

July 25, 2014

Northwest Power and Conservation Council
851 SW 6th Avenue, Suite 1100
Portland, OR 97204-1348
Submitted via e-mail to: PublicComments@nwcouncil.org

Re: Comment of American Whitewater on the Draft Amended Fish and Wildlife Program

Dear Council Chair Bradbury, Vice Chair Anders, and Council members Booth, Karier, Lorenzen, Rockefeller, Smith and Yost:

American Whitewater appreciates having the opportunity to provide comment on the Northwest Power and Conservation Council's Draft Amended Fish and Wildlife Program. The Program is the largest fish and wildlife recovery program in the United States, and we appreciate the scope and breadth of comments and topic areas that the Council has worked with throughout the process of developing the Draft Program. In particular, we have a special interest in the Protected Areas program, which has protected over 44,000 miles of freely flowing river reaches throughout the Pacific Northwest from hydropower development. We're pleased to see that the Protected Areas program remains a key strategy for meeting numerous goals outlined within the Draft Amended Fish and Wildlife Program, and that the Council is standing by its decision to establish Protected Areas outside of the Columbia River Basin. We support the Council in standing strong behind this aspect of the program. We are extremely disappointed, however, to see that the exception process has been placed into the Draft Amended Program.

American Whitewater is a national non-profit 501(c)(3) river conservation organization founded in 1954. With over 5,800 members and 100 locally-based affiliate clubs, we represent the conservation interests of tens of thousands of whitewater enthusiasts across the nation. American Whitewater's mission is to conserve and restore America's whitewater resources and to enhance opportunities to enjoy them safely. We are the primary advocate for the protection of whitewater rivers throughout the United States, connecting the interests of human-powered recreational river users with ecological and science-based data to achieve the goals within our mission. A significant number of our members reside in the Pacific Northwest and recreate on rivers that are affected by the Council's decisions. We have a direct interest in amendments to the program and provided substantive recommendations and comments to the Council last fall, which we incorporate by reference.¹

¹ American Whitewater's September 2013 recommendations are available at: <http://www.nwcouncil.org/fw/program/2013amend/recs/rec?id=635>; and November 2013 comments are available at: <http://www.nwcouncil.org/fw/program/2013amend/comments/comment?id=813>

I. Exceptions to Protected Areas

A. Recommendation to Remove Exception Process

American Whitewater’s primary recommendation to the Council last fall was that exceptions remain out of the Protected Areas program. An overwhelming majority of the comments that were submitted to the Council regarding Protected Areas echoed this recommendation, including those from the U.S. Fish and Wildlife Service, National Park Service, Snoqualmie Tribe, almost three-dozen conservation organizations and over four hundred from the general public. We were disappointed that the Draft Program reinstated the exception process despite the overwhelming sentiment from the public not to, and request that the Council reconsider their decision.

Protected Areas were established to protect the most sensitive fish and wildlife habitat from the significant impacts of hydropower development.² Over 44,000 river and stream miles were given this special protection because they were found to be areas where hydropower development would have major negative impacts that could not be reversed.³ Protected Areas were also established to save time, energy and resources due to the controversy involved in siting hydropower projects in these sensitive areas, both within and outside of the Columbia River Basin.⁴ To date, the program has been incredibly successful, and the Federal Energy Regulatory Commission (FERC), which is charged with issuing hydropower permits and licenses to utilities and private developers, has recognized the Council’s 2010 Sixth Northwest Conservation and Electric Power Plan as a regional comprehensive plan.⁵ As a result, FERC has followed the recommendation of the Council and has declined to issue a single hydropower license for a project located within a Protected Area.⁶

When the exception process was omitted from the program, it was rarely being used.⁷ Today, pressure on Protected Areas is increasing because nearly all of the economically viable and less environmentally sensitive sites for hydropower have already been developed. Currently there are three active proposals for hydropower projects in Protected Areas—the Black Canyon Hydro Project on the North Fork Snoqualmie River in Washington (FERC No. 14110); the Sunset Falls Project on the South Fork Skykomish River in Washington (FERC No. 14295), and the Oneida Narrows Dam on the Bear River in Idaho (FERC No. 12486).

² Northwest Power and Conservation Council, “Protected Areas Amendments and Response to Comments,” Document 88-22, p. i.

³ *Id.* at p. 2.

⁴ *Id.* at pp. 18-19.

⁵ Section 10(a)(2)(A) of the Federal Power Act (FPA), 16 U.S.C. section 803 (a)(2)(A), requires the Federal Energy Regulatory Commission (Commission) to consider the extent to which a project is consistent with Federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.

⁶ See, for example, FERC’s denial of the Shelly Project, 80 FERC 61342.

⁷ See Northwest Power and Conservation Council Response to Comments, 1990 and 1992, Council Documents 90-10 and 92-26. Requests to amend the status of protected reaches were much more common.

This pressure is increasing from the federal level as well. The Department of Energy (“DOE”) recently released a report entitled *New Stream-reach Development: A Comprehensive Assessment of Hydropower Energy Potential in the United States* (“DOE Assessment” or “Assessment”).⁸ The Assessment analyzes the potential for new hydropower development across three million river and stream reaches in the U.S. The Assessment found that the Pacific Northwest⁹ has the highest potential for new hydropower production, with 3,793 reaches with potential for a project with more than one MW, and numerous more with less than one MW.

There is a frightening correlation between the rivers and streams listed by the DOE and the rivers within the Protected Areas program (see Attachment I).¹⁰ They include outstanding regional rivers and streams such as Washington’s Skykomish, Snoqualmie and Wenatchee Rivers, Oregon’s Clackamas and Deschutes Rivers, and the Payette River in Idaho. While the Assessment refers to Endangered Species and protected lands, it is silent on NWPCC’s Protected Areas status.¹¹ These threats are real, as the DOE is working in partnership with hydropower developers to advance their goal of adding 65 GW of electricity across 3 million river and stream reaches in the U.S. by 2030.¹²

Currently the Draft Program allows for exceptions for those projects with “exceptional benefits to fish and wildlife.” American Whitewater has over two decades worth of experience working on hundreds of FERC licensing and relicensing proceedings. In that time, and in our experience, we have worked with hundreds of other conservation advocates and state and federal natural resource agencies. In our experience, we’ve found that the only way to truly provide exceptional benefits to fish and wildlife is to protect the last remaining freely flowing river reaches. Although some mitigation actions may be found to benefit certain species in particular ways during certain times of year, hydropower projects overall have numerous detrimental impacts to rivers and streams, including dewatering reaches, impeding the transportation of sediment, debris, and nutrients, and isolating riparian habitats by creating distinct upstream and downstream reaches. Hydropower operations impair water quality and temperature and alter natural flow regimes by dewatering or unnaturally pulsing drought-like and flood-like flows over the course of weeks, days, or even hours. Hydropower projects also restrict river access, eliminate certain types of recreation, and intrude on the aesthetics and scenic beauty of the area where they are built.

⁸ Department of Energy, April 2014, available at:

http://nhaap.ornl.gov/sites/default/files/ORNL_NSD_FY14_Final_Report.pdf

⁹ The Department of Energy’s Pacific Northwest Region includes all of Washington, most of Idaho and Oregon, western Montana, and very small parts of Nevada, Utah and California.

¹⁰ Attachment I overlays NWPCC Protected Areas with the Department of Energy’s HUC 10 layers representing hydropower potential within each basin. While the maps do not provide an exact reach-by-reach correlation, they provide a starting point for looking further into where there is potential overlap.

¹¹ The report does find that 4.2% of these river reaches overlap National Park land, 41% with Wild and Scenic Rivers, and that 66% of the stream reaches are associated with water quality and recreation concerns. Assessment, page 160.

¹² See http://www.hydro.org/wp-content/uploads/2014/04/2014_04_29-Press-Release-Moniz-NHA-Conference-FINAL.pdf, and <http://www.waterpowermagazine.com/news/newsus-has-potential-for-65gw-of-new-hydro-capacity-4255317>

These impacts occur no matter the size of the project or the amount of power it produces. Hydropower developers label their projects as “small” and “run-of-river” to imply that they are environmentally benign. Regardless of size and mode of operation, these projects also have detrimental impacts to rivers and streams, which we cited in our November 2013 comments to the Council and incorporate by reference. The pressure from “small” hydro is increasing as well, and the three active hydroelectric projects in Protected Areas mentioned above are examples. Additionally, the DOE Assessment contemplates that many of the potential stream reaches in the region will require low-head dam technologies if they are developed.¹³

The Protected Areas program is more important today in the face of these threats. It clearly directs hydropower developers towards areas that are less sensitive to the impacts of their projects and less likely to stir public controversy. Hydropower projects have no place in these special and sensitive areas, and the exception process opens the door for this to happen. In light of these pressures, we encourage the Council to re-examine its decision regarding exceptions, and to withdraw its earlier decision allowing exceptions in the Draft Amended Program.

Additionally, not allowing exceptions in Protected Areas would be more in alignment with renewable portfolio standards (“RPS”) in Washington and Oregon. Washington’s RPS do not include new hydropower projects as an “eligible renewable resource.”¹⁴ Oregon’s RPS include new hydroelectric projects only for facilities that are located on rivers outside of Protected Areas or federal Wild and Scenic Rivers or Oregon Scenic Waterways.¹⁵

B. Strengthening the Exception Process if Exceptions Stay in the Protected Areas Program

American Whitewater does not believe that an exception process is in the public interest, however if the Council chooses to keep exceptions in, we continue to recommend that the exception standard be strengthened and clarified (please see our comments and recommendations from last fall and our testimony at the July 8th, 2014 public hearing in Portland). We appreciate that the Council included some of our initial recommendations, including specifying that public comment is to be part of the process, and clarifying that the Council has the option to consult with the ISAB for further information about whether a project will provide exceptional benefits.

1. Exceptional Benefits

Our primary concern with the draft exception language is that it is not clear about what constitutes an “exceptional benefit.” We recognize that this standard could—and should—be interpreted as being a very high bar to meet. This standard, however, is open for

¹³ DOE Assessment, p. 155.

¹⁴ WASH. REV. CODE § 19.285.030 (2014).

¹⁵ OR. REV. STAT. § 469A (2013).

interpretation, and could mean something very different from one person to the next. If exceptions are to remain in the program, we encourage the Council to clarify within the Program what makes a benefit “exceptional.”

In its process, we urge the Council to:

- Make a distinction between any *benefits* of a project and those activities that *mitigate* the project’s impacts, and ensure that mitigation activities are not considered as a benefit. Mitigation is often required by both federal and state agencies to offset existing, expected or potential impacts of constructing and operating a hydropower project. Mitigation is simply not a project benefit—it is intended to help alleviate harm caused by the project.
- Ensure that the construction and operation of a hydropower project with “exceptional benefits” results in no adverse impacts to the riparian system. This includes the timing and volume of the river’s flow regime, fish passage, sediment and nutrient passage, water quality, temperature, fish and wildlife habitat and populations, cultural resources, recreation and other values that support healthy and robust riparian ecosystems and fish and wildlife populations.
- Consider all of the impacts of projects seeking an exceptional benefit exception. Projects with “exceptional benefits” should, at a minimum, not provide benefit for one aspect of the riparian system to the detriment to others. There should be no trade-offs or balancing between impacts and benefits attributable to different aspects of the project.
- Ensure that the benefits claimed can only be achieved by building the proposed hydropower project. A proposed hydropower project does not provide exceptional benefits by funding improvements at existing infrastructure that could conceivably be made whether or not the hydropower project is built.

2. Additional Exception Recommendations

American Whitewater and many others made additional recommendations for strengthening the exception process during the September 2013 comment period. These included prohibiting exceptions in Protected Areas for projects that will impact river reaches that are on the National Park Service’s Nationwide Rivers Inventory (“NRI”), or areas where critical habitat has been designated for species listed under the Endangered Species Act. These recommendations did not make it into the Draft Program, and we request that these suggestions be considered again. In the event that they are disregarded, we request that the Council offer explanation about why these suggestions have been dismissed.

Additionally, American Whitewater recommends that the Council only grant exceptions if there is a demonstrated need for power in the region where the proposed project is located. Hydropower projects impact the local communities where they are sited, and any

benefit that does come from the project should go directly to the community that is impacted. To reflect this value, we recommend the following language be inserted into the Draft Program on page 175-176.

“Petitions must contain the following:

[...]

A demonstration of critical power necessity in the immediate region that can only be addressed by the construction and operation of the proposed project.”

3. Active Projects Likely to Seek an Exception

Currently, there are three proposed hydropower projects within Protected Areas that are highly controversial and strongly opposed by the general public and environmental and recreation community because of their impacts. There is a high likelihood that the developers proposing these projects will seek an exception to build their projects in a Protected Area if the process is reinstated. We view these projects as the litmus test for whether the exception process is strong enough and encourage the Council to consider them as it develops the final Fish and Wildlife Program.

Sunset Falls: At Snohomish PUD’s proposed “Sunset Fish Passage and Energy Project” on the South Fork Skykomish River in Washington, the PUD is proposing to manage and maintain the existing Washington Department Fish and Wildlife trap and haul operations. Although the developer describes this as a benefit of the project, it is an action that makes the project more appealing for those who would otherwise oppose it. The PUD’s mission is to “make a difference in our customers' lives by safely providing quality products and services in a cost-effective and environmentally sound manner.” The PUD’s mission and goals are customer driven and have little to do with operating a fish passage facility. Their proposal to make modest upgrades to an existing trap and haul facility and take responsibility for operations is an outside action rather than an inherent benefit of the project. Although the PUD will likely argue that their version of the trap and haul facility is an “exceptional benefit,” this benefit is one that has been provided since the fish passage facility was constructed in 1958.

Ernie’s Gorge: Black Canyon Hydro is proposing a hydropower project on the North Fork Snoqualmie River in Washington. While the developer has made general claims regarding benefits for fish and recreation use, they have yet to clearly articulate what these would be. If developed at the capacity proposed, this project would remove all the water from a currently free-flowing river for several months of the year, resulting in significant impacts to resident fish and existing recreational use.

Oneida Narrows: The Twin Lakes Canal Company is proposing the Oneida Narrows Project on the Bear River in Idaho (ID). The applicant is seeking to build

the project in order to fund improvements to their irrigations facilities. While we support improving irrigation efficiencies, we do not believe this benefit is exceptional. Building the project is not the only way for irrigation infrastructure improvements to happen, and building the project would result in inundating imperiled Bonneville Cutthroat Trout refugia and likely result in listing the species under the Endangered Species Act.

One of the main reasons that the Protected Areas program was implemented was to reduce the controversy that comes from building and operating hydropower projects within sensitive areas. These projects have already generated a great deal of the controversy that the Protected Areas program seeks to avoid. For each of these river reaches (Bear, South Fork Skykomish and North Fork Snoqualmie), the greatest benefit to fish and wildlife would be realized by keeping them freely flowing.

If the Council decides it is in the public interest to keep an exception process in the Protected Areas program, American Whitewater requests that the Council explain their rationale behind this decision, particularly in light of the fact that the overwhelming majority of responses received from the public during the recommendation and comment periods last fall were in support of keeping the Protected Areas program free of exceptions.

II. Amendments to Protected Areas

American Whitewater is pleased to see that an amendment process has been reinstated for Protected Areas. We have several recommendations for providing clarity to the program. The Draft Program makes no explicit mention of whether there will be an opportunity for public participation in the amendment process, but does provide that the Council will follow “the procedures and standards for a program amendment process under the Northwest Power Act” (p. 175). American Whitewater recommends that the Draft Program explicitly outline the level to which the public will be able to participate in amendments, or at a minimum, cite to the provisions in the Northwest Power Act that outline the relevant procedures and standards pertaining to public participation.

American Whitewater made several recommendations for additions to the Protected Areas program during the recommendation and comment phase, and is disappointed to see that none of these recommendations were addressed within the Draft Amended Program. These include areas where critical habitat has been designated for bull trout. We request that the Council provide a rationale about why this was not considered for the Draft program, and encourage the Council to make these additions a priority for the Protected Areas program in the future.

Additionally, we seek clarification from the Council about whether the Bear River Narrows is still a Protected Area. In 1990 the Council granted an exception for the Bear River Narrows Hydroelectric Project in Idaho (P-9215) because the proposed project would stabilize fluctuating flows from an upstream dam. This project ultimately was not built, and the need for flow stabilization was eliminated with the removal of the Cove

Dam in 2006. In the interim, and in the face of a new proposed project in the same location, there has been concern among environmental groups that the reach remains unprotected.

We also seek clarification about whether the Protected Areas status of the Bear River changed when the exception was granted in 1990. The StreamNet Mapper indicates that this river is protected for wildlife only. The river provides habitat that is crucial for the survival of the Bonneville Cutthroat trout population, and should be protected for resident fish as well. If the protected designation removed protections for resident fish in the 1990's, we encourage the Council to reinstate the protection. If the designation for the reach has always been wildlife only, we encourage the Council to consider designating the reach as protected for resident fish and wildlife.

Finally, on page 175, the draft program states that the Council will not designate a river as protected without the concurrence of the state in which the river is located. American Whitewater recommends that the state's opinion be strongly considered in the process of both designating and undesignating a river as protected, but that the Council make the ultimate decision in both cases.

III. Exemptions to Protected Areas

The Draft Amended Program exempts from Protected Areas “any addition of hydroelectric generation facilities to a non-hydroelectric dam or diversion structure.” American Whitewater supports upgrading capacity at existing dams before new dams are built under the condition that such project operations, at a minimum, do no additional harm. Ideally, any upgrade would improve and enhance existing conditions.

Section (a) of Part F—“Future hydropower electric development and licensing, and protected areas”—outlines general measures that must be taken for all new hydropower within the Columbia River Basin, whether designated as a Protected Area or not. We recommend that the Council emphasize that the Protected Area exemption for adding hydropower capacity to non-power dams is considered to be “new hydropower” described in section a, and that these protective measures for fish and wildlife apply to these projects.

American Whitewater suggests the following language for page 173 of the Draft Program:

“The following are not affected by protected areas:

...

- Any addition of hydroelectric generation facilities to a non-hydroelectric dam or diversion structure, *provided that such a project is consistent with the General Measures outlined in part a. above.*”

IV. General Measures – New Hydropower Development

On page 169, for the “General Measures” under Section F: “Future hydropower electric development and licensing, and protected areas,” Subsection a: Future Hydroelectric Development and Licensing, the Draft Program outlines conditions that FERC, Bureau of Reclamation and Bonneville must follow in order to take actions relating to hydroelectric development in the Columbia River Basin. The fourth condition states that these agencies shall “provide Columbia and Snake River flows and reservoir levels of sufficient quantity and quality to protect spawning, incubation, rearing and migration.” The 2009 Program provided this condition for *all* hydropower throughout the Columbia River Basin (2009 Fish and Wildlife Program, Appendix B, p. 79). Flows of sufficient quantity and quality are imperative for the survival of fish and wildlife beyond the Columbia and Snake Rivers alone, and American Whitewater recommends that the Council expand the scope of this condition to the entire Basin, as in the 2009 program.

V. Dam Removal as a Restoration Strategy

In the Draft Amended Fish and Wildlife Program, the Council highlights its goals and objectives to “rebuild healthy, naturally producing fish and wildlife populations adversely affected by the construction and operation of hydropower dams in the Columbia River Basin.”¹⁶ The Draft Program continues by emphasizing its support for regional Tribal and agency restoration projects.

Removing dams from rivers like the White Salmon River, Hood River and Rogue River has restored significant amounts of important habitat and dramatically provided new opportunities for rebuilding fish and wildlife populations. These accomplishments were only possible through the deep involvement of a diverse partnership of stakeholders, including local, state and federal agencies and tribes.

We note that dam removal is not highlighted in Draft Program, both in terms of the habitat that has been restored by recent dam removals in the region or as a future restoration strategy.¹⁷ There is potential to restore additional habitat in Columbia River tributaries through removing barriers and dams that are no longer generating or economical, or where marginal power does not adequately balance against the environmental and fishery impacts. We encourage the Council to take a more active role in participating in these efforts. There are several ripe opportunities to restore fish and wildlife habitat in Columbia River tributaries, including:

¹⁶ Draft Program, p. 27.

¹⁷ In the Draft Program, dam removal is only mentioned in the context of subbasin management plans, where the Council recognizes that “physical conditions and priorities may have changed such as in areas with dam removal or where substantial restoration work has occurred,” (Draft Program, Subbasin Plans, page 107); and in the context of quantitative cost-effectiveness comparisons of fish and wildlife measures, and the value of “comparing the amount of habitat that might be protected per dollar for ... the different amounts of habitat that might be opened per dollar through the removal of passage barriers in a particular subbasin” (Draft Program, Quantitative cost-effectiveness comparisons of fish and wildlife measures, page 224).

- Enloe Dam on the Similkameen River is located in the Upper Columbia Basin, where a dam removal working group (consisting of the local Public Utility District, Colville Tribes, Lower Similkameen Band of Indians, state and federal fishery agencies and nonprofits) is exploring options for removing the dam and restoring more than 200 mainstem and tributary miles for steelhead and potential Spring Chinook habitat.
- Middle Fork Diversion Dam in the Nooksack Basin. Removing this dam is one of the most important restoration opportunities in its Watershed Management Unit and a restoration priority in the Washington state's Water Resources Inventory Area 1 Plan. Removal is a stated goal of the City of Bellingham, which owns the dam, and will provide up to 17 miles of steelhead and Spring Chinook habitat and boost fish populations by 15-20%.¹⁸
- Mill Pond Dam on Sullivan Creek, which is a tributary of the Pend Oreille River. Removal is scheduled for 2015, and will provide new habitat for native resident species, including threatened bull trout.

VI. Recommendations for Clarifying Program Language

On page 174, the program states, "The Council recognized that the Federal Energy Regulatory Commission may be obligated to complete its processes on these applications, but practicable." It appears that there is language missing from this sentence.

On page 175, the program states, "Any party may file a petition with the Council for an exception to the effect of a protected area designation for a proposed project that will provide exceptional benefits to the fish, wildlife, or both that are the reason for the designation." The structure of the latter part of this statement is awkward and American Whitewater suggests instead saying "...will provide exceptional benefits to the fish and/or wildlife that are the reason for the designation."

VII. Conclusion

We are pleased to see that the Council has chosen to keep the Protected Areas program as a critical strategy for addressing numerous goals within the Fish and Wildlife Program. We also applaud the Council for standing by its decision to establish Protected Areas outside of the Columbia River Basin, and support the Council in standing strong behind this aspect of the program. While we're disappointed to see that an exception process has been reinstated to the program, we appreciate that the Council has implemented some of

¹⁸ WRIA 1 Program Coordination Management Team Meeting Summary, March 31, 2011. Available at: http://wria1project.whatcomcounty.org/uploads/PDF/Meeting%20Materials/Management%20Team/WRIA%201%20Management%20Team%20Meeting%20Summary%2003-31-11_Final%20Draft.pdf; last visited: 7/25/2014.

our recommendations. We look forward to working with the Council to expand the Protected Areas program in the future.

Sincerely,

Handwritten signature of Megan Hooker in black ink.

Megan Hooker
Associate Stewardship Director

Handwritten signature of Thomas O'Keefe in black ink.

Thomas O'Keefe
Pacific Northwest Stewardship Director