

## **Staff summary of Issues & Recommendations**

### **Protected Areas**

\*Preliminary draft, please refer to full recommendations for complete review

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#### **2009 Fish and Wildlife Program Section**

Section D. 1. Habitat Strategies, d. Protected Areas (page 15)

Appendix B. Hydroelectric Development Conditions, 2. Protected Areas (page 80)

#### **Overview**

The Council received several hundred recommendations for amendments to the protected areas section of the program. The vast majority of them came from individuals supporting the existing protections and opposing reinstating the process for exemptions that was dropped from the program in 2000.

More substantive comments were received from fish and wildlife agencies, tribes and conservation organizations. Major issues raised include addition of bull trout critical habitat, expansion of protection to areas where barriers have been removed, and reinstating a process for exempting projects that provide an exceptional benefit to fish and wildlife.

### **I. Summary**

#### **A. Bull Trout Critical Habitat**

a) The Snoqualmie Tribe (29), American Rivers (49), American Whitewater (50), Conservation Groups (52), Idaho Rivers United (56), Montana Fish Wildlife and Parks (2), Save our Wild Salmon (64), and Trout Unlimited (67) recommend the presence of ESA-listed bull trout should be a factor in designating new Protected Areas.

#### **B. Climate Change**

a) American Rivers (49), Conservation Northwest (53), NOAA Fisheries (30), Pilchuck Audobon Society (58), Save our Wild Salmon (63), Lands Council (66), and Trout Unlimited (67) recommend that the ability of a river or stream to serve as a migration corridor or valuable habitat in light of climate change impacts should be a factor in designating new Protected Areas.

#### **C. Expansion above barriers**

- a) American Rivers (49) and CRITFC (14) note the Council should conduct a comprehensive inventory of barrier removals.... and expand protected areas accordingly.
- b) American Whitewater (50), the Yakama Nation (17) and the Snoqualmie Tribe (29) recommend that the Council evaluate and amend the Protected Areas status for anadromous fish for the White Salmon River and its tributaries above the former site of Condit Dam in Washington.

## **D. Exemptions**

- a) US Fish and Wildlife Service (33), The Snoqualmie Tribe (29), American Whitewater (50), Conservation Groups (52), Idaho Rivers United (56), Conservation Northwest (53), Pilchuck Audobon Society (58), Save our Wild Salmon (63), Lands Council (66), Trout Unlimited (67), Water Watch of Oregon (68), numerous individuals (approx. 355 individuals) recommend the Council prohibit exemptions in Protected Areas, as in the 2009 Fish and Wildlife Program.
- b) American Whitewater (50) and the Lands Council (66) recommend a strong and vigorous exemption process with some detail for granting exemptions if the Council chose to include an exemption process.
- c) Black Canyon Hydro, LLC (48), and PUD #1 Snohomish County (47) recommends reinstatement of a process to either add or remove the protected area designation for a specific river reach.
- d) WDFW (4) would strengthen exemption standards to ensure “exceptional benefits to fish and wildlife” and add back language from 1995 exemption process.

## **E. Notification Letter**

- a) American Whitewater (50), Conservation Groups (52), Idaho Rivers United (56), and WDFW (4) recommend that the Council send a letter to hydropower developers within 30 days after a preliminary permit is issued for a project proposed to be located in a Protected Area.

## **F. Bear River**

- a) American Whitewater (50) and Idaho Rivers United (56) recommend restoring protection to the Bear River where in 1990, the Council granted an exemption from the Protected Areas designation for the Bear River Narrows Hydropower Project in Idaho (FERC #9215). Although FERC Project #9215 was never built, the status of this reach of river remains unprotected.

## **G. Nationwide Rivers Inventory**

- a) National Park Service (39) recommends the Northwest Power and Conservation Council Fish and Wildlife Program Protected Areas list currently contains many of the rivers on the NRI as rivers that are protected from hydropower. This is consistent with the intent of the NRI. NPS recommends that the protected area list and NRI remain consistent. It is our understanding, that no changes to the protected areas lists are currently being proposed and NPS supports this recommendation. In the future if there are rivers that are on the NRI that are proposed for delisting in the protected areas, then NPS would like to be consulted during this process.

## **H. Updating Protected Areas Data Base**

- a) Black Canyon Hydro, LLC (48) recommends the inclusion of a detailed, and timely, amendment process for changing the designation of specific river reaches will improve the Council’s ability to meet its charge to protect, mitigate and enhance fish and wildlife by adaptively managing these resources as demanded by changing environmental circumstances.
- b) Conservation Groups (52) and Idaho Rivers United (56) support technical upgrades to the Protected Areas database system and consolidating the list of Protected Areas, so long as the substantive elements and structure remain intact.

- c) BPA Customers (PPC/NW RiverPartners/PNGC Power/NRU) (44) recommend reviewing and updating the decisions to protect large amounts of potential habitat, some of which is not in the Columbia River basin, to reflect current priorities by the current Council in this Program amendment process.
- d) Water Watch (68) of Oregon – recommends updates to include new ESA listings and specific areas such as Lake Albert for Pacific flyways.

**I. Mitigation for toxins**

- a) Save our Wild Salmon (63) and Lands Council (66) recommend the Council directly acknowledge in the Fish and Wildlife Program the importance of Protected Areas in safeguarding river, habitat, and fishery resources in the face of both toxic loads in the mainstem Columbia River.

## **II. Protected Areas Recommendations**

### **State Fish and Wildlife Agencies, Other State or State Supported Agencies**

#### **Montana Fish, Wildlife & Parks (MFWP) (2)**

a) Protected Areas Recommendation: Make certain that important habitat for bull trout and other species of concern are included in the protected areas.

#### **Washington Department of Fish and Wildlife (WDFW) (4)**

a) Maintain the integrity and structure of the Protected Areas Program, protecting fish and wildlife as designated, both in and outside of the Columbia River Basin.

b) Strengthen exemption standards to ensure “exceptional benefits to fish and wildlife”

c) Recommend that the Council automatically send a letter to hydropower developers shortly after they receive a preliminary permit from FERC for a project proposed to be located in a Protected Area.

d) Reinstate language regarding exemptions for Protected Areas that was found in the 1995 Fish and Wildlife Program -Suggested language provided

## **Indian Tribes and Tribal Organizations**

### **Columbia River Inter Tribal Fish Commission (14)**

a) The Council should update and strengthen its Protected Areas Policy to address areas where anadromous fish passage has been restored and assure the efficient protection of salmon resources

### **Yakima Indian Nation (17)**

a) Revise protected areas status on the White Salmon River to reflect removal of Condit Dam and restoration of anadromous fish to the river.

### **Snoqualmie Tribe (29)**

a) Recommend that the Council prohibit exemptions in Protected Areas, as in the 2009 Program.

b) Recommend that the Council assure that the Protected Area Program include ESA-listed bull trout and Puget Sound steelhead habitat, and expand the program if not.

c) Recommend that the program be evaluated to include those areas that have recently restored for anadromous fish access such as the White Salmon River.

## **Federal Fish and Wildlife and Other Federal Agencies**

### **NOAA Fisheries (30)**

- a) Protected Areas program remains a vital Program component and may serve as a foundation for stronghold development.
- b) The protected areas remain a critical component of the Program. As noted in the Program, hydroelectric development in these areas could have unacceptable risks of loss to fish and wildlife species of concern, their productive capacity and their habitat. The importance of
- c) Protected Areas is increased by the emerging threat of climate change.

### **U.S. Fish and Wildlife Service (USFWS) (33)**

a) The Protected Area designation is to focus energy development in areas where permitting would not generate significant expense or controversy. Allowing an exemption process detracts from this important public purpose. As such, we do not believe an exemption process is warranted.

- We recommend the Council retain the Protected Areas Program as described in the current Fish and Wildlife program.

### **National Park Service (39)**

a) The Northwest Power and Conservation Council Fish and Wildlife Program Protected Areas list currently contains many of the rivers on the NRI as rivers that are protected from hydropower. This is consistent with the intent of the NRI. NPS recommends that the protected area list and NRI remain consistent. It is our understanding, that no changes to the protected areas lists are currently being proposed and NPS supports this recommendation. In the future if there are rivers that are on the NRI that are proposed for delisting in the protected areas, then NPS would like to be consulted during this process.

## **Bonneville Customers, Utilities, River Users, User Groups**

### **PPC/NW RiverPartners/PNGC Power/NRU (44)**

- a) Decisions to protect large amounts of potential habitat, some of which is not in the Columbia River basin, need to be reviewed and updated to reflect current priorities by the current Council in this Program amendment process.
- b) New hydropower generation will directly help to further reduce carbon emissions in the region and throughout the west and aid in backing up or shaping new renewables that are developed.

### **Public Utility District No. 1 of Snohomish County (47)**

- a) District recommends that the Council re-insert the important language added by the 1988 amendments into the 2013-2014 Program to allow new hydropower in a protected area when beneficial and appropriate.
- b) Such provisions would:

- 1) allow an interested party to petition the Council for a change in status of a protected area to enable new hydropower development; and
- 2) seek an exceptional benefits exception to the prohibition on new hydropower development in a protected area when the proposed project would enhance fish and wildlife resources.

**Black Canyon Hydro, LLC (BCH) (48)**

- a) Black Canyon Hydro, LLC (BCH) recommends reinstatement of a process to either add or remove the protected area designation for a specific river reach.
- b) The inclusion of a detailed, and timely, amendment process for changing the designation of specific river reaches will improve the Council's ability to meet its charge to protect, mitigate and enhance fish and wildlife by adaptively managing these resources as demanded by changing environmental circumstances.

## **Environmental and Fishing Groups, Non-governmental Organizations**

### **American Rivers (49)**

- a) Habitat/Protected areas - The Council should conduct a comprehensive inventory of barrier removals.... and expand protected areas accordingly..
- b) The ability of a river or stream to serve as a migration corridor or valuable habitat in light of climate change impacts should be a factor in designating new Protected Areas.
- c) The presence of ESA-listed bull trout should be a factor in designating new Protected Areas.

### **American Whitewater (50)**

- a) We strongly encourage the Council to deny any recommendation that would weaken the program
- b) Prohibit exemptions in Protected Areas, as in the 2009 Fish and Wildlife Program.
  - If the Council takes this approach, we recommend a strong and vigorous exemption process.
  - Exemptions to Protected Areas be prohibited where they will impact river reaches that are also on the National Park Service's Nationwide Rivers Inventory ("NRI").
  - Exemptions to Protected Areas be prohibited in areas where critical habitat has been designated for species listed under the Endangered Species Act.
  - Any exemption process should examine projects against the "exceptional benefit" standard used in previous F&W Programs.
  - The exemption process should involve public participation procedures, including public notice and hearings.
  - The Independent Scientific Advisory Board ("ISAB") and the Independent Economics Analysis Board ("IEAB") do an analysis of the impacts of the project for which an exemption is being sought.
  - For those river reaches already identified by the Council as Protected Areas, we request that "resident fish" be specifically identified as a value where that is not already the case.
  - Protected Areas Recommendation #6: We recommend that an exemption that is granted to the Protected Areas program be project specific rather than location specific.
- c) Protected Areas Program include Bull Trout habitat, and expand the program accordingly if it does not.
  - We specifically recommend that the Council review the 18,795 miles of rivers and streams designated as critical habitat for bull trout.
- d) We recommend that the Council send a letter to hydropower developers within 30 days after a preliminary permit is issued for a project proposed to be located in a Protected Area.
- e) In 1990, the Council granted an exemption from the Protected Areas designation for the Bear River Narrows Hydropower Project in Idaho (FERC #9215).
  - Although FERC Project #9215 was never built, the status of this reach of river remains unprotected.
  - Rationale: In sum, the need for flow stabilization below Oneida Dam no longer exists, the Bear River Narrows is the last remaining habitat in the river for Bonneville Cutthroat Trout, and any new hydropower at this location would roll back costly watershed improvements made through PacifiCorp's Bear River Hydroelectric Project Settlement Agreement.



- This hole in the protected reach of the Bear River continues to invite hydropower development and threatens the survival of the Bonneville Cutthroat Trout.
- f) Protected Areas Recommendation #7: We recommend that the Council evaluate and amend the Protected Areas status for anadromous fish for the White Salmon River and its tributaries above the former site of Condit Dam in Washington.

**Conservation Groups (52)**

- a) Prohibit exemptions in Protected Areas, as in the 2009 Fish and Wildlife Program.
- b) The Council should send a letter to hydropower developers within 30 days after any preliminary permit is issued for a project proposed to be located in a Protected Area.
- c) In order to ensure that Protected Areas protect all fish and wildlife, we recommend that the Council assure that Protected Areas include bull trout habitat, and that the designation be expanded to include this habitat if it currently does not.
- d) Finally, Conservation Groups support technical upgrades to the Protected Areas database system and consolidating the list of Protected Areas, so long as the substantive elements and structure remain intact.

**Conservation Northwest (53)**

- a) The Protected Areas Program should be strengthened by adding climate change impacts and bull trout protection to the list of considerations underlying a decision to designate a stream as protected.
- b) Exemptions that allow new dam construction run counter to that mitigation goal, and could open up sensitive streams in Washington, Oregon, Idaho, and Montana to damaging dam proposals like the Sunset Falls dam proposal on the South Fork Skykomish River in Washington.

**Idaho Rivers United (56)**

- a) Supports "Conservation Groups" recommendations and American Whitewater (50) on Bear River.

**Pilchuck Audubon Society (58)**

- a) Pilchuck Audubon Society supports the protected designation of the Skykomish River and the renewal of the fish and wildlife plan of NPCC without exemptions for new dams and without amendments that would weaken the Protected Areas Program.
- b) In fact, we feel the amendment process is an excellent opportunity to strengthen the Protected Areas program by addressing climate change and new Endangered Species Act listings (bull trout).

**Save our Wild Salmon Coalition (64)**

- a) The Program should strengthen the Protected Areas Program by addressing current river protection needs, data, and science, and by denying any recommendation that would weaken the Protected Areas Program.
- b) As a species that depends on relatively pristine stream and lake habitat, it is vital to expand Protected Areas to include area identified as critical habitat for bull trout.
- c) Denying any attempt at an exemption from a Protected Area meets the Council's responsibilities to maximize policy and program benefits and minimize process costs.
- d) Send a letter to hydropower developers within 30 days after any preliminary permit is issued for a project proposed to be located in a Protected Area. The letter will notify the permittee that their project

is located in a Protected Area, outline what Protected Areas are and what the implications are from FERC and Bonneville Power Administration (BPA)

e) Directly acknowledge in the Fish and Wildlife Program the importance of Protected Areas in safeguarding river, habitat, and fishery resources in the face of both toxic loads in the mainstem Columbia River and the worsening impacts of climate change.

### **The Lands Council (66)**

a) Prohibit exemptions in Protected Areas, as in the 2009 Fish and Wildlife Program.

b) If the Council continues to allow exemptions, we recommend a strong and vigorous exemption process.

- Exemptions to Protected Areas be prohibited where they will impact river reaches that are also on the National Park Service Nationwide Rivers Inventory (NRI).
- Exemptions to Protected Areas be prohibited in areas where critical habitat has been designated for species listed under the Endangered Species Act.

c) We suggest and recommend that the language in the Fish and Wildlife Program directly acknowledge the importance of Protected Areas in the face of toxic loading into the Columbia River.

d) Climate change is expected to retime flows as more rain falls and snowpack is less.

### **Trout Unlimited (67)**

a) Support and Strengthen the Protected Areas Program

b) Suggest that the Council strengthen this program by expanding the current protected areas to include additional fresh-water areas

- Determinations should be based on changes in protected species status (eg: bull trout critical habitat determinations) and with the consideration of changing climate conditions and growing need for connected cold-water habitats for migratory species.

c) We strongly encourage the Council to deny any recommendation that would weaken or create exemptions to the Protected Areas Program.

- To the extent that the Council determines that there is need for exemptions or exceptions to the Protected Areas program, we urge the Council to develop strict criteria to discourage abuse of any exemption process and to minimize undue investment of resources in pursuit of exemptions or exclusions.
- Criteria should include strong ecological sideboards as well as evaluation and demonstration of a critical power necessity that cannot be addressed in the absence of the proposed project.

### **WaterWatch of Oregon (68)**

a) The Protected Areas program is a critical piece of maintaining existing strongholds and rebuilding populations of fish and wildlife impacted by hydroelectric construction.

b) WaterWatch advocates an amendment that:

- adds additional protections for important Pacific flyway waterbodies (such as Lake Abert and others that have been subject to pumped storage proposals in recent years);

- addresses Endangered Species Act listings made since the last amendment and anticipates new listings;

c) WaterWatch opposes an exemption process because subjecting the Protected Areas to mounting pressure from hydroelectric development is clearly contrary to the purpose of the program.

d) We urge the Council to decline any invitations to adopt an exemption process for Protected Areas.

## **Individual Recommendations**

The Council received over 400 individual recommendations on the topic of Protected Areas. Nearly expressed concern about an exemption to Protected Areas for the Skykomish River in Washington and most recommend the Council maintain the Protected Area provision as it is in the 2009 program, with no language about exemptions. A portion of these recommend strengthening Protected Areas. One individual expressed support for the investigation of a hydro-project on the Skykomish River.

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