiated by a Private or Other Non-Federal Entity That May Need Federal Authorization or Funding.	Construction and/or operation of freshwater hatcheries, water withdrawal projects, approval of new or revised water quality standards, pesticide registration, streambank stabilization, gravel mining, road and bridge construction, pipeline streamcrossings, and sturgeon habitat restoration that require a Federal action (permit, authorization, or funding).	None.

<sup>1</sup> This column represents the activities potentially affected by listing the Kootenai River population of white sturgeon as an endangered species (September 6, 1994; 59 FR 45989) under the Endangered Species Act.

<sup>2</sup> This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

**Regulatory Flexibility Act (5 U.S.C. 601 et seq.)**

In the draft economic analysis, we will determine if designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat.

**Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))**

Under our draft economic analysis, we will determine whether designation of critical habitat will cause: (a) any increases in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions; or (b) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat occupied by the species.

**Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)**

In accordance with the Unfunded Mandates Reform Act:

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan will not be required. Small governments will be affected only to the extent that any programs involving Federal funds, permits, or other authorized activities must ensure that their actions will not destroy or adversely modify critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of occupied proposed critical habitat.

(b) This rule will not produce a Federal mandate on State, Tribal, or local governments or the private sector of \$100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State, Tribal, or local governments.

**Takings**

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not "take" private property.

The designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Kootenai River population of white sturgeon. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Non-Federal landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the Kootenai River population of white sturgeon.

**Federalism**

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The designation of critical habitat in areas currently occupied by the Kootenai River white sturgeon imposes no additional restrictions to those currently in place, and therefore has little incremental impact on State and local governments and their activities.

In keeping with Department of the Interior policy, we requested information from and coordinated development of this critical habitat designation with appropriate State resource agencies in Idaho. We also utilized information on critical habitat submitted by the State during the listing of the Kootenai River white sturgeon. The State now has representation on our recovery team for this species. Consequently, we will continue to coordinate this and any future designation of critical habitat with the appropriate State agency.

**Civil Justice Reform**

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

**Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)**

This proposed rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

**National Environmental Policy Act**

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U. S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir.1995), *cert. denied* 116 S. Ct. 698 (1996)).

**Government-to-Government Relationship with Tribes**

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and the Department of the Interior's requirement at 512 DM 2, we understand that recognized Federal Tribes must be related to on a Government-to-Government basis.

**References Cited**

A complete list of all references cited in this proposed rule is available upon request from U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office (see **ADDRESSES** section).

**Author**

The primary author of this notice is Bob Hallock, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11 (h), by revising the entry for "sturgeon, white" under "FISHES" to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*	*	*	*
Sturgeon, white .....	<i>Acipenser transmontanus</i> .	U.S.A. (ID, MT), Canada (B.C.).	U.S.A. (ID, MT), Canada (B.C.), (Kootenai R. system).	E	549	17.95(e)	NA
*	*	*	*	*	*	*	*

3. Amend § 17.95(e) by adding critical habitat for the Kootenai River population of white sturgeon (*Acipenser transmontanus*) in the same alphabetical order as this species occurs in § 17.11 (h) to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*

(e) *Fishes.*

\* \* \* \* \*

Kootenai River population of white sturgeon (*Acipenser transmontanus*).

1. Critical habitat is depicted for Boundary County, Idaho on the map and as described below.

2. Critical habitat includes the Kootenai River from river kilometer 228 (river mile 141.4) to river kilometer 246 (river mile 152.6), as indicated on the map below, from ordinary high water line to opposite ordinary high water line as defined by the U.S. Army Corps of Engineers (33 CFR 329.11).

3. Within these areas, the primary constituent elements include, but are not limited to, those that are essential for the primary biological needs of

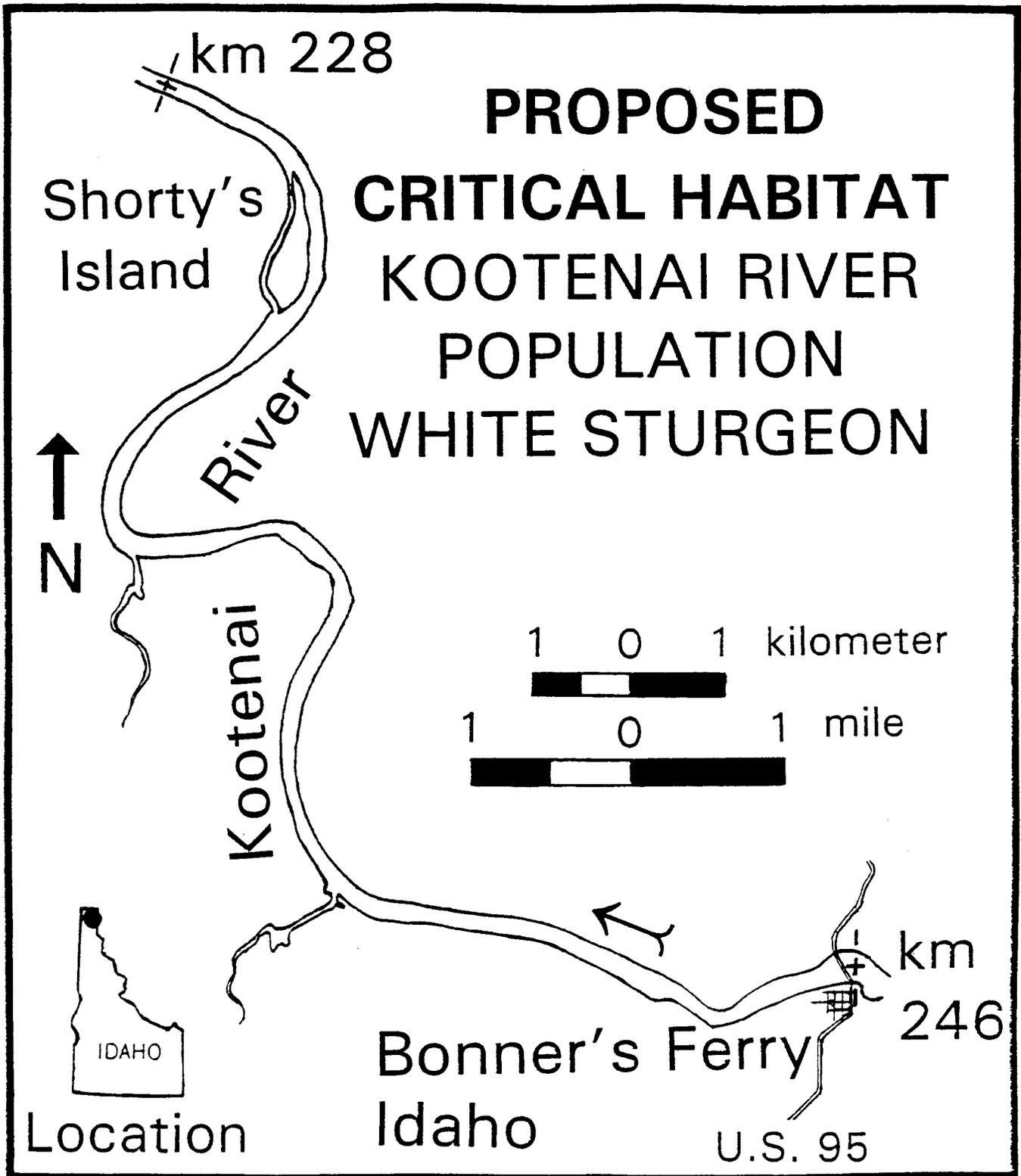
normal behavior, water requirements, cover, shelter, breeding, and rearing of offspring. These elements include the following: (1) A flow and hydrologic regime characterized by water magnitude, timing, depth and velocity; and water quality, including temperatures necessary for normal behavior involving breeding site selection, breeding and fertilization, and cover for egg incubation and yolk sac fry development; (2) a flow and hydrologic regime characterized by water of sufficient duration and magnitude to restore or maintain riverbed substrate necessary for cover and shelter for both incubating eggs and yolk sac larvae; (3) a flow and hydrologic regime characterized by flow magnitude, time, velocity, depth, and duration necessary for the normal behavior of adult and juvenile sturgeon; and (4) water and sediment quality necessary for normal behavior, including breeding behavior, and the viability of all life stages, including incubating eggs and yolk sac larvae.

4. Within this area, existing structures, such as buildings and roads, are not included in the critical habitat designation.

5. Idaho (Boise Meridian (BM)): Areas of land and water as follows: Physical features were identified using USGS 7.5' quadrangle maps for the downstream margin, and the Bonners Ferry Gage location information from USGS data (USGS 1997) for the upstream margin; river reach distances were initially provided in kilometers by Idaho Department of Fish and Game and converted to river miles with reference points found on USGS 7.5' quadrangles.

Proposed critical habitat in the Kootenai River within Boundary County, Idaho from river kilometer 228 (river mile 141.4) (SW¼, Sec. 25, T.63N., R.1W., BM), below "Shorty's Island", upstream to river kilometer 246 (river mile 152.6) (NE¼, Sec. 27, T.62N., R.1E., BM), above the Highway 95 bridge at Bonners Ferry.

**BILLING CODE 4310-55-P**



Dated: December 15, 2000.

**Kenneth L. Smith,**  
*Acting Assistant Secretary for Fish and  
Wildlife and Parks.*

[FR Doc. 00-32466 Filed 12-20-00; 8:45 am]

BILLING CODE 4310-55-C