

May 10, 1989

RESPONSE TO COMMENT
PROTECTED AREAS TECHNICAL CORRECTIONS

I. Amendment Process

Comment:

Although they did not oppose any of the proposed corrections, Friends of the Earth (FOE) commented that the time allowed for public comment should have been longer. FOE suggested that additional advance public notice might lead to suggestions for improved amendments.

Response:

In its protected areas rule, the Council made provision for an expedited process for corrections "where there is a compelling need for earlier consideration". This was first round of such corrections.

The state agencies involved with these corrections had received notice of the proposed corrections and had concurred in them prior to the time that the Council entered rulemaking on them. (A number of the corrections were initiated at the request of the state agencies.) Because it appeared that the proposed corrections were not likely to be controversial, the Council decided that a one-month period for public comment would be adequate.

No other commentor suggested the need for additional time, and there is no indication that the shortness of the comment period prematurely cut off comments in this instance. However, the Council agrees that a longer comment period could be useful and will consider extending the comment period in subsequent rulemakings of this kind.

Comment:

FOE commented that a "review of FERC activity and acknowledgement of the chief proponent of the amendments should be included in every summary."

Response:

The Council has chosen not to include references to pending projects or other FERC activity. References to active FERC preliminary permits and license applications were included in protected areas lists during the initial rulemaking. Our experience at that time showed that the information available to us was not always up to date or accurate as to location or other project details. Rather than list information which is incorrect or misleading, we chose not to list it at all.

The Council will consider at the time it next enters rulemaking on protected areas amendments whether to list the chief proponent of each amendment.

Comment:

The Washington Department of Wildlife and the Bonneville Power Administration (Bonneville) commented that articles published about protected areas amendments such as the "Backgrounder" should include the specific river reach numbers affected.

Response:

The river reach numbers are typically 14 digit numbers with little or no meaning to members of the general public. For this reason, they were not included in the various notices of the protected areas technical corrections. All of the notices did indicate that for further information, interested parties should call the Council's central office. We had anticipated that anyone who wanted to know the exact river reach numbers would call one of our toll-free numbers and we would furnish the numbers to them.

In light of these comments, the Council will consider how to make the river reach numbers more conveniently available in any further protected areas rulemakings.

Comment:

Bonneville commented that it had reviewed each of the proposed changes, endorsed them, and intends to modify Exhibit C of its Long-Term Intertie Access Policy to reflect the new designations.

Response:

The Council appreciates Bonneville's willingness to incorporate these changes into its Long-Term Intertie Access Policy and believes that the provisions of this policy add an important layer of protection to the resources within protected areas.

II. Idaho Corrections

Comment:

Idaho Fish and Game and the Friends of the Payette commented in favor of the proposed corrections for the Deadwood River. No opposing comments were received.

Response:

The Council adopted the proposed corrections.

Comment:

Idaho Fish and Game and Payette National Forest commented that the portion of Deep Creek for which a change in status was proposed should be protected for anadromous fish and for resident fish or wildlife.

Response:

All of Deep Creek was originally listed in the protected areas designations as a "Z" area, indicating that it was already protected from development by federal law. All of Deep Creek was believed to be within a wilderness area. In fact, the lower portion of Deep Creek is outside the wilderness area and is therefore not protected by federal law.

The correction adopted by the Council will correct the designations to show the true current status of the lower portion of Deep Creek as "U", indicating that it has not been protected by action of the Council and is not within a wilderness area.

At the time that the Council entered rulemaking, it was believed that the Idaho Fish and Game supported a "U" designation for lower Deep Creek. As a result, the rulemaking notice for the Deep Creek correction did not indicate that the Council was considering protected status for lower Deep Creek.

The Council believes that there should be a full opportunity for public comment on the appropriate status of Deep Creek in the event that it is considered for protected status. The Council intends to call for general amendments to protected areas later this year. At that time, it intends to take up the status of lower Deep Creek and will provide adequate notice in order to encourage comments from all affected parties.

III. Montana Corrections

Comment:

The Montana Department of Fish, Wildlife, and Parks commented in favor of the proposed changes.

Response:

The Council adopted the proposed changes.

IV. Oregon Corrections

Comment:

Friends of Walker Creek Wetlands and others commented that Walker Creek deserved protected status because it was habitat rich in native plants, wildlife, and anadromous and resident fish. They noted, among other things, the presence of anadromous cutthroat and steelhead trout and coho salmon.

The City of McMinnville Water and Light Commission commented in opposition to protected status for Walker Creek on the grounds that a 1986

study involving a number of federal and state agencies showed that Walker Creek has no present significant fisheries of anadromous fish nor are there any meaningful opportunities for improvement.

Response:

The proposed correction would have designated Walker Creek as protected for anadromous fish. There is plainly a factual debate between the Water and Light Commission and others as to whether such fish are present on Walker Creek.

In order to provide an adequate opportunity to examine the information presented by commentors and to allow others to review and comment on the information presented, the Council decided not to take action on the proposed correction at this time. The Council anticipates taking up the status of Walker Creek during the next round of protected area amendments sometime later this year.

Comment:

The McMinnville Water and Light Commission commented that: "All permits and applications for our proposed municipal water supply project are for municipal water supply exclusively. No hydro-electric development is contemplated other than that required by Oregon State law."

Response:

The Council's protected areas rule applies only to hydroelectric projects. The rule does not apply to municipal water supply projects, except when those projects also include hydroelectric generation.

V. Washington Corrections

Comment:

Washington Department of Wildlife and Tacoma City Light commented in favor of the proposed correction for Wells Creek. FOE expressed concern about the Wells Creek correction, especially about the potential impact on mountain goat and deer winter range. FOE, however, did not oppose the Wells Creek correction.

Response:

The Council adopted the correction as proposed. The Council believes that the concerns expressed by FOE about the impact on mountain goat and deer winter range can be addressed in the FERC licensing process.

Comment:

FOE commented that there was no rationale expressed for changing the protected status of Canyon Creek, but did not oppose this correction.

Washington Department of Wildlife commented (orally at the Washington hearing, and subsequently by letter) in support of a correction which would indicate that only the area of the Canyon Lake project was not in protected status, with the lower portion of the reach still protected for anadromous fish and wildlife (up to the base of the falls at river mile 1.9) and with the upper portion of the reach (beginning immediately above the project area at approximately river mile 3.6) protected for resident wildlife.

The department explained that the specific area of the proposed project had been carefully studied for the presence of Bald Eagles, the primary resident wildlife species of concern. As a result of these studies, the Department had determined that Bald Eagles did not use the specific project area except to fly over, and that the proposed project should not have an impact on Bald Eagles.

Response:

The Council adopted the revised correction as requested by the comments of the Washington Department of Wildlife.