

## Written Statement

This statement is submitted by John A. Young. I was a biologist with NOAA Fisheries and the U.S. Fish and Wildlife Service for my entire 30-year career. My work with both agencies was relative to implementation of the Marine Mammal Protection Act and the Endangered Species Act (ESA). I retired in 2005.

In 2002 I was selected as the first, and to date the only, Bull Trout Coordinator for the U.S. Fish and Wildlife Service (USFWS). My understanding is that the Pacific Region of the USFWS is currently planning to re-fill this position after a nearly two year vacancy.

As Bull Trout Coordinator, my job was to serve as the conduit between field staff of the USFWS, the scientific community, the public, and the managers of the USFWS in preparing three documents required under the ESA after a species is listed as threatened or endangered: a Recovery Plan, a Critical Habitat Designation, and a 5-year review of the species status. All of the information I am providing to you today is reflected in the respective administrative records for these three initiatives. The administrative records are available from the Pacific Region of the USFWS in Portland, Oregon.

### Bull Trout Recovery Plan

To prepare the Recovery Plan the USFWS established Recovery Teams across the range of bull trout in Washington, Oregon, Nevada, Idaho and Montana. Recovery Teams were made up of biologists and other stakeholders representing other Federal agencies, such as the Forest Service and Bureau of Land Management, State fish and wildlife agencies, private timber companies, utility companies, private ranchers and farmers, and others. The recovery plan was drafted and released for public comment. The draft plan was also peer reviewed by fishery biologists identified by the American Fisheries Society. Peer reviewers included U.S. Forest Service research biologists, university professors, biologists working for private timber industry corporations, biologists working for State fish and wildlife agencies, and others, and included some of the most prominent bull trout researchers as reflected by the current scientific literature. Public and peer review comments were considered and the draft recovery plan was edited accordingly. To date the final recovery plan for bull trout has not been released.

### Bull Trout Critical Habitat Designation

To prepare the critical habitat proposal, a team of USFWS biologists worked with recovery team members to describe habitat necessary to support the recovery of those populations identified in the draft recovery plan as essential to the survival and recovery of bull trout. Again, public comment was solicited and peer review initiated and, again, peer reviewer affiliations ranged from Federal and State agencies to private timber companies and academia. Based on public and peer review input, the amount of critical habitat proposed for bull trout was reduced significantly in the draft final designation submitted by staff biologists to USFWS managers.

Subsequent dialogue with the USFWS Washington Office and the Office of the Assistant Secretary for Fish, Wildlife and Parks resulted in numerous categories of exclusions of areas from the bull trout critical habitat designation. None of these exclusions were based on science, and the rationale for several categories of exclusions was either unclear or illogical.

For example, the entire "action area" of the Federal Columbia River Power System (FCRPS) (i.e., the Federal hydropower projects on the Columbia and Snake Rivers) was deleted from the critical habitat designation. "Action area" is a term of art under the ESA and indicates the scope of habitat that a species that is affected by project operations occupies. So, if an adult bull trout migrates through a dam on the mainstem Columbia River and is potentially affected by dam operations, the "action area" includes the spawning grounds high up in the watershed (sometimes a hundred miles or more distant from the mainstem river) where the adult fish was born and returns to reproduce. The problem with excluding these areas from a critical habitat designation is that the operators of the FCRPS - the U.S. Army Corps of Engineers, the Bureau of Reclamation, and the Bonneville Power Administration - only control operations on the mainstem Columbia and Snake Rivers. These agencies have absolutely no discretionary authority over upstream habitat occurring on private farms and ranches, State lands, or Federal lands managed by the Forest Service or Bureau of Land Management. While an argument might be made that exclusion of the mainstem Snake and Columbia River areas directly managed by the agencies operating the FCRPS is appropriate, blanket exclusion of the FCRPS "action area" is completely illogical. USFWS staff identified this category of exclusion as inappropriate, but USFWS managers were overruled by the Office of the Assistant Secretary for Fish, Wildlife and Parks.

Another example of an illogical, unsupportable category of exclusion is that of all reservoirs within the range of bull trout habitat. There are hundreds of large and small reservoirs built for irrigation water storage, flood control, and hydropower generation in the Pacific Northwest. Operators of these reservoirs include Federal Agencies, private utility companies, private associations of ranchers and farmers, and State and local governments. Operational plans for these reservoirs are diverse, depending on their purpose. Some, but certainly not all, of the operators of reservoirs have consulted with the USFWS under the ESA and have accordingly considered the conservation of bull trout when designing their annual operation plans. Most pertinent to this discussion is that the exclusion of all reservoirs within the scope of proposed bull trout critical habitat was made at the direction of the Office of the Assistant Secretary for Fish, Wildlife and Parks without an analysis of the status of individual operational plans, any associated conservation measures, and the effect of those plans and measures on the habitat necessary for the continued survival and recovery of bull trout. Again, the efficacy of this blanket exclusion was questioned at the staff level, but again USFWS managers were directed to include this exclusion category in the final critical habitat rule by the Office of the Assistant Secretary for Fish, Wildlife, and Parks.

The final critical habitat designation for bull trout was a fraction of that presented to USFWS managers following public comment and peer review, and the result was scattered patches of habitat across the Pacific Northwest not reflective of connected habitat representing the life history requirements of this species. Accordingly, the critical habitat designation is currently being litigated by several conservation organizations.

#### Bull Trout Proposed Critical Habitat Economic Analysis

An economic analysis of the effects of the critical habitat proposal was prepared concurrently by a private contractor and released for public comment. At the direction of the USFWS Washington Office, 50+ pages of this analysis describing the potential economic benefits of the proposed bull trout critical habitat designation were deleted. Therefore, the economic analysis only described potential negative economic effects of the proposed designation.

The data presented in the Economic Analysis has also been skewed, by policy, to overestimate costs associated with a critical habitat designation for bull trout. For example, fish passage facilities on the hydropower projects in the Pacific Northwest were built long before bull trout were listed as threatened and were designed primarily to pass salmon and steelhead from their spawning grounds to the Pacific Ocean and back again. These facilities are expensive to build and maintain, and do benefit some populations of migratory bull trout, as well as the salmon and steelhead they were originally built for. However, in the economic analysis of proposed bull trout critical habitat the full cost of construction and operation has been attributed as a cost relative to the bull trout critical habitat designation. There was no attempt to pro-rate costs by species based on the degree of benefit. More astounding is the fact that these same full costs of construction and operation are also reflected in the NOAA Fisheries Economic Analysis of proposed critical habitat for species of salmon and steelhead under that agency's jurisdiction. The public, therefore, is being intentionally misled to believe that the costs of designating critical habitat and the general conservation of listed species of fish in the Pacific Northwest are multiples of the actual costs incurred.

Another troubling policy currently being implemented is direction to include all costs associated with the conservation of a species since listing in the economic analysis of a proposed critical habitat designation. For bull trout, which were listed in 1998, some 5 years prior to the initiation of the critical habitat designation, the costs include all conservation efforts implemented during this 5-year period. This policy of including all costs within a document prepared ostensibly to address the critical habitat proposal, and clearly titled as relevant only to the critical habitat proposal, is disingenuous at best.

#### Bull Trout 5-year Review

In 2004, a 5-year review of the status of bull trout was initiated in response to a request from the Governor of Idaho. For this project, a panel of experts was convened to assist USFWS biologists and managers in designing a process for both collecting information relative to the status of bull trout and also for subsequent decision-making. Panel members were chosen through a literature searching process where the most qualified

individuals were identified, based on their contributions to the scientific literature. Panel member affiliations included the U.S. Forest Service, academia, the U.S. Geological Survey and others.

As was the case with the draft Recovery Plan and proposed Critical Habitat designation, the draft 5-year review was then subjected to peer review by a diverse group of scientists, and the document was edited accordingly. The result of the 5-year review was that some populations of bull trout were in an improved conservation status since listing, some populations were in a degraded conservation status, and overall the populations of bull trout in the United States were still appropriately listed as threatened under the ESA. To date, this review has not been released, and my understanding is that the USFWS intends to begin work on a new 5-year review for bull trout. The inescapable perception is that policy makers in the Office of the Assistant Secretary are looking for a different result.

### Summary

The intent in responding to the ESA requirements for preparing a recovery plan, a critical habitat designation, and a 5-year review was to create a transparent, scientifically-based process that the public, the scientific community, and managers in the USFWS and the Office of the Assistant Secretary for Fish, Wildlife and Parks could track. The transparent process and the scientific basis for these initiatives are reflected in the administrative records held by the agency and available for public and congressional review. The failure to finalize these initiatives based on the carefully developed processes and peer reviewed scientific information I have described has resulted in a lowering of morale among USFWS scientific staff, a reduced respect for the work of the agency from scientific peers and the public, a reduced willingness of the scientific community to assist the USFWS in such initiatives in the future, and a tremendous waste of labor and associated budget within the USFWS.

### Observations on the Critical Habitat Process in General

It is clearly stipulated in the ESA that critical habitat be designated within a year of a listing of a species as threatened or endangered. The unwritten policy of the USFWS under both the current administration and the preceding administration is that critical habitat is of little value beyond the consultation requirements associated with listing, and critical habitat development is not initiated unless and until the agency is sued to do so. Because the ESA is abundantly clear in this regard, the agency almost never prevails in such litigation and is routinely directed by the court to work out a schedule for completing critical habitat designation with the litigants.

This unwritten policy of resisting a basic requirement of the ESA represents poor management at its worst. If the intent is to influence Congress to modify the requirements of the ESA, it has not been successful. What has resulted is a pattern of reactive management where the agency is litigated, forced to work out a schedule for completing a critical habitat proposal where planning alternatives are limited, and then forced to refocus existing labor and budgetary resources to meet the mandates of the court. The

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court costs of successful litigants that the agency must assume, negative publicity to the agency resulting from the public perception that the agency is not doing its job, and a demoralized work force associated with this "head buried in the sand" management approach are the unnecessary and avoidable by products of such poor management practices.

## Disclosure

Name: John A. Young

Business address: None (Retired Biologist)

Business telephone: None (home telephone: 772-461-7316)

Organizations: No affiliation with organizations

Training, education: Bachelor's Degree in Biological Science, University of California at Santa Barbara - 1971

Professional Licenses, etc.: None

Employment History: Fishery Biologist with NOAA Fisheries - 1975 - 1991

Leader, Alternative Fishing Methods and Gear  
Development Program, Southwest Fisheries Science  
Center

Wildlife Biologist with the U.S. Fish and Wildlife Service -  
1992 - 2005

Bull Trout Coordinator

Offices held: None

Federal grants, contracts, etc.: None

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Other pertinent information: None

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