

28 January 2003
The Pacific Rivers Council
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MEMO TO:

U.S. Fish and Wildlife Service
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RE: Comments on Proposed Critical Habitat for ESA Listed Bull Trout

The Pacific Rivers Council is a nonprofit conservation organization advocating the protection and restoration of rivers, streams, and their native species diversity. We have read the Proposed Designation of Critical Habitat for the Klamath River and Columbia Basin Distinct Population Segments (DPSs) of Bull Trout, 50 CFR Part17, RIN 1018-A152. On behalf of the Pacific Rivers Council, I request the following comments entered into the public record.

First, the Service deserves support for the scope and biological criteria used to identify critical habitat for bull trout. Spawning and rearing streams occupied by small populations, and river mainstems, lakes, and reservoirs occupied transiently or seasonally by migratory individuals, are all critical to survival and recovery of the species, and it is to the credit of the Service that many of these habitats over large portions of the range of these DPS's have been recognized as such in this proposal.

In general, spawning and rearing streams included in the critical habitat proposal seem reasonably well-selected and supported. However, there are exceptions, and the Service should revisit their proposal in cases where the proposal appears in conflict with available empirical data. Moreover, gaps in coverage arise because the Service has chosen to designate individual stream segments rather than whole watersheds. To illustrate, we refer you to the well-documented comments provided to you by Gary Carnefix, of Missoula, Montana, about tributaries to Rock Creek drainage in the Upper Clark Fork drainage, Montana. Designation of several important tributaries in Rock Creek was omitted by the Fish and Wildlife Service. Mr. Carnefix has many years of graduate research experience on bull trout in Rock Creek drainage. I am quite familiar with the drainage and his research, as I served as his major professor and principle investigator of that research project. No doubt these same problems affect many other streams. If the Service intends to stick to its listing and mapping of tributary segments, then it should

re-analyze the available data to ensure that such “tributaries of tributaries” are not also overlooked in other basins. All such water bodies hosting spawning and rearing populations of bull trout should all be specifically listed and mapped. Alternatively the Service should adopt generic language including as critical habitat all tributaries to the designated waterbodies that are known to contain, or have once contained, bull trout.

The proposed rule recognizes that floodplains and riparian areas have direct and indirect, “demonstrable effects” on conditions within the water body designated as critical habitat. This is an accurate and necessary reflection of the best available science. The rule should further specify that federal actions potentially affecting surface hydrologic, groundwater, or climatic conditions within the watersheds of critical spawning and rearing streams should trigger consultations and review. Further, federal actions that could significantly affect the hydrology of surface and subsurface waters or biological, chemical, and thermal conditions of surface and subsurface waters contributing to the river mainstems, lakes and reservoirs designated as critical habitat should trigger consultation and review.

Ideally, critical habitat designation ought to be linked explicitly to elements of the recovery plan, including demographics of populations comprising the DPS, spatial dispersion and distribution of populations and individuals, probability of long-term persistence and recovery of these populations, preservation of genetic integrity within the DPS, and recovery goals and delisting criteria. However, the proposed recovery plan appears to lack many of these elements, and as a consequence the opportunity to explicitly support certain biological aspects of the proposed critical habitat rule is diminished. We recognize this is a systematic weakness of critical habitat rules and especially recovery plans in the Services, but with increasing public scrutiny of critical habitat designations, it becomes of much greater importance for the agency to provide a sound scientific rationale for its proposals. We will provide comments on the proposed recovery plan for bull trout elsewhere, but we encourage the Service to link improvements in the recovery plan with a more explicit rationale for the critical habitat designation. They can and should be mutually supporting.

We strenuously object to excluding habitat within areas covered by HCPs for critical habitat designation. HCPs have been negotiated and incidental take permits granted by the Service without the benefit of range-wide assessment of critical habitat, recovery measures, and recovery or delisting criteria. There can be no *a priori* assurance that an HCP prevents all forms of harm that may occur as a result of federal and federally linked activities within the covered area. For example, federally funded dams, diversions, or fish hatcheries, federally permitted mineral exploration or mining may adversely modify habitat within areas covered by existing HCPs, and yet are commonly beyond the scope of the activity anticipated when an HCP was granted. Moreover, there is a mix of covered and not-covered activity under the HCP granted for any specific area. Any general exclusion of HCP-affected areas from a critical habitat rule seems legally and biologically indefensible, ill advised, and, frankly, unnecessary. If private landowners

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are largely unaffected by critical habitat designation, then it is senseless and completely without benefit to them exclude the covered lands from critical habitat designation. Many kinds of federal actions may still occur and affect those areas above and beyond the permitted activities of the HCP holders, and therefore it should only be to the benefit of HCP holders to ensure that their efforts to conserve habitat are not offset by harmful federal actions governing the same waters.

Thank you for the opportunity to comment.

Regards,

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