



Burns Paiute Tribe

Natural Resources Department

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3 December 2014

VIA ELECTRONIC FILING

Mr. Michael Carrier
Idaho Fish and Wildlife Office
1387 S. Vinnell Way, Room 368
Boise, ID 83709

Re: Revised Draft Bull Trout Recovery Plan, Submission of Burns Paiute Tribe Comments

Dear Mr. Carrier,

On September 4, 2014 the U.S. Fish and Wildlife Service issued a solicitation for comments on the Revised Draft Bull Trout Recovery Plan (“Draft Plan”). Staff of the Burns Paiute Tribe Natural Resource Department has reviewed the Draft Plan and responds to the September 4, 2014 solicitation with the enclosed comments. On November 4, 2014 five tribes submitted joint preliminary comments on the Draft Plan, to which the Burns Paiute Tribe was a signatory. We submit the enclosed comments to be considered in addition to the November 4, 2014 intertribal comments that you have already received but to which FWS has not yet responded. The enclosed comments pertain specifically to the two Malheur River Core Areas and to the Upper Snake Recovery Unit which encompasses the BPT’s ancestral homeland. These comments are consistent with policy directives from BPT Tribal Council.

Our staff’s review of the Draft Plan rendered substantial changes that must be made prior to finalization. Consistent with FWS’s federal tribal trust obligations to Indian tribes, we anticipate a response from you in writing, as is normal for agency response to comments provided by the public and upon conclusion of a public comment period, as well as in person as is normal to the federal response to Indian tribes when major concerns on an agency product are formally raised. We expect this meeting to occur prior to the end of January to ensure that our comments will be incorporated as finalization of the Draft Plan expeditiously progresses. Since the FWS has already begun development of its RUIPs, premature to the incorporation of public comments, BPT staff emphasizes the necessity of immediate schedule of this meeting and with its tribal partners.

Frankly stated, it is our firm belief that the Draft Plan, if it remains unchanged by tribal comments, will contribute to the eventual decline and extirpation of not only the Malheur River Core Areas but of other Core Areas throughout the range of the species and which are specifically important to tribes. We believe that this will occur as a direct result of assignment of percentages to threats-management targets in some Recovery Units; and from the revisions of the former 27 Recovery Units into 6 Recovery Units which cross state lines and other fisheries management boundaries and which lack robust scientific support in definition. As per the intertribal comments submitted to you on November 4th, it is our sincere hope that you will utilize this opportunity to improve upon the Draft Plan and converse meaningfully with tribal partners.

Please contact BPT Fisheries Program Manager, Erica Maltz, for questions regarding these comments and/or for scheduling of follow-up meetings. She may be contacted at 541.573.8088 or maltzem@burnspaiute-nsn.gov.

Respectfully,

/s/ JASON KESLING

Jason Kesling, Director, Burns Paiute Tribe Natural Resources Department

Enclosure: Burns Paiute Tribe comments on the Revised Draft Bull Trout Recovery Plan

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Robyn Thorson, U.S. Fish and Wildlife Service
Steve Duke, U.S. Fish and Wildlife Service
Joe Mentor, Mentor Law Group, PLLC
Robert Dach, Bureau of Indian Affairs
Deane Osterman, Kalispel Natural Resources
Alfred Nomee, Coeur d'Alene Tribe
Jinwon Seo, Shoshone-Paiute Tribes
Rich Janssen, Confederated Salish and Kootenai Tribes
Robert Austin, Upper Snake River Tribes Foundation
2015 Malheur River Bull Trout Technical Advisory Committee

Burns Paiute Tribal Authority, Expertise and Interest in Bull Trout Populations in the Malheur River, OR and Tribal Expectations of the U.S. Fish and Wildlife Service

The Burns Paiute Tribe (BPT) is a sovereign nation and collaborative manager of fish and wildlife resources with the Oregon Department of Fish and Wildlife. The BPT is a federally-recognized Indian tribe with a reservation in Harney County, Oregon and manages approximately 8,000 acres of property in the Malheur River including approximately eight miles of designated bull trout Critical Habitat. Additionally, BPT currently implements and consults on a variety of bull trout recovery actions in Malheur River with the Oregon Department of Fish and Wildlife, the U.S. Fish and Wildlife Service (FWS), the U.S. Forest Service and the U.S. Bureau of Reclamation. Since the listing of the species in 1999, BPT has assumed agency leadership with respect to monitoring the health of bull trout in the Malheur River and the response of local populations to multiagency recovery actions. The continued existence, demographic recovery and future viability of bull trout populations in the Malheur River is a major concern to BPT, as evidenced by the sixteen years of effort the BPT has allocated towards agency coordination, and enhancement and monitoring of these populations.

The United States has a well-established, solemn trust obligation to Indian Tribes. Under this obligation, the United States has assumed a special fiduciary responsibility to consider the best interests of the tribes pursuant to its treaties and executive orders. Most fundamentally, the modern form of the trust obligation is the federal government's duty to protect tribal rights, interests and trust resources. The BPT asks the FWS to fulfill its duty to the tribe and to consider and assess the effects of the Draft Plan on BPT's rights and resources via careful consideration of the following comments and of the comments submitted in collaboration with four other tribes on November 4th, 2014, via active discourse with the tribes on these comments and beyond that which is given to members of the public.

General Comments

1. BPT staff seeks FWS response to all intertribal comments provided to FWS on November 4th, 2014 and does not reiterate those comments here.
2. Include site-specific and quantifiable demographic targets, at the Core Area level, to supplement the Draft Plan's reliance on qualitative measures of the success of threats-based management.

The cumulative interactions and population level effects of many common threats to bull trout are not well understood. Additionally, the overall definition of when successful threats management is reached to establish "recovery" (and to warrant a de-listing process), versus when successful threats management has not been reached (and warrants additional action), is nebulous, subjective, and not easily quantified. The informal nature of multi-jurisdictional management of non-anadromous, non-game fish species further confounds the path towards the

recovery of bull trout. These variables lead BPT to comment that inclusion of additional and quantifiable targets at the Core Area level will strengthen the Draft Plan and provide a platform for multi-agency discourse on the status of bull trout and effectiveness of management actions. The Draft Plan's subjectivity could be translated into actions that may not actually benefit bull trout populations but that meet the Draft Plan's criteria for recovery, actions that may not be applied for an appropriate extent of time or that may be interpreted in a manner that cannot be objectively evaluated by land and resource management agencies.

To illustrate the range of potential variables and the degree of subjectivity, BPT provides a hypothetical example population of bull trout "population X." During identification of primary threats to this population, as FWS is currently soliciting within the parallel RUIP development, a panel of interagency experts identifies the following primary threats: cattle grazing, brook trout, passage and temperature and ranks them as roughly equal primary threats to population X. With a final Recovery Plan in place, land and resource management agencies are then tasked with managing the threats they have identified and ranked during RUIP development. To remove these threats: for cattle, the U.S. Forest Service constructs fences around spawning habitat and uses pasture rotation during August and September; for brook trout, the state fish and wildlife agency conducts removal activities annually in priority areas and to reduce pressure on spawning adult bull trout; for passage, the Bureau of Land Management drafts a list of major blockages to fluvial bull trout and develops a schedule for culvert replacement; and for temperature, the tribe plants riparian species in degraded stream sections. Subsequently, each of these agencies individually implements effectiveness monitoring measures to ensure that cattle were not utilizing spawning areas, that brook trout were excluded from bull trout spawning grounds, that passage was occurring at replaced culverts, and to ensure growth and survival of riparian plantings. After initiating these measures, representatives from each agency meet for a FWS Assessment Workshop (p. 128) to evaluate the collective progress towards recovery.

At the Assessment Workshop the panel confirms that it has implemented the above listed threats management actions and has evaluated respective success via effectiveness monitoring. However, annual bull trout monitoring reveals no change in bull trout status in the stream. All identified threats have been successfully managed, yet bull trout are still not showing desired population response. Based on the proposed Draft Recovery Plan, it could be interpreted that these actions meet the criteria for recovery, despite no change in bull trout population trends. Without quantifiable targets that apply directly to bull trout in individual Core Areas, "recovery" can be based entirely on management of anthropogenic factors that may have only limited benefit to bull trout and are not sufficient on their own to justify delisting. Conversely, with quantitative demographic targets in place (e.g. colonization rates, spawner abundance, increases in genetically pure bull trout, etc.), the panel could, based on the empirical results of their annual bull trout monitoring, revisit the relevance of the primary threats selected in the RUIP, the magnitude and duration of management actions aimed at mitigating or removing those threats, and the connection of management actions to the appropriate life history stages and forms.

Furthermore, this hypothetical example is intended to illustrate the difficulty in utilizing the Threats Assessment Tool in *one* particular watershed (e.g. the Malheur River) or state (e.g. the Malheur River in Oregon). The Draft Plan entirely fails to address the following scenario: if the expert panels in each of the other 10 Core Areas in population X's Recovery Unit determine via respective Assessment Workshops that they are successfully managing all primary threats—is the entire Recovery Unit re-designated as a DPS and delisted despite the unknown or potentially declining status of population X? Under the Draft Plan, there are no quantified benchmarks to gauge the sufficiency of management actions, the extent of management actions and measurable effects to bull trout populations at either the Core Area or the Recovery Unit scale.

Although likely oversimplified, the preceding scenario and hypothetical questions are not outside a reasonable expectation of the implementation of the Draft Plan based on the description it provides. Without any biologically-supportable and quantifiable standards, the Assessment Workshops are unlikely to resolve even the basic question of whether threats to bull trout have been adequately addressed to meet the criteria in the Draft Plan. BPT anticipates the following scenarios will occur if the Draft Plan is executed in the manner described:

- *Insufficient magnitude of action:* Agencies may select management actions that may appear to address the threat, but that do not produce the intended population response. Without a demographic requirement, there are no incentives for Recovery Units to relate management actions to population responses. For example, it is well demonstrated that brook trout cause negative impacts to bull trout through a variety of mechanisms, including the genetic impacts of interspecific spawning. How does an agency manage genetic threats? An agency could start, as the state fish and wildlife agency did for population X, with removing brook trout in priority bull trout spawning areas. Is that action sufficient or have brook genetics introgressed with bull trout to the extent that population X now contains too few genetically pure bull trout and that is actually the problem? If the effect is the latter, then might reintroductions to population X also be an appropriate management action in tandem with removal? The desired outcome would be an increase in genetically pure bull trout in the spawning population, but in this example brook trout removal alone could satisfy the requirements of the Draft Plan without necessarily achieving this outcome.
- *Insufficient duration of action:* Following the example of brook trout, if an agency was able to remove 99% of brook trout in a given Core Area, short term benefits to bull trout would likely be present, but if brook trout populations rebound, the threat to bull trout may be present to the original extent within a short period of time. The Draft Plan does not specify the duration of threats management to determine that “recovery” has been achieved. Without demographic targets (e.g. x adults stable over x generations), insufficient duration of management actions could satisfy the requirements of the Draft Plan.

- *Incorrect management actions.* By adopting threats management as the definition of recovery, the Draft Plan assumes a causal relationship between the management of primary threats and “the long-term persistence of bull trout.” That relationship has not been tested for most standard management tools to address common threats to bull trout. For example, most bull trout populations occupy a small percentage of historically occupied habitat. Under the Draft Plan, resource and land management agencies are highly likely to focus threats management within localities where bull trout currently exist. What if the underlying problem in some Core Areas lies in the amount of suitable habitat unoccupied? Will removal of threats cause bull trout to recolonize or will agencies have to actively relocate individuals to those areas? Numeric demographic targets (e.g. colonization rates) would allow land and resource management agencies to evaluate causal assumptions as well as assist them in evaluating the extent of necessary management actions.
- *Inability to evaluate whether threats are being managed.* The FWS proposes to utilize the Threats Assessment Tool to gauge success. As it is described in the Draft Plan, the Threats Assessment Tool appears to be a moderated convention (“Assessment Workshop”) of management agencies to input qualitative thoughts into a table and associate with rankings that may or may not be based on scientific data. Unless the FWS intends to financially support a quantitative exercise, such as Structured Decision Making, for all Core Areas, then there must be other quantitative standards in place beyond threats management to provide an unbiased basis for gauging progression towards recovery. BPT proposes that site specific demographic targets should be identified for each Core Area so that the Assessment Workshops may function around whether numeric targets are met and objective evaluation of the status of bull trout populations with respect to metrics of viability. Agencies are unlikely to invent numbers to delist, but may attempt to assert insufficient management actions to meet the Draft Plan’s subjective criteria.

In contrast to the Draft Plan, the 2002-2004 draft plans included universal targets for adult and spawner abundance. These were apparently abandoned over internal disagreement on whether the conclusions of Rieman and McIntyre (1993) and Rieman and Allendorf (2001) should be applied to all bull trout populations (Steve Duke, pers. comm.). Site specific demographic targets, beyond abundance (e.g. the multi-metric approach outlined in Bowerman 2013), would provide management agencies with a numeric benchmark against which they can collectively reevaluate whether threats management is causing the desired outcomes in bull trout populations and adaptively reevaluate whether the correct threats are being addressed.

3. The FWS has demonstrated a conflict of interest in its utilization of the scientific rationale provided for Recovery Unit delineation; therefore, Recovery Unit delineation should be reevaluated with external scientific evidence prior to the release of a final plan.

The Draft Plan cites Ardren et al. (2011) to support definition of the 6 Recovery Units used in the Draft Plan, and to provide rationale for its departure from the 27 units formerly outlined in the 2002-2004 draft plans. Ardren et al. (2011) states: “In this study we provide new information, based on microsatellite DNA and mtDNA, that will aid in the designation of bull trout conservation units.” Ardren et al. (2011) continues to state: “interpretation of our results, along with careful considerations of ecological and life history information, allows for identification of conservation units at DPS to recovery unit scales.” Although BPT does not debate the scientific merits of Ardren’s work, BPT does debate whether similar conclusions would be drawn if the work had occurred independent of the FWS.

It appears that the FWS has “interpreted” internal science in development of Recovery Units that are indirectly tied to future delisting. This conflict is exacerbated by the FWS redefinition of Recovery Units to encompass considerably larger geographic areas than previous draft plans, and which overlap various and potentially incompatible sovereign management units. As iterated in the Draft Plan, the 6 Recovery Units were developed to withstand the tests of FWS DPS policy in anticipation that a Recovery Unit could be designated as a DPS and delisted pending future status assessments. The Draft Plan discusses the Recovery Units and their relationship to DPS policy explicitly in the context of delisting. BPT highlights that scientific support for defining Recovery Units, particularly in the politically-charged context of the geographic scale of future delisting, should be subject to more robust generation and interpretation and with more emphasis on “careful considerations of ecological and life history information.” BPT believes that “careful considerations of ecological and life history information” with tribal and federal partners may have precipitated alternative delineation of Recovery Units, which is a critical delineation if Recovery Units are precursory to DPS designations.

4. The Recovery Unit boundaries in the Draft Plan should be revised to consider existing land and resource management boundaries of agencies that will implement threats-based management and to encompass smaller geographic areas that are consistent with existing jurisdictional boundaries in resident (non-anadromous) fish management.

Recovery Unit delineation does not consider state management lines yet the Draft Plan offers successful threats management as the new target for defining ESA-recovery. Given that states, tribes and other federal agencies manage bull trout populations and their habitats, how does the FWS anticipate collective achievement of successful threats management within Recovery Units that do not consider existing management boundaries? This particular paradigm in ESA Recovery Planning may be effective for anadromous populations that, by the nature of their life histories, require large Recovery Units that are multi-jurisdictional and are subject to legal and regulatory agreements; however, most bull trout populations are confined to isolated headwater areas with physical and water quality impediments to their movement. In these areas there is likely no inclination at the scale of Recovery Units for state-to-state management and monitoring

to ensure threats management thresholds are met at the geographic scale intended by the Draft Plan.

The Draft Plan aims to “prioritize and implement recovery actions in those areas where success is likely” (p. 44), which insinuates that some degree of oversight on the geographic scale of each Recovery Unit is necessary. However, the Malheur Core Areas are currently the only 2 out of 22 in the Upper Snake Recovery Unit that are not, at least partially, located in Idaho. Since management of resident, non-anadromous fish predominantly occurs according to state lines (e.g. Oregon Department of Fish and Wildlife, Idaho Department of Fish and Game), a Draft Plan that defines ESA Recovery as successful threats-based management but that does not consider the practicality of existing resource management boundaries, must assume that new inter-state collaboration and coordination will form to meet these targets. The Draft Plan appears to provide FWS with a facilitation role at this geographic scale and relies upon the existing purviews of fish and land management agencies to determine the success and sufficiency of management. New inter-state collaboration around management of bull trout is unlikely to occur, particularly between states (e.g. Oregon and Idaho) that do not share commonalities in native species policy or that adhere to native species policies which are in direct conflict (e.g. Oregon and Idaho). An alternative strategy would be to redefine Recovery Units primarily based upon genetic distinction and life history and secondarily along state lines and/or federal land management districts.

5. The two Malheur River Core Areas should be removed from the Upper Snake Recovery Unit based on biological uniqueness, the biodiversity principles, and FWS DPS policy.

Since Malheur River bull trout exist at low numbers and spawning surveys have supported that observation since 1999, these populations cannot be placed at risk for premature delisting based on the management of populations outside of the Malheur River. The Draft Plan places these populations at risk for premature delisting via inclusion of these two Core Areas in a Recovery Unit comprised of Core Areas outside of the management jurisdictions of agencies in Oregon (i.e., the 20 Core Areas in Idaho) and by assigning a 75% threshold for threats management. BPT proposes that the FWS removes the two Malheur River Core Areas from the Upper Snake Recovery Unit to ensure that delisting will not occur until population viability of these two Core Areas can be empirically demonstrated, and based on biological rationale provided by BPT in these comments. Aside from abolishing the 75% target for the Upper Snake Recovery Unit, which the November 4th intertribal comments propose for all Recovery Units for which the 75% target is in place, the Draft Plan cannot guarantee the protection of the Malheur River Core Areas until a time at which ESA protection is no longer warranted based solely on the management and viability of these two Core Areas. BPT questions how the FWS could support any Recovery Plan that allows for the potential delisting of the Malheur River Core Areas while populations remain well below viability and thus, in BPT staff’s professional opinion, continue to warrant ESA protection.

BPT provides the following biologically-supportable rationale for the formation of the two Malheur River Core Areas into one independent Recovery Unit:

- Interagency data collection in the Malheur River demonstrated that fluvial bull trout may mature at an earlier age than individuals in most other bull trout populations (Steve Namitz, pers. comm.). Schwabe (2005) empirically developed the following size classes for fluvial bull trout in the Upper Malheur River: age-3 consists of individuals ranging from 175-225 mm and age-4 consists of individuals ranging from 226mm-276mm. Malheur River fluvial individuals age-4 and potentially age-3 have been confirmed as sexually mature (BPT 1999). In recent years, BPT capture of fluvial adults in the Upper Malheur and during staging for spawning in July and August has almost entirely consisted of individuals smaller than 276 mm (BPT 2013, BPT 2014 draft). The earlier age at maturation among fluvial individuals may be a unique feature among Malheur Core Areas in comparison to the remainder of Upper Snake Recovery Unit Core Areas in which the age at maturation is generally accepted to occur at ages 4-6 for fluvial fish (Ratliff and Howell 1992).
- The two Malheur River Core Areas are comprised of resident, fluvial, and adfluvial populations thus meeting the biodiversity principle of “Representation” in which all extant life history forms must be expressed within the distinct unit.
- There is a high potential for the establishment of new populations in the Malheur in currently unoccupied areas, and a substantial interagency effort to investigate and implement such reintroductions, thus the potential to meet the biodiversity principle of “Redundancy.” Additionally, substantial biological evidence exists to support the further division of the two existing Core Areas into multiple extant populations, thus the principle of “Redundancy” may already be met with existing populations in the Malheur River (BPT 1999-2013, Schwabe and Dehaan 2005, Dehaan et al. 2009).
- Probability of persistence of extant Malheur populations may be increased by planned and proposed management actions, thus BPT anticipates that the Malheur River will meet the principle of “Resiliency” as collaborative management actions continue to be prioritized and implemented on appropriate geographic scales.

The Draft Plan focuses on outlining Recovery Units that are also consistent with DPS policy (USFWS 1996). USFWS (1996) requires the basis of DPS definition on the following criteria: 1) “discreteness of a unit”; 2) “the significance of that unit to the taxon”; and 3) “the conservation status of the unit” (as cited in the Draft Plan). This policy further defines “significance” as occupying a unique ecological setting, that extirpation of the unit would result in a gap in the species’ range, or that the unit differs genetically from other populations (definition as described by Ardren et al. 2011).

Under these criteria for DPS definition, an argument for the Malheur River as its own Recovery Unit, potentially as precursory to future DPS designation, can be outlined:

- *Discreteness:* the Malheur River Core Areas are not connected to any of the other Upper Snake Core Areas nor is there ever likely to be volitional connection between these two Core Areas and the remaining 20 Core Areas of the Upper Snake.
- *Significance:* the Malheur River Core Areas comprise two of only a few Core Areas at the historic southern extent of the species' range in the U.S. These are the only two Core Areas that comprise extant populations in the entirety of Southeast Oregon. Along with the Klamath Basin, these five Core Areas comprise all extant populations in the entirety of Southern Oregon. Furthermore, the Malheur Core Areas are genetically distinct from all bull trout populations in other Snake River tributaries in Oregon (Spruell and Allendorf 1997 as cited in USFWS 2002). Given that the state lines of Oregon constitute a sovereign management unit separate from the sovereign management jurisdiction of Idaho, BPT asserts that, under the threats management framework of the Draft Plan, Malheur River Core Areas should only be included in Recovery Units with other populations in Oregon. Since Spruell and Allendorf (1997) demonstrated that Malheur River bull trout are distinct in comparison to Oregon populations, BPT asserts that the Malheur River should again constitute its own Recovery Unit and based on genetic uniqueness.
- *Conservation Status:* The Malheur River Core Areas are collaboratively managed by several state and land management agencies while the BPT leads coordination in these issues. A substantial amount of resources has been and is planned to be allocated to recovery of these populations. For example, the Malheur National Forest has been awarded a ten year grant at \$2.2 million annually to implement restorative measures. BPT manages three Bonneville Power Administration projects, one of which is entirely dedicated to the health of Malheur River bull trout and is worth approximately \$260,000 annually for coordination and implementation of recovery projects. BPT has already spent nearly one million dollars in the purchase and planting of riparian species alone in the eight miles of Critical Habitat managed by BPT. BPT has also excluded cattle grazing entirely from the Critical Habitat under its management since 2006. The Malheur Core Areas have also benefited from the infrastructure that has arisen around efforts towards recovery. The Malheur River has one of the largest Working Groups in Oregon, complemented by the interagency Malheur River Bull Trout Technical Advisory Committee which meets quarterly to share information, prioritize recovery actions, and develop new multi-jurisdictional management actions. With the magnitude of stable resources allocated directly or indirectly to the recovery of Malheur River bull trout, BPT believes that these Core Areas will not only become a useful case study for determining the effectiveness of various types of management actions and methods of monitoring population response, but that a more substantial multi-agency commitment to restoring these populations to viability exists than in most other basins in Oregon and throughout the range of bull trout. This commitment has been largely generated by BPT and the resulting resource allocation is tied to the Malheur River.

Exclusion of the Malheur River Core Areas from the Upper Snake Recovery Unit, and formation of a new Malheur River Recovery Unit based on the rationale provided, is the only guarantee

that ESA protection of these Core Areas will remain until threats can be effectively managed and populations can be recovered to the extent that they no longer require ESA protection. The existing and planned resource allocation, combined with the functional collaborative management framework described, predisposes the proposed Malheur River Recovery Unit to successful threats management and to eventual viability of all contained populations.

6. Provide formal clarification on genetic thresholds for conservation of pure bull trout in anticipation that brook trout will be included as a primary threat in the RUIPs.

BPT anticipates that brook trout will be identified as a primary threat in several Core Areas within multiple Recovery Units during RUIP development. Management actions around this threat will require clarification of whether to remove hybrids and at what phenotypic or genetic threshold. In the Upper Malheur River, occurrence of hybridization beyond the first generation has been identified (Dehaan et al. 2009); therefore, allowing hybrids to be released during removal activities may inhibit the success of the management of this threat. State, federal and tribal land and resource management agencies in the Malheur River could utilize formal guidance provided by FWS.

Specific Comments

BPT staff provides the following specific comments that were prepared by Malheur River Bull Trout Technical Advisory Committee members, but which were not included in agency comments due to respective internal deadlines, the brevity of the Draft Plan comment period, and the coincidence of the Draft Plan comment period with normal field seasons. BPT includes these comments as our own as an indication of agreement with other Malheur River Bull Trout Technical Advisory Committee members on necessary revisions to the Draft Plan.

7. On page vi the Draft Plan states (under Revised Draft Recovery Plan Executive Summary, “Recover Goals Objectives and Criteria”): “The ultimate goal of this recovery strategy is to manage threats and ensure sufficient distribution and abundance to improve the status of bull trout throughout their extant range in the coterminous United States so that protection under the Endangered Species Act is no longer necessary. When this is achieved, we expect that:

- Bull trout will be geographically widespread across representative habitats and demographically stable in each recovery unit;
- The genetic diversity and diverse life history forms of bull trout will be conserved to the maximum extent possible; and
- Cold water habitats essential to bull trout will be conserved and connected.”

Comment: The proposed Draft Plan directly contradicts the above bulleted statements. If four of the six Draft Recovery Units are delisted, there will be limited opportunities for monitoring existing populations, and/or limited funding to achieve recovery work to support the above draft

Recovery Goals. Delisting while acknowledging population declines is in direct contradiction to the three Recovery Goals listed in the Draft Plan.

8. On page vii the Draft Plan provides the following sequential statements (under Revised Draft Recovery Plan Executive Summary, first paragraph): “Bull trout population status remains strong in some core areas. However, in developing this revised draft recovery plan, we acknowledge that despite our best conservation efforts, it is likely that some existing bull trout core areas will become extirpated due to various factors; including the effects of small populations and isolation (35 of 110 extant core areas comprise a single local population). Thus, our current approach to developing recovery criteria and necessary recovery actions for bull trout is intended to ensure adequate conservation of genetic diversity, life-history features, and broad geographical representation of bull trout populations while acknowledging some local extirpations are likely to occur.”

In the second paragraph, the Draft Plan continues: “the proposed recovery criteria represent our best assessment of the conditions that would most likely result in a determination that listing under the Act is no longer required.”

And finally in the second paragraph, first bullet: “For the Coastal, Mid-Columbia, Upper Snake and Columbia Headwaters Recovery Units: Primary threats are effectively managed in at least 75 percent of all core areas, representing 75 percent or more of bull trout local populations within each of these four recovery units (as identified in Appendix B and Table 2 in this revised draft recovery plan).”

Comment: The intention to “ensure adequate conservation of genetic diversity, life-history features, and broad geographical representation of bull trout populations while acknowledging some local extirpations are likely to occur” is noted, but we professionally disagree that removing the protections afforded by the ESA “for the Coastal, Mid-Columbia, Upper Snake and Columbia Headwaters Recovery Units” will have a positive outcome on the conservation of genetic diversity, life-history features, and broad geographical representation of the bull trout populations in these units. In actuality, delisting these populations will have a negative effect; negatively influencing these “Recovery Unit” populations by diminishing genetic diversity, creating population loss to brook trout hybridization and competition, and ultimately extirpation.

Many recovery actions are implemented through mitigation funding from power producing entities. Continuation of future bull trout habitat enhancements, monitoring and/or adaptive management actions may cease if delisting in these Recovery Units occur. However, the necessity of implementation in those areas is likely to remain as populations will remain well below viability. Further, unique populations of bull trout in the Coastal, Mid-Columbia, and Upper Snake Recovery Units will suffer as a result. The short- and long-term effects of any delisting action based on threats management alone will contradict the intent of the Endangered Species Act. Some unique, genetically isolated bull trout populations (e.g. upper Malheur River & North Fork Malheur River) will degrade in status from decreasing to extirpated:

- Anthropogenic barriers will prevent natural bull trout recolonization and prevent metapopulation gene flow via a decreased ability to remove and/or provide passage at known barriers;
- Land use practices will increase pressure on bull trout occupied habitats on federal land by undermining regulatory actions that are contingent upon listing status; and
- Continued bull trout decline is likely if a long-term commitment to recovery actions is lacking, based on trends in ODFW spawning survey data (1992-2013), and may lead to extirpation.

Comment: In reference to the following statement (excerpted above) “The proposed recovery criteria represent our best assessment of the conditions that would most likely result in a determination that listing under the Act is no longer required”: Acknowledging that bull trout populations remain in decline does not justify removing ESA protection. We believe bull trout absolutely require ESA protection based on monitoring data. By this inconsistent “recovery” logic of delisting declining populations, is it not possible that bull trout status could move from ‘Threatened’ to ‘Delisted’ to ‘Endangered’ and/or ‘Extirpated’? Extirpation could occur without the mechanism or mandates afforded by the ESA to track and prevent continued population decline.

Comment: In reference to the following statement (excerpted above) “Primary threats are effectively managed in at least 75 percent of all core areas, representing 75 percent or more of bull trout local populations within each of these four recovery units.” Provide clarification on how achieving effective management in at least 75% of the remaining 40% of bull trout’s historic distribution is a biologically appropriate justification for delisting. It appears USFWS is suggesting that managing threats in 30% of historic range (e.g. $75\% \times 40\% = 30\%$) is considered “recovery,” while acknowledging that “some local extirpations are likely to occur” and recognizing that managing threats does not ensure stable or increasing population abundance.

9. On page 8 the Draft Plan states (last paragraph): “In preparation of this revised draft recovery plan, we also applied the NatureServe status assessment tool to evaluate the status of the six recovery units. The tool rated the Klamath Recovery Unit as the least robust, most vulnerable bull trout recovery unit and the Upper Snake Recovery Unit the most robust and least vulnerable.”

Comment: The Upper Snake Recovery Unit is listed as the “most robust” and “least vulnerable.” Upper Malheur and North Fork Malheur populations have been in a decreasing trend since 2000 (ODFW spawning survey reports included in BPT 2000-2013). Therefore, Upper Malheur River and North Fork Malheur River populations should not be included in a Recovery Unit that has met the 75% Criteria for delisting. ODFW has been performing redd counts in this system since 1992 “due to increased interest in the status of bull trout.” Delisting these populations will decrease regulatory interest in continued monitoring of spawning

abundance, and likely move populations toward extirpation by reducing the necessity of management actions. ODFW redd survey methodology caveats their counts with “Brook trout are present in the upper Malheur River system, and spawn timing overlaps with that of bull trout.” And further “In the upper Malheur Watershed, distinguishing between bull trout and brook trout redds is impossible without identifying the fish creating each redd” (Hurn 2014). If Malheur River bull trout are delisted as a function of management elsewhere in the Upper Snake Recovery Unit, it is unlikely that the acknowledged threat of brook trout will be addressed due to reduced regulatory necessity.

10. On page 8 the Draft Plan states (last paragraph): “In preparation of this revised draft recovery plan, we also applied the NatureServe status assessment tool to evaluate the status of the six recovery units...The Upper Snake Recovery Unit is ranked as T4: ‘Apparently Secure-Uncommon but not rare; some cause for long-term concern due to declines or other factors.’”

Comment: This is not consistent with the 2005, 5 year status review figures. How did the status of so many Core Areas move from ‘At Risk or High Risk’ and ‘Declining or Unknown’ (Maps A & D, respectively from the 2008 5 year review) predominantly within the Draft Upper Snake River Recovery Units move to “*Apparently Secure*” in three years (2005 to 2008)?

USFWS (2013) states “the law’s (ESA) ultimate goal is to ‘recover’ species so they no longer need protection under the ESA. Recovery plans describe the steps needed to restore a species to ecological health. FWS biologists write and implement these plans with the assistance of species experts; other Federal, State, and local agencies; Tribes; nongovernmental organizations; academia; and other stakeholders.” Biologists and managers in the Malheur River do not believe that including upper Malheur and North Fork Malheur bull trout populations within the Upper Snake Recovery Unit will meet the intent of the Endangered Species Act. Therefore we believe the upper Malheur and North Fork Malheur bull trout populations should comprise one unique Recovery Unit designated completely within the boundary of the state of Oregon.

11. On page 56, the Draft Plan states (first subheading, “Upper Snake Recovery Unit”): Brook trout are identified as a primary threat in eight core areas within this recovery unit. Brook trout removal efforts should be implemented where feasible and biologically supportable. Preventing spread of brook trout into new drainages should be prioritized (e.g., in the North Fork Malheur River).”

Comment: If the Upper Snake River Recovery Unit is delisted, brook trout removal efforts will not be implemented although feasible and biologically supportable. Pressure on existing bull trout populations will continue and there will be no mechanism in place to prevent the spread of brook trout into new drainages (e.g. to the North Fork Malheur River). There will be no funding source for these previously prioritized actions and the 5 plus years of planning efforts will have been wasted. Therefore we believe the Upper Malheur and North Fork Malheur bull trout

populations should comprise one unique Recovery Unit designated completely within the boundary of the state of Oregon.

12. In reference to the Threats Table (p. 97-98), **Comment:** We request clarification in the “threat table” applying to all boxes that list “Upland/riparian land management (legacy timber harvest and Roads)”. As currently stated it implies that current threats are associated with legacy upland and riparian management. While legacy effects should be addressed, threats should also include on-going and future land management practices. All current and future upland and riparian land management practices should be developed and implemented mindfully when ESA listed species could potentially be affected.

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