



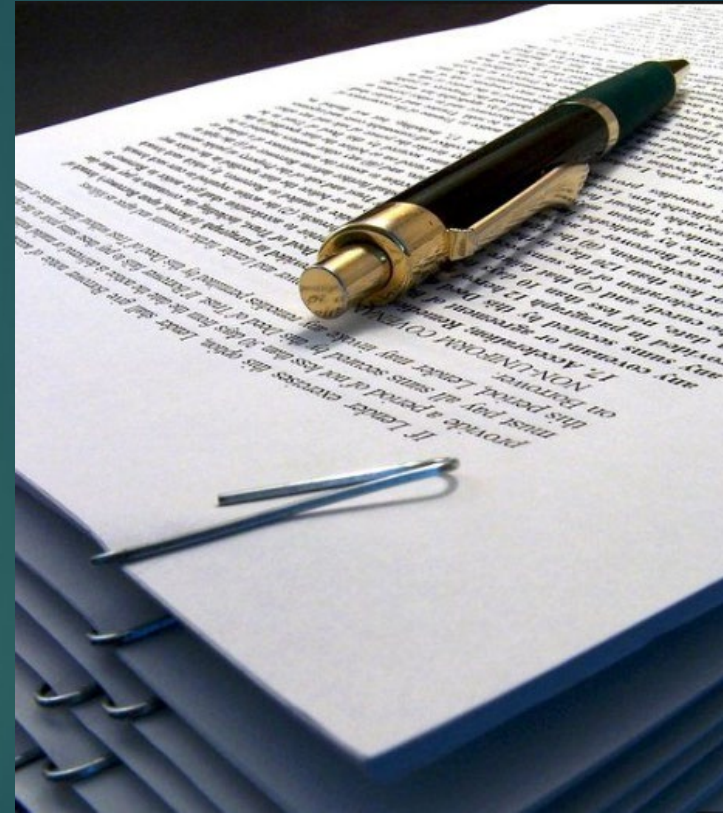
Bull Trout and the ESA in Priest River

Disclaimer:

- ▶ There may be errors or omissions in this presentation, I tried to make things as simple, brief, and understandable as possible from a process that is complex and changes often due to litigation.

A brief History of listing -

- ▶ Listed as threatened in 1998
- ▶ Draft recovery plan in 2002
- ▶ 5 year review in 2004
- ▶ More draft Recovery plans in 2004
- ▶ Designation of Critical habitat in 2005
- ▶ Current Critical habitat designation in 2010
- ▶ 5 year review in 2012
- ▶ Current recovery plan made in 2015
- ▶ 5 year review and SSA completed in September 2024
- ▶ A wide ranging species that is listed at the coterminous

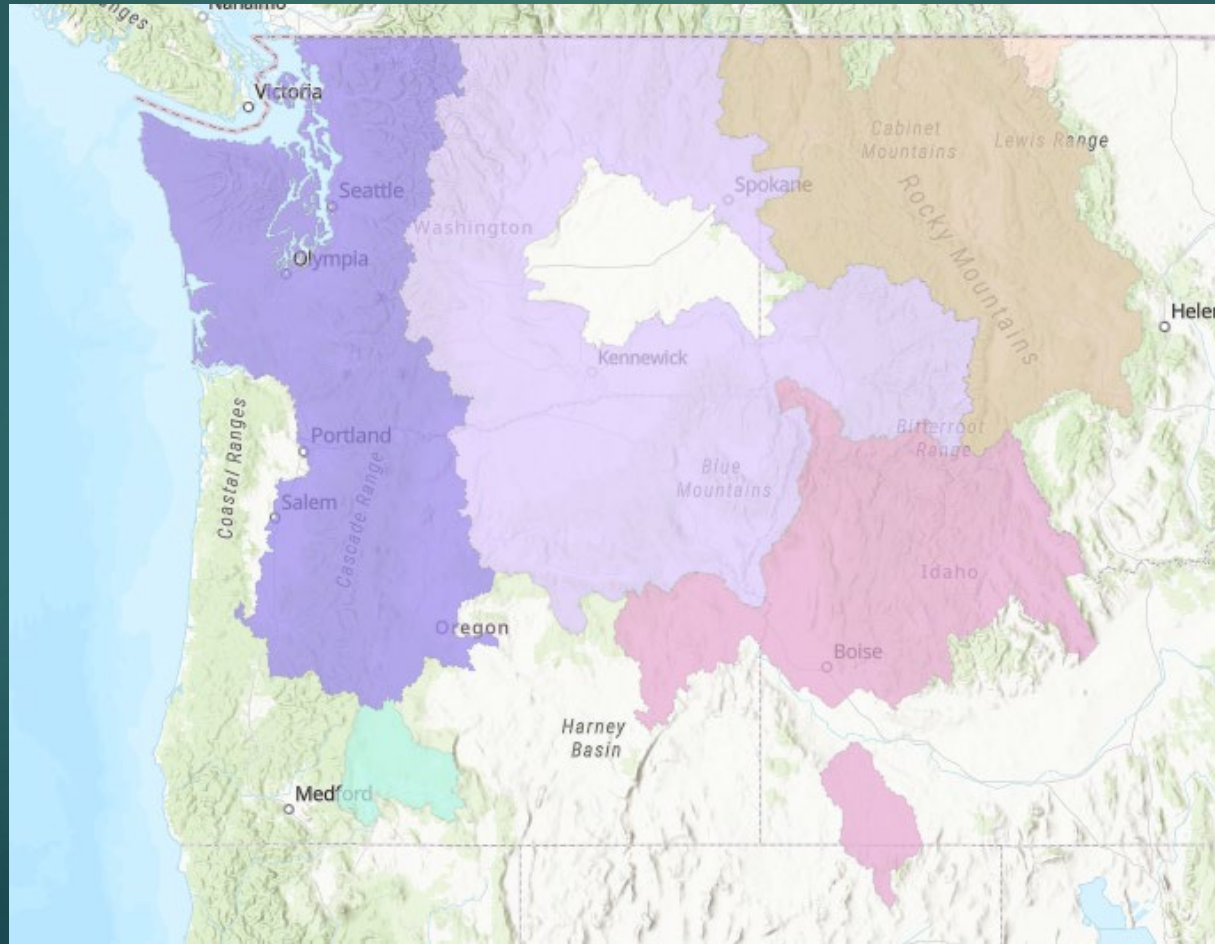


Background of Lake Pend Oreille



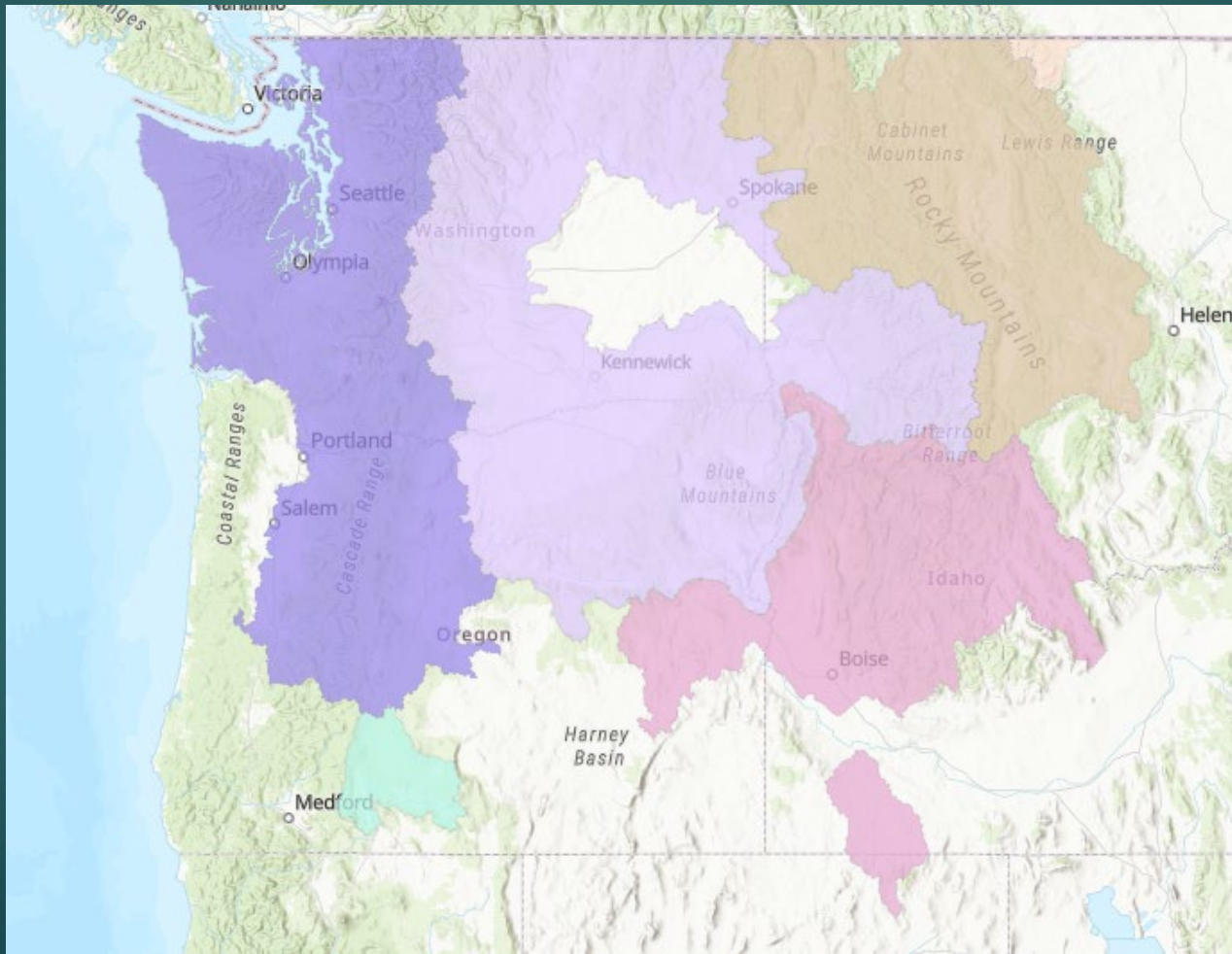
Bull Trout -Coterminus

- ▶ Both Bull trout and Bull trout and it's designated Critical habitat are listed at the coterminous level- this includes all parts of Oregon, Washington, Idaho, Nevada, and Montana.



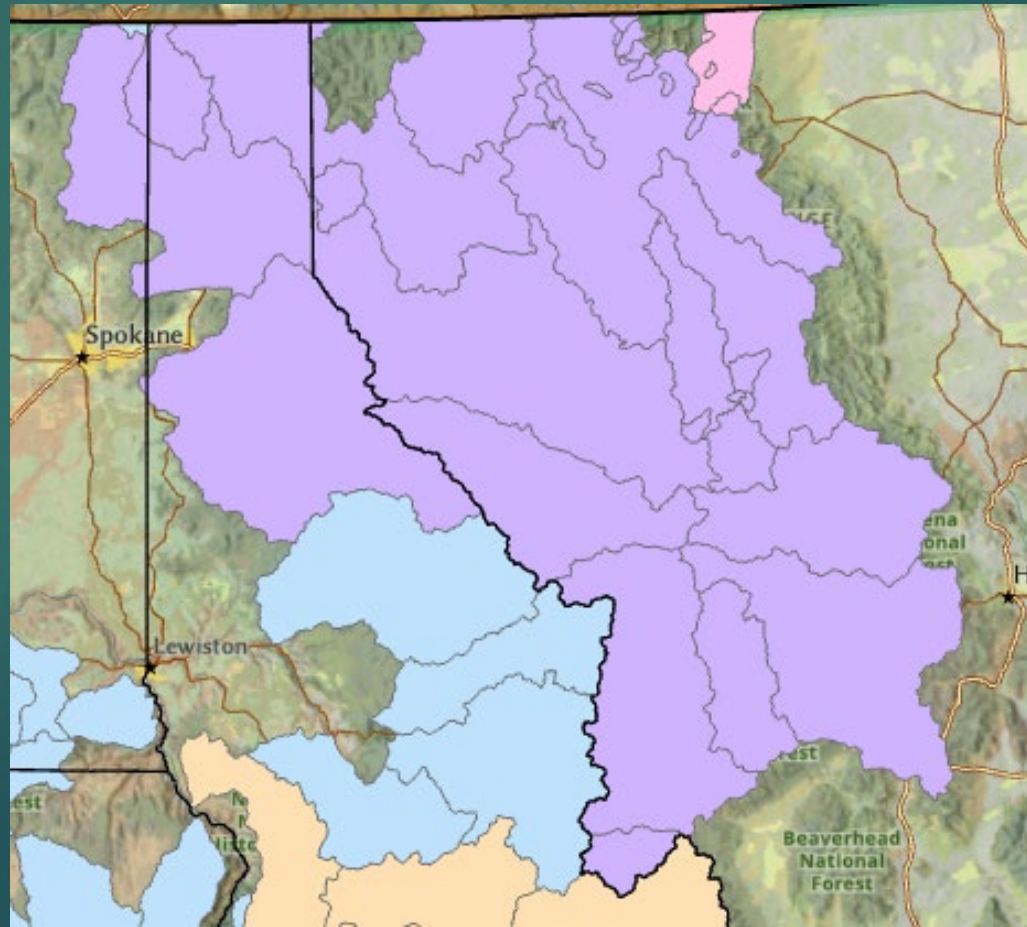
Bull Trout –Recovery units

- ▶ If an action adversely affects one of the six bull trout recovery units, then it may result in jeopardy.



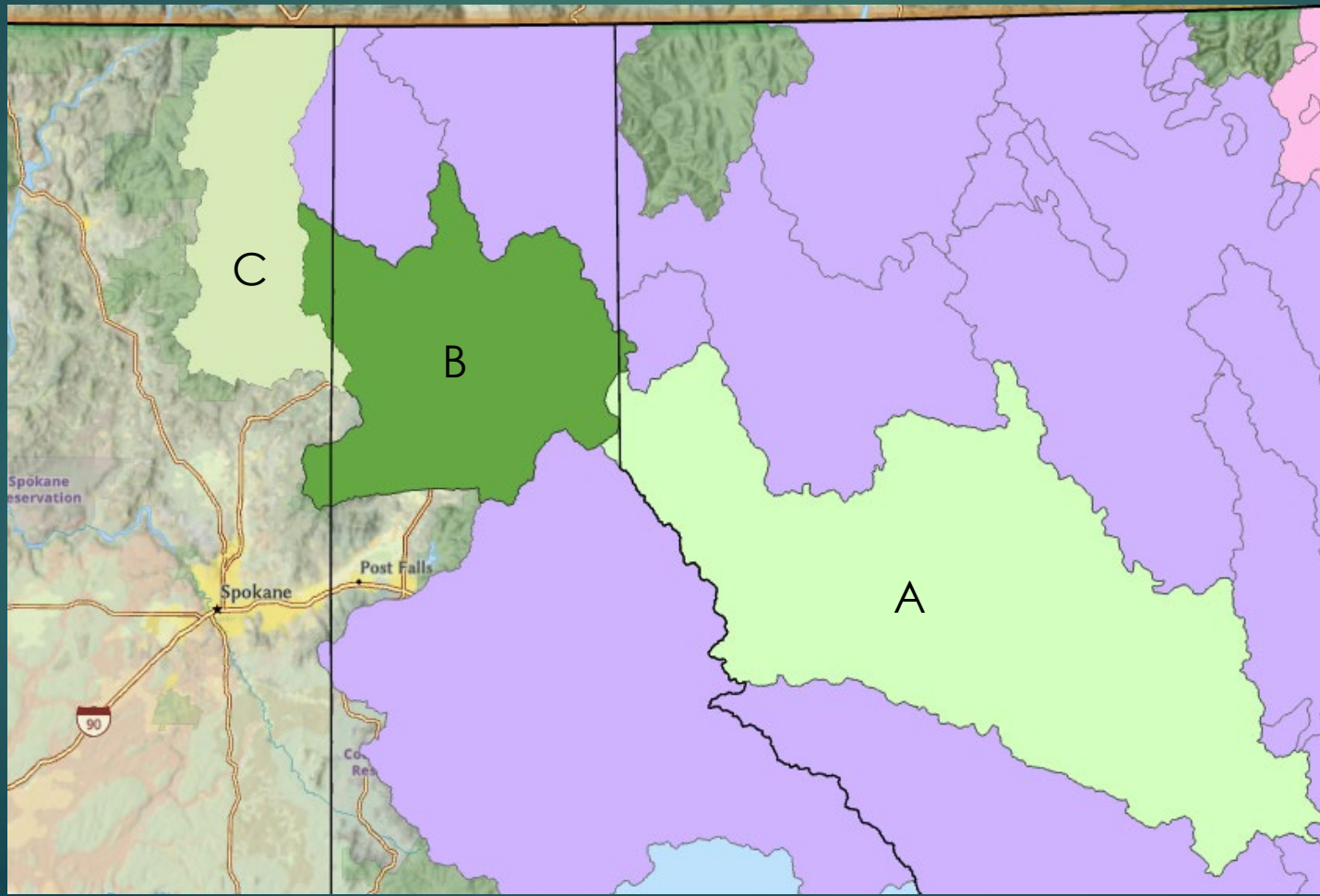
Bull Trout Core Areas

- ▶ Each recovery unit is separated into Core areas – core areas may have multiple populations (complex core areas) or one population of bull trout (simple Core areas)



Bull Trout – Sub-Core Areas

- ▶ Lake Pend Oreille is unique with sub –parts, and LPO and Priest River are in Sub-Part B (priest Lake is not in part B)

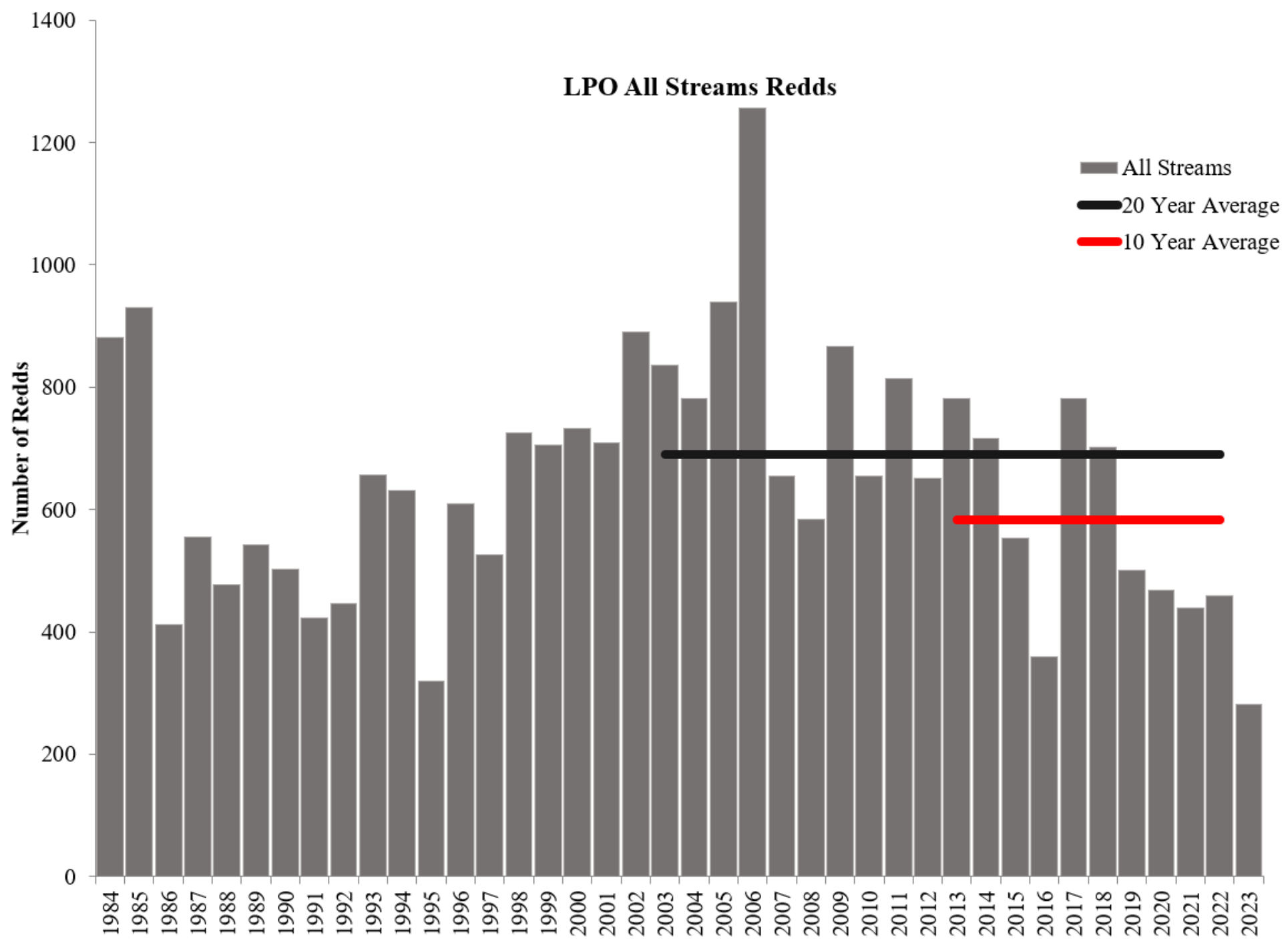


General Bull trout Life history (adfluvial)

- ▶ Bull trout emerge from redds and grow/rear in their natal streams for 0-5 years, with 1-3 years being the most common
- ▶ They hang out on the bottom of streams and tend to live in/under rocks coming out to hunt at night until they put on size and out-migrate at around 8.5 inches
- ▶ Young Bull Trout feed primarily on aquatic invertebrates, but adult diets can vary- mostly consisting of other fish though they may also eat inverts
- ▶ Once leaving their spawning stream, they move into LPO and do ??? until they are large enough to eat kokanee and other fish, then they may choose to return to spawn once they are reproductively mature
- ▶ The move up into spawning streams from may through September and return to LPO after spawning in September/October.
- ▶ Bull trout can spawn multiple times in their lives.

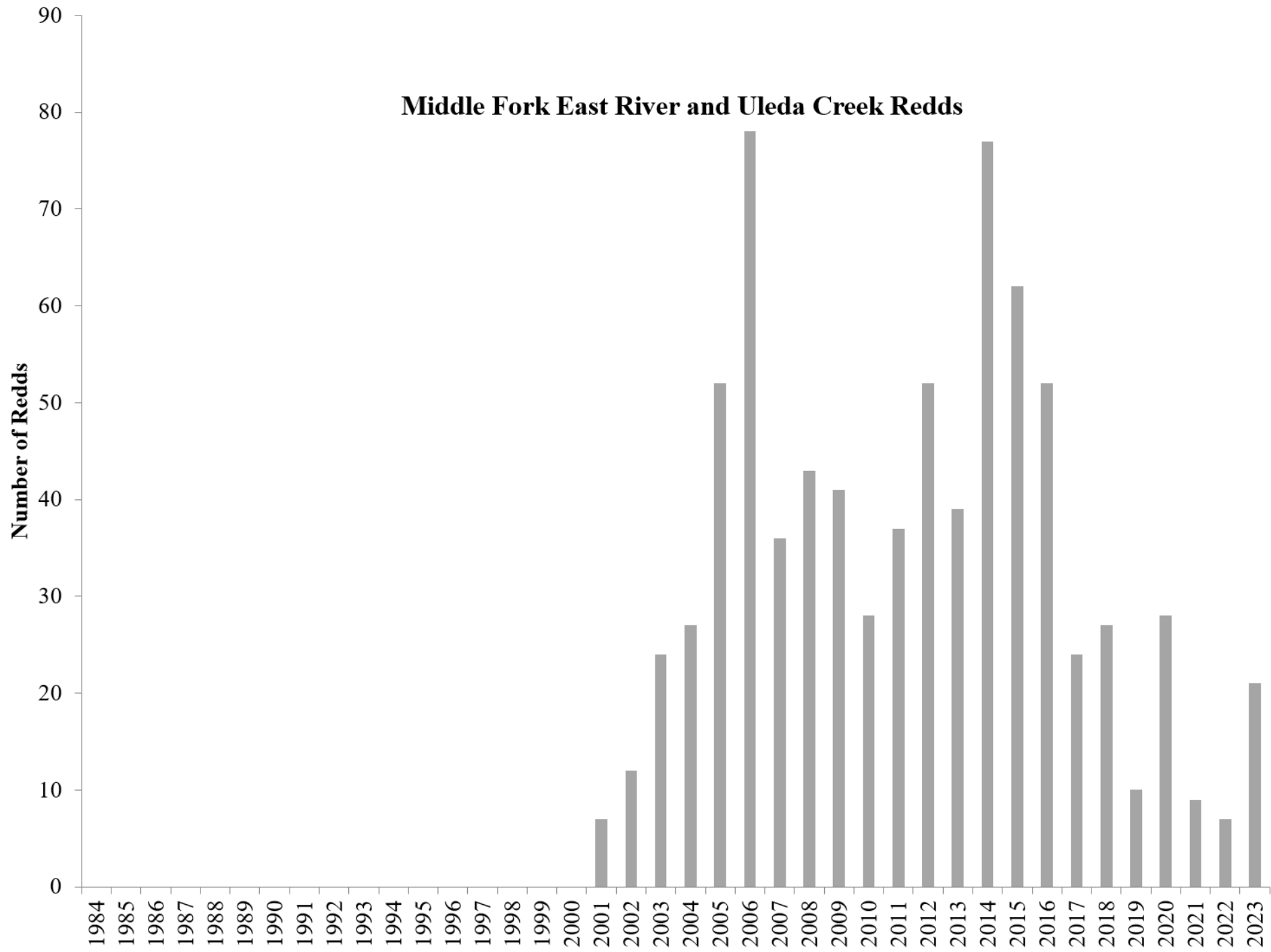


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Bull Trout Priest River Migration





ESA Section 7 Requirements

- ▶ Section 7(a)(1) of the Endangered Species Act (ESA) directs all Federal agencies to utilize their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of species listed pursuant to the ESA.
- ▶ There is no funding for 7(a) (1) to action agencies, so it has generally been up to the action agency to chose to pursue this part of the ESA of their own accord. I am less familiar with this part of the ESA.

ESA Section 7 Requirements

- ▶ Section 7(a)(2) of the Endangered Species Act (Act) requires every Federal agency to consult with the Fish and Wildlife Service (FWS) and/or National Oceanographic and Atmospheric Administration to ensure that any action authorized, funded, or carried out, in whole or in part, by the agency is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat and applies to all actions with discretionary Federal involvement or control.
- ▶ If congress mandates something it is not discretionary - There have only ever been a few non-discretionary actions ever.
- ▶ An “action” is defined as all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to: (a) actions intended to conserve listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air (50 CFR 402.02).
- ▶ The requirement to consult also applies to ongoing Federal actions.

Defining Words

- ▶ **Jeopardy** (*Jeopardize the Continued Existence of*)- "...to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival **and** recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." Origin: Regulations (1986) codified as 50 CFR 402.02
- ▶ **Destruction or Adverse modification**- "Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat **as a whole** for the conservation of a listed species." Origin: Regulations (2016), revised (2019), codified as 50 CFR 404.02

Request for Consultation begins with:

- ▶ The **Federal Agency** that is proposing the action

or

- ▶ A **non-Federal representative**, when that entity has been designated by the Federal Agency through written notice to the Service (this only applies to Informal consultations, preparation of Biological Assessments, Species lists). CFR 402.08

Which Service for Agency consultation?

- ▶ The Department of the Interior (through the FWS) and the Department of Commerce (through NMFS) share responsibilities for conducting consultations pursuant to the ESA.
- ▶ Generally, marine species fall under NMFS and all other species fall under FWS.
- ▶ Currently, the Services are not able to provide consultation on a species that does not fall under its jurisdiction (e.g.: NMFS would not consult on manatee, and FWS would not consult on sawfish).

Interagency Consultation

- ▶ Consultation is triggered when an agency action “may affect” a listed species or designated critical habitat in the “action area.”
- ▶ No consultation is required when there is a determination of “no effect.”
 - ▶ The FWS does not concur with or comment on no effect (NE) determinations the action agency makes. We are generally not informed of any NE determinations unless there is a consultation on a different species that results in a “may affect” determination.
 - ▶ It is the ability of the action agency to determine the effects of their actions independently of the services.

What are the Purposes of Interagency Consultation?

1) To determine whether a **proposed** federal action is likely to:

- ▶ jeopardize the continued existence of a listed species;

and/or

- ▶ result in the destruction or adverse modification of a listed species' designated critical habitat.

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Purposes of Formal Consultation

- 2) Identify the means and measures by which an action agency may conserve listed species or critical habitat (e.g. nonbinding suggestions);
- 3) Identify the nature and extent of the effects of an action on listed species and critical habitat;
- 4) Identify reasonable and prudent alternatives, if any, when an action is **likely to jeopardize** listed species or **adversely modify** critical habitat;
- 5) Provide exemption for specified levels of otherwise prohibited **incidental take** of listed species; and
- 6) Provide an administrative record of effects on species to update the species' environmental baseline for future formal consultations.

“May Affect” Listed Species

- ▶ Definition - **any** impact, positive or negative

- ▶ Two types

- 1) “Not likely to adversely affect” listed species

- A) (wholly) Beneficial effects - **all** positive, **no** negative impacts

- B) Insignificant effects - can not meaningfully measure, detect, or evaluate effects

- C) Discountable effects - extremely unlikely to occur

- 2) “Likely to adversely affect” listed species

- Any effects that do not wholly meet A, B, and/or C (above) or where “take” of a listed species and/or destruction of critical habitat is likely to occur.

What is Take under the ESA?

Section 9 of the Act and Federal regulations pursuant to Section 4(d) of the Act prohibit the **take** of endangered and threatened wildlife, respectively.

The Act defines “**take**” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

- ▶ Take of a listed species is illegal
- ▶ Consultation exempts take from being illegal– there is no permitting done by the services in consultation.
- ▶ There is no take for plants or critical habitat since they are not wildlife.

No Adverse effects

Not Likely to Adversely Affect
(NLAA)

Informal

ESA Consultation

Result = Concurrence Letter (LOC)

May Affect

Adverse effects

Likely to Adversely Affect
(LAA)

Formal

ESA Consultation

Result = Biological Opinion (BO)

Take aways

- 1) All biological opinions have adverse effects to a listed entity (e.g. listed plant, animal, or designated critical habitat) by definition. Any time there is a “likely to adversely affect” for a listed entity in a biological opinion, then there are adverse effects expected to that listed entity from the proposed action
- 2) All Letters of concurrence are not likely to adversely affect listed entities by definition.

Questions?

