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Legislative Intent, Science and Special Provisions in Wilderness

A Process for Navigating Statutory Compromises

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Abstract: In order to manage special provisions in U.S. wilderness, several research products are needed. Minimally, a complete understanding of the legislative intent of the provision, in-depth understanding of the deep meanings held by the particular stakeholder community of interest, and some knowledge about the larger population of interest are needed. In this study of jet boat use on the Salmon River in the Frank Church–River of No Return Wilderness, a combination of qualitative and quantitative methods were used to understand the attachment jet boat users have to the activity and the place.



Senior article author Alan Watson.
Photo by Leena Vilkkä.

Introduction

Most wilderness research has focused on providing information for managing in order to meet the definition of wilderness contained within section 2(c) of the U.S. Wilderness Act. However, there has been very little research to guide implementation of section 4(d), which deals with special provisions. This section of the act provides general direction on preexisting legal exceptions such as use of aircraft or motorboat; prospecting for minerals, water, or other resources; maintenance of reservoirs and transmission

lines; grazing livestock; and permitting commercial services.

When legislation establishes protection for public lands under the authority of the Wilderness Act, incorporating these special provision guidelines is often quite controversial. The Central Idaho Wilderness Act of 1980 established the Frank Church–River of No Return Wilderness (FCRNRW) (2.2 million acres/0.9 million ha) and extended Wild and Scenic River status to the Main Fork of the Salmon River as it flows through the wilderness (see Figure 1). This act passed the U.S. House of Representatives, with special provisions for

several preexisting uses, over the objection of Idaho's two congressional representatives. From 1979, when multiple bills were introduced by Senator Frank Church to establish this protection, until 1980 when a final bill was passed, hearings around Idaho and in Washington, D.C., produced many arguments and discussion in favor and in opposition to the special provisions contained in this legislation.

The purpose of this article is to describe research to understand the historic context of special provisions in combination with an empirical understanding of current users accommodated (e.g., jet boats on the Salmon River) as input to the current wilderness planning process. This understanding is provided by a review of legislative history, in-depth interviews of jet boat association leaders, and a survey of the general jet boat user population (see Figure 2).

Legislative History

Meyer (1999) offered a process for assessing congressional intent. When facing an ambiguous situation in applying legislation, a structured analytical process can be used to examine the explanations of legislators who created the law or the documents they used when they debated and passed the law (Folsom 1972). In such an examination of the Central Idaho Wilderness Act (Meyer 2000), statutory language and accompanying legislative discussions assure the continuing use

(PEER REVIEWED)

of jet boats on the Salmon River in the FCRNRW and “continued heavy recreational use.” From committee reports, Meyer (2000) learned that continuance of “access by ... motorboat,” was to assure that this “traditional means of access” could still be used to “see and enjoy this splendid wilderness.” It was clarified that the term *motorboat* would include the type of motorized jet boats in use on the river in 1980. Continuing use of jet boats, however, was not intended to preempt the prerogatives of the secretary of agriculture (under the provisions of the Wild and Scenic Rivers Act) to regulate motorized travel on the river in times of low water, high fire hazard, or for other reasonable purposes.

Committee reports emphasized that the amount of motorboat use would be permitted to continue at a level not less than that which occurred during the calendar year of 1978. The secretary of agriculture, however, would retain the necessary flexibility to increase the use of motorboats on the basis of a management plan, although any increase would not be allowed to result in overuse by motorboats.

Congress accepted one administration clarification offered in a committee hearing: Appropriate regulation prescribed in the Central Idaho Wilderness Act meant there would be an upper limit to the amount of jet boat traffic that the river environment and the experience on it could tolerate, and that some restrictions and regulations would eventually have to be applied. However, the authority of the Wild and Scenic Rivers Act, not The Wilderness Act, was to be used as the basis for justifying any motorboat use regulation on the river, even though it flows through one of the country’s largest wilderness units.

The legislative history established a lower threshold (at least in principle) below which motorized use could not

be restricted, but it set no ceiling. And although it established that protection of the experience would be an appropriate basis for setting an upper limit, the discussion was rather silent on the actual nature of the experiences to be protected, primarily focusing instead on the issue of maintaining access. Therefore, in addition to an analysis of the legislative intent, there was also a need to develop an understanding of the nature of experiences, meanings, and relationship to place among motorized users. An understanding of these issues was constructed using both in-depth interviews and a mail-back survey.

Methods

Initially, interviews were conducted with five leaders of a prominent and politically active jet boat club in Idaho. In the second phase of the study, the analysis of the first interviews guided an extended set of interviews within the jet-boat-user community and to develop a mail survey designed to evaluate a set of propositions about the experiences, meanings, and relationship to place within the jet boating population.

Qualitative Interviews

When developing an understanding about the nature of experience and relationship to place, either richness or depth of understanding of individuals is important. In-depth interviews were selected to gain this understanding, and the goal of sampling was not to determine the extent to which different types of experiences and meanings are distributed across the population of jet boat users, but rather *to outline and describe in rich detail the range of experiences and meanings associated with jet boat use on the Salmon River*. Under this sampling logic, populations are represented by capturing the range of diversity in representative types comprising the population (Bellah et al. 1985).



Figure 1—The Salmon River flows through the Frank Church–River of No Return Wilderness in Idaho. Photo courtesy of the Salmon-Challis National Forest.

Quantitative Surveys

Every effort was made to census identifiable subpopulations of jet boat users on the Main Salmon River; two subpopulations not included were private landowners and commercial jet boat operators. Targeted subpopulations included (1) jet boat membership association A (N = 281); (2) jet boat membership organization B (N = 88); (3) 1996 and 1997 Forest Service jet boat permits (N = 72); (4) 1983–1984 and 1993–1995 Forest Service jet boat permits



Figure 2—There has been little research to guide implementation of section 4(d) of The Wilderness Act, which deals with special provisions. Photo courtesy of the Salmon-Challis National Forest.

(N = 42) (permits from other years could not be located); (5) jet boaters identified by jet boat membership association A leadership as active in jet boating in 1978 (N = 168); (6) unaffiliated operators identified by survey respondents (N = 98); (7) passengers identified by survey respondents (N = 146). A total of 895 surveys were sent out, with a postcard follow-up reminder one week later.

Results

Qualitative Interview Results

Analysis of the combined interviews (5 with opinion leaders from phase 1 and 20 interviews with 37 participants in phase 2) revealed insights relative to a number of dimensions of relationship to place. It is not possible here to fully present the insights for all of these dimensions. However, a brief overview of three of these dimensions is presented below.

Nature and significance of bond

Differences in the depth of bond to place was evident. At one end of the continuum were individuals who, to a significant degree, organized their lives around the Salmon River and/or the opportunity to jet boat on the river. At the other extreme were individuals with relatively low attachment who often acknowledged they were different from those who viewed the Salmon as “their backyard.” In between were individuals who valued the Salmon for specific tangible/physical features that were often seen as unique. These distinctions are important for understanding jet boaters’ relationship to place. For example, those with the most deeply rooted emotional bonds organized their lives around this place to such an extent that conceiving of them simply as “visitors” would be a mischaracterization. Furthermore, they often valued jet boats not just as an activity, but as a means of providing access to the Salmon across changing life

stages and situations. In other words, their ability to do physically demanding activities in remote settings may diminish over time, but their interest in spending time in the places they have recreated in all their lives did not, and jet boats were seen as a means to having this experience.

Access

Maintaining access was a key theme in the legislative history regarding motorized use of the Salmon. During the course of the interviews, it also emerged as a key concept for understanding jet boaters’ relationship to place. For example, most of the jet boaters viewed the Salmon River as a local resource. As local users, they were concerned about protecting opportunities to access the area over short periods of times (e.g., weekends as opposed to extended vacations) and opportunities to decide spontaneously to take advantage of a sudden opening in their schedule. Some of the jet boaters felt that the current permitting system was not flexible enough to allow this kind of access. In addition, the permit system was seen by some as problematic in light of how variability in river conditions (e.g., water level, debris following storms, timing of fish runs) affects jet boating.

Meaning of Wilderness

Interview participants valued the remote, undeveloped, primitive, pristine, wild, and roadless character of the Salmon River. In fact, the term *wilderness* was sometimes used to describe the area. However, designated wilderness does not seem to be an adequate concept for describing the meanings to these people. When asked about designated wilderness, some respondents pointed out that designation is a recent event that has not changed the character of the area. Others seemed to struggle to see the relevance of this designation because as a class of places, the Salmon River country

Table 1—Propositions Generated from In-Depth Interviews of Jet Boat Association Leadership.

Propositions

1. Being close to nature is important to jet boaters.
2. Opportunities to experience solitude in a remote setting is valued by jet boaters.
3. Jet boating is a family experience, or an opportunity to pass on important values to others.
4. Jet boaters exhibit strong attachment to place, or opportunities to spend time in the Salmon River Canyon is important to them (they have a strong personal history, are deeply involved).
5. Jet boating is challenging, with a certain amount of risk as in any whitewater activity, and current regulations influence the perception of safety by limiting the ability of boaters to travel in groups.
6. Jet boats are consistent with wilderness and wild and scenic values to jet boaters.
7. Jet boaters appreciate the cultural history of the river corridor.
8. Jet boaters perceive some other users as having unrealistic expectations about their journeys along the Salmon River.
9. River planning should be addressed from a regional perspective, not river by river.
10. Jet boaters believe that environmentally responsible behavior by all users is important in order to protect the resource.
11. It is important to teach river etiquette to all users.
12. Jet boaters believe in “responsible shared use”—fair, equitable access to the resource and opportunity for growth with other user groups.

is no different from many other wild places in Idaho in their view; that is by and large the nature of Idaho. Overall, interview participants primarily related to the Salmon River country as a specific place rather than as a representative of a class of places (designated wilderness). As a place, the Salmon River country has one characteristic that markedly differs from designated wilderness. As defined in The Wilderness Act, wilderness is an area “where man himself is a visitor who does not remain.” In contrast, most of the interview participants viewed the Salmon River country as a place with an extensive human past, which was of great value to many of them, and a continued human presence.

From analysis of these interviews, a series of propositions were developed about the relationship among jet boaters, jet boat use, the Salmon River, and the FCRNRW (see Table 1). These propositions guided development of the quantitative survey of the jet boat user population.

Quantitative Survey Results

A total of 391 surveys were completed and returned. Forty-one were returned undeliverable, and a follow-up telephone survey of nonrespondents found that about 8 percent claimed they had not received the survey, although it was not returned undeliverable. The initial unadjusted response rate was estimated at 48 percent (391 of 819). Of these 391 respondents, 39 had not been on a jet boat within the boundaries of the FCRNRW and were dropped from data analysis. From the follow-up telephone survey of nonrespondents, it was estimated that approximately 50 percent of nonrespondents had not jet boated within the FCRNRW boundaries, suggesting that the 391 respondents represented 74 percent of the potential respondents to the mail-back survey who boated in the FCRNRW boundaries.

Approximately 25 percent of jet boat operators had entered into the activity since 1993, 50 percent since 1986, and 78 percent since 1978. Therefore, only 22 percent of the current jet boat participants were engaged in this activity in the baseline year of 1978. For passengers, the trend was a little different: nevertheless, only 43 percent were engaged in this activity in 1978.

Some of the propositions in Table 1 were tested through responses to the survey questions. For example, for Proposition 2, 66 percent of all jet boaters indicated they do enjoy solitude while jet boating. However, 52 percent indicated that the number of other people they meet on the river is not important to the experience they have, 70 percent said the number of structures they might see is not important, and 85 percent said their experience is not influenced by seeing small aircraft flying overhead (see Figure 3).

For Proposition 3, 68 percent enjoy spending time with their families while jet boating, 85 percent think of this time as an important family experience, and 98 percent consider it important or very important to protect access to this activity at this place for future generations. About 35 percent of respondents first experienced jet boating on the Salmon River as a child.

Proposition 6 was based on the jet boat association leadership's repeated assertion that they thought their experience in jet boats was a wilderness experience. In the survey, 79 percent expressed agreement that their experience while jet boating on the river was the same as the experience of nonmotorized floaters', and 76 percent thought the experience was the same as those riding horses along the wilderness trails. Only 33

percent, however, would go on the river within the wilderness if they couldn't go on jet boats.

Discussion

Statutory policy, such as The Wilderness Act, represents an expression of how society values culturally significant resources. However, in a diverse society, national level policy will reflect compromises among subgroups due to variation in values, and this ultimately creates ambiguities and sometimes apparent contradictions that managers must address when implementing the statute in specific instances. Section 4(d) of The Wilderness Act, which addresses special provisions within wilderness, presents this situation. Some interpret the provisions as creating “exceptions” to true wilderness, whereas others interpret them as a means of accommodating different orientations toward wilderness (Alessa and Watson 2002). When faced with such diversity in interpretation of statutory accommodations, a socially legitimate process for negotiating resolution is needed. This article suggests that a careful analysis of legislative history in conjunction with a multimethod scientific approach designed to develop an understanding of current stakeholders can enhance the legitimacy of planning processes.



Figure 3—Sixty-six percent of all jet boaters indicated they do enjoy solitude while jet boating; however, 52 percent indicated that the number of other people they meet on the river is not important. Photo courtesy of the Salmon-Challis National Forest.

When legislation establishes protection for public lands under the authority of The Wilderness Act, incorporating these special provision guidelines is often quite controversial.

In this case, with only 22 percent of the jet boaters present on the river as operators and 44 percent as passengers at the time of the legislation that established the special provision, there was little understanding of the legal intent of that provision by these users. Thus the legislative history of the Central Idaho Wilderness Act provided a valuable basis for understanding the history of political compromises in a way that can facilitate contemporary discussions. Acknowledgment by all parties that heavy recreation use was anticipated on the Salmon River is important. And it became clear that any change to management would need to be justified within the foundation of the Wild and Scenic Rivers Act, not The Wilderness Act.


And although most jet boaters were aware that the agency was restricted from reducing jet boat use below the estimated 1978 level, it was also significant that this restriction was not intended to preempt regulation of motorized travel for reasonable purposes. There was also potential for an upper limit to be established in order to meet the intent of the Wild and Scenic Rivers Act.

The Central Idaho Wilderness Act, however, was silent on the nature of the experience to be provided. Therefore, a scientific understanding of users in terms of their experiences and relationship to the place was necessary to understand the potential ways management decisions will influence those relationships. The in-depth interviews

provided a basis for generating propositions and designing a survey to provide a statistically generalizable characterization of the population.

For example, the majority of jet boaters reported that they enjoy solitude on the Salmon River while jet boating, but over half said that the number of people they meet is not important, most suggested that the number of planes they see in the wilderness is not important, and over two-thirds are not troubled by structures in the wilderness. On the one hand, this indicates jet boaters seek traditional wilderness values, but, on the other, it reveals apparent contradictions. However, rather than reflecting a unique situation, these sorts of contradictions or tensions are evident among other wilderness users as well (Glaspell 2002).

The primary purpose of this article has been to present a process for addressing legislated special provisions. The process may also be effective at a more general level for addressing new, emerging, or contested wilderness values that result from societal changes or evolutions in the meaning of wilderness. One case of emerging wilderness values, the Alaska National Interest Lands Conservation Act, identifies a national interest in protecting opportunities for rural residents to pursue subsistence lifestyles on federal public lands, including wilderness. What contested meanings emerge when people are viewed as part of wilderness ecosystem processes? Is subsistence a kind of wilderness experience

or means to some other value? These questions might be meaningfully addressed by combining careful review of legislative intent, in-depth exploration of the meanings held by different stakeholder groups, and broader investigation of the distribution of those meanings across populations of interest. 

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