

homes, Nutrition, Reporting and recordkeeping requirements, Safety.

■ For the reasons set forth in the preamble, the Centers for Medicare and Medicaid Services amends 42 CFR chapter IV as set forth below:

#### PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 1. The authority citation for part 483 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

\* \* \* \* \*

■ 2. Section 483.150(a) is revised to read as follows:

##### § 483.150 Statutory basis: Deemed meeting or waiver of requirements.

(a) *Statutory basis.* This subpart is based on sections 1819(b)(5), 1819(f)(2), 1919(b)(5), and 1919(f)(2) of the Act, which establish standards for training nurse-aides and for evaluating their competency.

\* \* \* \* \*

■ 3. Section 483.151 is amended by—

- A. Revising the section heading.
- B. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f) respectively.
- C. Adding new paragraph (c).

The revision and addition reads as follows:

##### § 483.151 State review and approval of nurse aide training and competency evaluation programs.

\* \* \* \* \*

(c) *Waiver of disapproval of nurse aide training programs.*

(1) A facility may request that CMS waive the disapproval of its nurse aide training program when the facility has been assessed a civil money penalty of not less than \$5,000 if the civil money penalty was not related to the quality of care furnished to residents in the facility.

(2) For purposes of this provision, “quality of care furnished to residents” means the direct hands-on care and treatment that a health care professional or direct care staff furnished to a resident.

(3) Any waiver of disapproval of a nurse aide training program does not waive any requirement upon the facility to pay any civil money penalty.

\* \* \* \* \*

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774,

Medicare—Supplementary Medical Insurance Program)

Dated: January 14, 2010.

**Charlene Frizzera,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: April 12, 2010.

**Kathleen Sebelius,**

*Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R1–ES–2009–0005; 92220–1113–0000–C6]

RIN 1018–AW42

#### Endangered and Threatened Wildlife and Plants; Reclassification of the Oregon Chub From Endangered to Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are reclassifying the federally endangered Oregon chub (*Oregonichthys crameri*) to threatened status under the authority of the Endangered Species Act of 1973, as amended (Act). This decision is based on a thorough review of the best available scientific and commercial data, which indicate that the species’ status has improved to the point that the Oregon chub is not currently in danger of extinction throughout all or a significant portion of its range.

**DATES:** This final rule is effective on May 24, 2010.

**ADDRESSES:** Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; (telephone 503/231–6179).

**FOR FURTHER INFORMATION CONTACT:** State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (*see ADDRESSES*). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

## Background

The purposes of the Act (16 U.S.C. 1531 *et seq.*) are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved and to provide a program for the conservation of those species. A species can be listed as endangered or threatened because of any of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. When we determine that protection of a species under the Act is no longer warranted, we take steps to remove (delist) the species from the Federal list. If a species is listed as endangered, we may reclassify it to threatened status as an intermediate step before delisting; however, reclassification to threatened status is not required in order to delist.

Section 3 of the Act defines terms that are relevant to this final rule. An endangered species is any species that is in danger of extinction throughout all or a significant portion of its range. A threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. A species includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature.

## Previous Federal Actions

In our December 30, 1982, Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species, we listed the Oregon chub as a Category 2 candidate species (47 FR 58454). Category 2 candidates, a designation no longer used by the Service, were species for which information contained in Service files indicated that proposing to list was possibly appropriate but additional data were needed to support a listing proposal. The Oregon chub maintained its Category 2 status in both the September 18, 1985 (50 FR 37958) and January 6, 1989 (54 FR 554) Notices of Review.

On April 10, 1990, the Service received a petition to list the Oregon chub as an endangered species and to designate critical habitat. The petition and supporting documentation were submitted by Dr. Douglas F. Markle and Mr. Todd N. Pearsons, both affiliated with Oregon State University. The

petitioners submitted taxonomic, biological, distributional, and historical information and cited numerous scientific articles in support of the petition. The petition and accompanying data described the Oregon chub as endangered because it had experienced a 98 percent range reduction and remaining populations faced significant threats. On November 1, 1990, the Service published a 90-day finding indicating that the petitioners had presented substantial information indicating that the requested action may be warranted and initiated a status review (55 FR 46080).

On November 19, 1991, the Service published a 12-month finding on the petition concurrent with a proposal to list the species as endangered (56 FR 58348). On October 18, 1993, we published a final rule listing the Oregon chub as endangered (58 FR 53800). A 5-year review of the Oregon chub's status was completed in February 2008 (U.S. Fish and Wildlife Service 2008a, pp. 1–34); this review concluded that the Oregon chub's status had substantially improved since listing, and that the Oregon chub no longer met the definition of an endangered species, but did meet the definition of a threatened species, under the Act. The review, therefore, recommended that we downlist the Oregon chub from endangered to threatened.

On March 10, 2009, the Service published a proposed rule (74 FR 10412) to designate critical habitat for the Oregon chub. The public comment period on the proposal was open for 60 days, from March 10, 2009, to May 11, 2009. We subsequently reopened the public comment period on the critical habitat proposal on September 22, 2009, for an additional 30 days, ending October 22, 2009 (74 FR 48211). During the reopened public comment period, we held a public hearing in Corvallis, Oregon. We published a final rule designating critical habitat on March 10, 2010 (75 FR 11010).

On May 15, 2009, we published a proposed rule to reclassify the Oregon chub from endangered to threatened (74 FR 22870). We contacted interested parties (including elected officials, Federal and State agencies, local governments, scientific organizations, interest groups, and private landowners) through a press release and related fact sheets, faxes, mailed announcements, telephone calls, and e-mails. In addition, we notified the public and invited comments through news releases to media outlets throughout the region, including major newspapers (The Oregonian [Portland, OR], The Statesman-Journal [Salem, OR], and The

Register-Guard [Eugene, OR]), and television and radio news stations. The public comment period on the proposal was open for 60 days, from May 15, 2009, to July 14, 2009.

On May 19, 2009, the Service published a notice in the **Federal Register** announcing the Oregon Department of Fish and Wildlife's (ODFW) application for an enhancement of survival permit under section 10(a)(1)(A) of the Act (74 FR 23431). The permit application included a proposed Programmatic Safe Harbor Agreement between ODFW and the Service (Oregon Department of Fish and Wildlife and U.S. Fish and Wildlife Service 2009, pp. 1–30). We issued the permit on August 31, 2009. The term of the permit and agreement is 30 years. The permit authorizes ODFW to extend incidental take coverage with assurances to eligible landowners who are willing to carry out habitat management measures that would benefit the Oregon chub by enrolling them under the agreement as Cooperators through issuance of Certificates of Inclusion. The geographic scope of the agreement includes all non-Federal properties throughout the estimated historical distribution of the species in the Willamette Valley (*i.e.*, between the cities of Oregon City and Oakridge, Oregon).

#### Species Information

The Oregon chub is a small minnow (Family Cyprinidae) endemic to the Willamette River Basin in western Oregon (Markle *et al.* 1991, p. 288). The Oregon chub has an olive-colored back grading to silver on the sides and white on the belly (Markle *et al.* 1991, p. 286). Oregon chub are found in slack water, off-channel habitats such as beaver ponds, oxbows, side channels, backwater sloughs, low-gradient tributaries, and flooded marshes. These habitats usually have little or no water flow, silty and organic substrate, and abundant aquatic vegetation for hiding and spawning cover (Pearsons 1989, p. 12; Scheerer and McDonald 2000, p. 9). Summer temperatures in shallow ponds inhabited by Oregon chub generally exceed 16 degrees Celsius (C) (61 degrees Fahrenheit (F)) (Scheerer *et al.* 1998, p. 26). In the winter months, Oregon chub are found buried in detritus or concealed in aquatic vegetation (Pearsons 1989, p. 16).

Oregon chub reach maturity at about 2 years of age (Scheerer and McDonald 2003, p. 78) and in wild populations can live up to 9 years. Most individuals over 5 years old are females (Scheerer and McDonald 2003, p. 68). Oregon chub spawn in warm (16 to 21 degrees C (61

to 70 degrees F)) shallow water from June through August (Scheerer and McDonald 2000, p. 10). The diet of Oregon chub collected in a May sample consisted primarily of copepods, cladocerans, and chironomid larvae (Markle *et al.* 1991, p. 288).

In the early 1990s, Oregon chub populations were found predominantly in the Middle Fork Willamette River (Middle Fork), with a few, small populations found in the Mid-Willamette River, Santiam River, and Coast Fork Willamette River (Coast Fork). The species is now well distributed throughout the Willamette Basin (in Polk, Marion, Linn, Lane, and Benton Counties, Oregon), with populations in the Santiam River (9 sites), Mid-Willamette River (6 sites), McKenzie River (4 sites), Middle Fork (16 sites), and Coast Fork (3 sites) (Bangs *et al.* 2008, p. 7). There are currently 19 populations that contain more than 500 adults each; 16 of these have a stable or increasing trend (Bangs *et al.* 2008, pp. 7–10).

#### Review of the Recovery Plan

The Service published a final recovery plan for the Oregon chub in 1998 (U.S. Fish and Wildlife Service 1998). Recovery plans are intended to guide actions to recover listed species and to provide measurable objectives against which to measure progress towards recovery; however, precise attainment of the recovery criteria is not a prerequisite for downlisting or delisting. The Oregon chub recovery plan established the following criteria for downlisting the species from endangered to threatened:

- (1) Establish and manage 10 populations of at least 500 adults each;
- (2) All of these populations must exhibit a stable or increasing trend for 5 years; and
- (3) At least three populations must be located in each of the three sub-basins of the Willamette River identified in the plan (Mainstem Willamette River, Middle Fork, and Santiam River).

The recovery plan established the following criteria for delisting (*i.e.*, removing the species from the List of Endangered and Threatened Wildlife):

- (1) Establish and manage 20 populations of at least 500 adults each;
- (2) All of these populations must exhibit a stable or increasing trend for 7 years;
- (3) At least four populations must be located in each of the three sub-basins (Mainstem Willamette River, Middle Fork, and Santiam River); and
- (4) Management of these populations must be guaranteed in perpetuity.

Recovery actions specified in the recovery plan to achieve the downlisting and delisting goals included managing existing sites, establishment of new populations, research into the ecology of the species, and public education and outreach to foster greater understanding of the Oregon chub and its place in the natural environment of the Willamette Basin (U.S. Fish and Wildlife Service 1998, pp. 28–44).

**Recovery Plan Implementation**

When we listed the Oregon chub as endangered in 1993, it was known to occur at only nine locations within a 30-kilometer (18.6-mile) reach of the Willamette River, representing just 2 percent of its historical range (Markle *et al.* 1991, p. 288). Since 1992, the Service, ODFW, U.S. Army Corps of Engineers (Corps), U.S. Forest Service, Oregon Parks and Recreation Department, and Oregon Department of Transportation have funded ODFW staff to conduct surveys for Oregon chub throughout the Willamette Valley. ODFW has surveyed 650 off-channel habitats and small tributaries in the Willamette River Basin (Scheerer 2007, p. 92), greatly increasing our knowledge of the current and potential habitat available to the Oregon chub. Other research projects have resulted in new information on the species’ habitat use, timing of spawning, and age and growth patterns (U.S. Fish and Wildlife Service 2008a, pp. 13–15).

The status of the Oregon chub has improved dramatically since it was listed as endangered. The improvement is due largely to the implementation of actions identified in the Oregon chub recovery plan. This includes the discovery of many new populations as a result of ODFW’s surveys of the basin, and the establishment of additional populations via successful reintroductions within the species’ historical range (Scheerer 2007, p. 97). To date, Oregon chub populations have been introduced at 16 sites (9 in the Mainstem Willamette sub-basin, 4 in the Middle Fork sub-basin, and 3 in the

Santiam sub-basin) (Bangs *et al.* 2008, p. 7). Introduced populations have been established in suitable habitats with low connectivity to other aquatic habitats to reduce the risk of invasion by nonnative fishes (see Summary of Factors Affecting the Species—Factor C below for more information) (Scheerer 2007, p. 98). At present, 7 of these populations persist and exhibit stable or increasing trends; 2 populations were reintroduced too recently to evaluate success (i.e., the populations introduced in 2008 at St. Paul Ponds and Sprick Pond); and 5 introduced populations have been extirpated or are not likely to remain viable. Reasons for reintroduction failures include pond desiccation, low dissolved oxygen, unauthorized introductions of nonnative predatory fishes, and high mortality of introduced fish (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 6; Scheerer 2009a, p. 1).

Currently, there are 38 Oregon chub populations, of which 19 have more than 500 adults (Bangs *et al.* 2008, p. 7). Sixteen years have passed since listing, and the species is now relatively abundant and well distributed throughout much of its presumed historical range. The risk of extinction has been substantially reduced as threats have been managed, and as new populations have been discovered or re-established. The Oregon chub has exceeded or met nearly all of the criteria for downlisting to threatened described in the recovery plan. A review of the species’ current status relative to the downlisting criteria from the Recovery Plan follows.

*Downlisting Criterion 1:* Establish and manage 10 populations of at least 500 adults each. This criterion has been exceeded. There are 19 populations with more than 500 adult Oregon chub (see Table 1 below).

*Downlisting Criterion 2:* All 10 populations referenced in Downlisting Criterion 1 must exhibit a stable or increasing trend for 5 years. This criterion has been exceeded; there are 16 populations with at least 500 adults that are stable or increasing (see Table 1 below). Scheerer *et al.* (2007, p. 4)

defined abundance trends as increasing, declining, stable, or not declining using linear regression of abundance estimates over time for each population with more than 500 adult fish over the last 5 years. When the slope of this regression was negative and significantly different from zero ( $P > 0.10$ ), the population was categorized as declining. When the slope was positive and significantly different from zero ( $P < 0.10$ ), the population was categorized as increasing. When the slope was not significantly different from zero ( $P > 0.10$ ), Scheerer *et al.* (2007, p. 4) calculated the coefficient of variation of the abundance estimates to discriminate between populations that were stable (i.e., low variation in population abundance estimates) and those that were unstable but not declining (i.e., high variation in population abundance estimates). When the coefficient of variation was less than 1.0, the population was defined as stable; otherwise, the population was considered unstable but not declining (see Table 1 below).

*Downlisting Criterion 3:* At least three populations (which meet downlisting criteria 1 and 2 above) must be located in each of the three sub-basins of the Willamette River (Mainstem Willamette River, Middle Fork Willamette, and Santiam River). This criterion has been exceeded in two sub-basins, and is nearly accomplished in the third. In the Mainstem Willamette River sub-basin, there are 6 populations with 500 or more Oregon chub with stable or increasing trends; in the Middle Fork Willamette sub-basin, there are 8 populations with 500 or more Oregon chub with stable or increasing trends; and in the Santiam River sub-basin, there are 3 populations with 500 or more Oregon chub, but only 2 with stable or increasing trends over the last 5 years (see Table 1 below). Five-year trends were calculated for abundant populations (>500 individuals for the last 5 years) only. Table 1 shows the populations by sub-basin.

TABLE 1—OREGON CHUB POPULATION ESTIMATES AND TRENDS (FROM BANGS ET AL. 2008, P. 7)

Population site name	Owner <sup>1</sup>	Population estimate <sup>2</sup>	5-year trend <sup>3</sup>
Santiam River Sub-basin:			
Foster Pullout Pond .....	Corps .....	2,640	increasing. stable.
Gray Slough .....	Private .....	660	
South Stayton Pond .....	ODFW .....	1,710	
Gerens Island North Channel .....	City of Salem .....	210	
Pioneer Park Backwater .....	Private .....	320	
Stayton Public Works Pond .....	City of Stayton .....	70	
Santiam 1–5 Side Channels .....	ODOT .....	(2)	
Green’s Bridge Slough .....	Private .....	(8)	

TABLE 1—OREGON CHUB POPULATION ESTIMATES AND TRENDS (FROM BANGS ET AL. 2008, P. 7)—Continued

Population site name	Owner <sup>1</sup>	Population estimate <sup>2</sup>	5-year trend <sup>3</sup>
Santiam Easement .....	Private (with USFWS easement) .....	(2)	
Mainstem Willamette Sub-basin (includes McKenzie River and Coast Fork):			
Ankeny Willow Marsh .....	USFWS .....	36,460	increasing.
Dunn Wetland .....	Private .....	46,330	stable.
Finley Gray Creek Swamp .....	USFWS .....	2,140	increasing.
Finley Cheadle Pond .....	USFWS .....	3,520	increasing.
Finley Display Pond .....	USFWS .....	830	increasing.
St. Paul Ponds .....	ODFW .....	(25)	
Muddy Creek .....	Private .....	(3)	
Russell Pond .....	Private .....	650	stable.
Shetzline Pond .....	Private .....	130	
Big Island .....	Private .....	200	
Green Island .....	Private .....	(12)	
Herman Pond .....	USFS .....	(3)	
Coast Fork Side Channels .....	OPRD/ODOT .....	130	
Sprick .....	Private .....	(12)	
Lynx Hollow Side Channels .....	OPRD .....	(0)	
Middle Fork Sub-basin:			
Shady Dell Pond .....	USFS .....	7,250	increasing.
E. Bristow St. Park—Berry Slough .....	OPRD .....	5,460	increasing.
Dexter Reservoir RV Alcove—DEX3 .....	Corps .....	2,450	stable.
Wicopee Pond .....	USFS .....	5,430	stable.
Fall Creek Spillway Ponds .....	Corps .....	3,050	declining.
Buckhead Creek .....	USFS .....	1,260	declining.
East Fork Minnow Creek Pond .....	ODOT .....	2,160	stable.
Elijah Bristow Island Pond .....	OPRD .....	550	stable.
Hospital Pond .....	Corps .....	3,680	stable.
Dexter Reservoir Alcove—PIT1 .....	Corps .....	680	stable.
Haws Pond .....	Private .....	280	
E. Bristow St. Park—NE Slough .....	OPRD .....	230	
Jasper Park Slough .....	OPRD .....	(1)	
Elijah Bristow South Slough .....	OPRD .....	(1)	
Middle Fk Willamette RM 198.6 .....	OPRD .....	(1)	
Middle Fk Willamette RM 199.5 .....	OPRD .....	(1)	

<sup>1</sup> Owner abbreviations: Corps = U.S. Army Corps of Engineers, USFWS = U.S. Fish and Wildlife Service, USFS = U.S. Forest Service, ODOT = Oregon Department of Transportation, OPRD = Oregon Parks and Recreation Department, ODFW = Oregon Department of Fish and Wildlife.  
<sup>2</sup> Population numbers are mark-recapture estimates except those shown in parentheses, which are the number of fish counted.  
<sup>3</sup> Five-year trends were calculated for abundant populations (>500 individuals for the last 5 years) only.

**Additional Conservation Measures**

The Oregon Chub Working Group (Working Group) was formed in 1991. This group of Federal and State agency biologists, academicians, land managers, and others meet each year to share information on the status of the Oregon chub, results of new research, and ongoing threats to the species. The Working Group has been an important force in improving the conservation status of the Oregon chub.

An interagency conservation agreement was established for the Oregon chub in 1992, prior to listing (U.S. Fish and Wildlife Service 1998, p. 59). The Service, ODFW, Oregon Department of Parks and Recreation, Corps, U.S. Bureau of Land Management, and U.S. Forest Service are the parties to the agreement. The objectives of the conservation agreement are to: (1) Establish a task force drawn from participating agencies to oversee and coordinate Oregon chub conservation and management actions,

(2) protect existing populations, (3) establish new populations, and (4) foster greater public understanding of the species, its status, and the factors that influence it (U.S. Fish and Wildlife Service 1998, pp. 65–66).

The Oregon chub is designated as “Sensitive-Critical” by ODFW. The “Sensitive” species classification was created under Oregon’s Sensitive Species Rule (OAR 635–100–040) to address the need for a proactive species conservation approach. The Sensitive Species List is a nonregulatory tool that helps focus wildlife management and research activities, with the goal of preventing species from declining to the point of qualifying as “endangered” or “threatened” under the Oregon Endangered Species Act (ORS 496.171, 496.172, 496.176, 496.182 and 496.192). Species designated as Sensitive-Critical are those for which listing as endangered or threatened would be appropriate if immediate conservation actions were not taken. This designation

encourages, but does not require, implementation of any conservation actions for the species; however, other State agencies, such as the Oregon Department of State Lands, the Water Resources Department, and the Oregon State Marine Board, refer to the Sensitive Species List when making regulatory decisions.

In 2009, the Service developed a programmatic Safe Harbor Agreement with ODFW (Oregon Department of Fish and Wildlife and U.S. Fish and Wildlife Service 2009, pp. 1–30). A Safe Harbor Agreement is a voluntary agreement involving private or other non-Federal property owners whose actions contribute to the recovery of species listed as endangered or threatened under the Act. In exchange for actions that contribute to the recovery of listed species on non-Federal lands, participating property owners receive formal assurances from the Service that if they fulfill the conditions of the Safe Harbor Agreement, the Service will not

require any additional management activities by the participants without their consent. In addition, at the end of the agreement period, participants may return the enrolled property to the baseline conditions that existed at the beginning of the agreement. The programmatic Safe Harbor Agreement allows ODFW to work with private landowners to establish new populations of Oregon chub on private lands, directly advancing the recovery of the species. The permit, authorized under section 10(a)(1)(A) of the Act, associated with the programmatic Safe Harbor Agreement authorizes ODFW to extend incidental take coverage with assurances to eligible landowners who are willing to carry out habitat management measures that would benefit the Oregon chub by enrolling them under the agreement as Cooperators through issuance of Certificates of Inclusion.

#### Summary of Comments and Responses

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of four appropriate and independent experts following publication of the proposed rule. We received five comment letters on the proposed rule: four from peer reviewers and one comment letter from ODFW. All of the reviewers were in support of the reclassification, and most recommended only minor clarifications to the proposed rule. We have incorporated these minor clarifications into this final rule. We received one substantive comment, which we summarize and respond to below.

*Comment:* One peer reviewer agreed with the Service's proposal to reclassify the Oregon chub as threatened, but noted that climate change and its effects to the hydrology of the Willamette Basin were not addressed in the proposed rule, and suggested that these issues need to be evaluated before the Service considers delisting the Oregon chub.

*Our Response:* Climate change presents substantial uncertainty regarding the future environmental conditions in the Willamette Basin. The channelization of the Willamette River and its tributaries, and the introduction of nonnative predatory fishes were the major factors underlying the historical decline of the Oregon chub. Changing climate is expected to place an added stress on the species and its habitats. The Intergovernmental Panel on Climate Change (IPCC) has concluded that recent warming is already strongly affecting aquatic biological systems; this is evident in increased runoff and earlier spring peak discharge in many

glacier- and snow-fed rivers (IPCC 2007, p. 8). Projections for climate change in North America include decreased snowpack, more winter flooding, and reduced summer flows (IPCC 2007, p. 14). Projections for climate change in the Willamette Valley in the next century include higher air temperatures that will lead to lower soil moisture and increased evaporation from streams and lakes (Climate Leadership Initiative (CLI) and the National Center for Conservation Science and Policy 2009, p. 9). While there is high uncertainty in the total precipitation projections for the region, effective precipitation (precipitation that contributes to runoff) may be reduced significantly even if there is no decline in total precipitation (CLI and the National Center for Conservation Science and Policy 2009, p. 9).

Although climate change is almost certain to affect aquatic habitats in the Willamette Basin (CLI 2009, p. 1), there is great uncertainty about the specific effects of climate change on the Oregon chub. The Service has developed a strategic plan to address the threat of climate change to vulnerable species and ecosystems; goals of this plan include maintaining ecosystem integrity by protecting and restoring key ecological processes such as nutrient cycling, natural disturbance cycles, and predator-prey relationships (U.S. Fish and Wildlife Service 2009; p. 21). The Oregon chub recovery program will strive to achieve these goals by working to establish conditions that allow populations of Oregon chub to be resilient to changing environmental conditions and to persist as viable populations into the future. Our recovery program for the species focuses on maintaining large populations distributed across the species' entire historical range in a variety of ecological settings (e.g., across a range of elevations). This approach is consistent with the general principles of conservation biology. In their review of minimum population viability literature, Traill *et al.* (2009, p. 3) found that maintenance of large populations across a range of ecological settings increases the likelihood of species persistence under the pressures of environmental variation and facilitates the retention of important adaptive traits through the maintenance of genetic diversity. Maintaining multiple populations across a range of ecological settings, as described in the recovery plan, will also increase the likelihood that at least some of these populations persist under the stresses of a changing climate.

Our recovery program will continue to focus on monitoring the species' status and responding to changing conditions. Any future proposal to delist the species due to recovery will need to establish that the species is not likely to become endangered in the foreseeable future throughout all or a significant portion of its range in the absence of the Act's protections, including consideration of any likely effects caused by changing climate.

#### Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. "Species" is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature. Once the "species" is determined, we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. We must consider these same five factors in reclassifying or delisting a species. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is "endangered" for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range, and is "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The word "range" is used here to refer to the range in which the species currently exists, and the word "significant" refers to the value of that portion of the range being considered to the conservation of the species. The "foreseeable future" is the period of time over which events or effects reasonably can or should be anticipated, or trends reasonably extrapolated; see discussion following Factor E, below.

After completing a rangewide threats analysis, we also evaluate whether the Oregon chub is endangered or threatened in any significant portion(s) of its range.

*Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Historical records indicate that the Oregon chub was distributed throughout the Willamette Basin, from the Clackamas River in the north, to the Coast Fork and Middle Fork in the south (Markle *et al.* 1991, p. 288). When we listed the Oregon chub as endangered in 1993, the species was known to exist at only nine locations, representing only 2 percent of the species' historical range (Markle *et al.* 1991, pp. 288–289; Scheerer *et al.* 2007, p. 2). Four of these locations had fewer than 10 individuals (Scheerer *et al.* 2007, p. 2). This precipitous decline in the species' abundance and distribution was attributed to the extensive channelization, dam construction, and chemical contamination that occurred in the Willamette Basin, particularly from the 1940s through the late 20th century (Pearsons 1989, pp. 29–30).

There are at least 371 dams in the Willamette River Basin, most of which were constructed from 1950 through 1980 (Hulse *et al.* 2002, p. 30). These dams reduced the magnitude, extent, and frequency of flooding in the basin, which dramatically reduced the amount of slough and side channel habitats available to the Oregon chub (Hulse *et al.* 2002, pp. 28–30). Other structural changes, such as revetment and channelization, diking and drainage, and the removal of floodplain vegetation, eliminated or altered the side channels and sloughs used by the Oregon chub, and destroyed the natural processes that replenish these slack water habitats (Hjort *et al.* 1984, p. 73; Sedell and Frogatt 1984, p. 1833; Hulse *et al.* 2002, p. 27). Analysis of historical records shows that over one-half of the Willamette's sloughs and alcoves had been lost by 1995 (Hulse *et al.* 2002, p. 18). Although the Oregon chub evolved in a dynamic environment in which flooding periodically created and reconnected habitat for the species, currently most populations of Oregon chub are isolated from other chub populations due to the reduced frequency and magnitude of flood events and the presence of migration barriers such as impassable culverts and beaver dams (Scheerer *et al.* 2007, p. 9).

In the 16 years since we listed the Oregon chub as endangered, concerted efforts by Federal, State, and local governments and private landowners have increased the number of Oregon chub populations from 9 to 38 (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 6; Bangs *et al.* 2008, p. 7). This dramatic increase in the number of populations is

a result of the discovery of new populations through extensive surveys of suitable habitats throughout the Willamette Basin and the establishment of new populations through successful reintroductions within their historical range (Scheerer 2007, p. 97). Since 1992, Oregon chub have been reintroduced to 16 locations, resulting in the successful establishment of 9 populations (Bangs *et al.* 2008, p. 7).

The analysis of threats in the final rule to list the Oregon chub as an endangered species and the recovery plan for the species discussed numerous potential threats to water quality in Oregon chub habitats. Many Oregon chub populations occur near rail, highway, and power transmission corridors; near agricultural fields; and within public park and campground facilities; prompting concern that these populations could be threatened by chemical spills, runoff, or changes in water level or flow conditions caused by construction, diversions, or natural desiccation (58 FR 53800; U.S. Fish and Wildlife Service 1998, p. 14, Scheerer 2008c, p. 1). In the 16 years since listing, a few of these concerns have been realized, and are discussed in the paragraphs below.

Excessive siltation from ground disturbing activities in the watershed, such as logging upstream of Oregon chub habitat, can degrade or destroy Oregon chub habitat. The threat of siltation due to logging in the watershed has been identified at five sites: Green Island North Channel, Finley Gray Creek Swamp, East Fork Minnow Creek Pond, Buckhead Creek, and Wicopee Pond (Scheerer 2008c, p. 1). In the 1990s, a large part of the Minnow Creek Watershed in the Middle Fork Willamette sub-basin was logged; flood events in the watershed in 1996, 1997, and 1998 caused accelerated sedimentation in the beaver pond at East Fork Minnow Creek Pond, and over half of the open water wetted area of the Oregon chub habitat there was lost as sediment filled the pond (Scheerer 2009b, p. 1). The Oregon chub population in East Fork Minnow Creek Pond declined dramatically following these floods and the resulting sedimentation (Scheerer 2009b, p. 1).

Water quality investigations at sites in the Middle Fork and Mainstem Willamette sub-basins have found some adverse effects to Oregon chub habitats. Nutrient enrichment may have caused the crash of the Oregon chub population at Oakridge Slough on the Middle Fork. The slough is downstream from the Oakridge Sewage Treatment Plant and has a thick layer of decaying organic matter, which may limit the amount of

useable habitat available to the chub (Buck 2003, p. 2). In the late 1990s, the Oregon chub population in Oakridge Slough peaked at nearly 500 individuals; since then, the population has apparently declined to zero (Scheerer *et al.* 2007, p. 2). Increased nitrogen and phosphorus concentrations have been detected in the slough; while the nutrient concentrations are not believed to be directly harmful to Oregon chub, the elevated nutrient levels may have resulted in eutrophication of the pond, with associated anoxic conditions unsuitable for chub, or increased plant and algal growth that severely reduced habitat availability (Buck 2003, p. 12).

Studies at William L. Finley National Wildlife Refuge have found evidence of elevated levels of nutrients and pesticides in Oregon chub habitats (Materna and Buck 2007, p. 67). Water samples were collected in 1998 from Gray Creek Swamp, which is home to a large population of Oregon chub. Analyses detected three herbicides, although all were below criteria levels recommended for protection of aquatic life; however, one form of nitrogen (total Kjeldahl N) exceeded Environmental Protection Agency (EPA) criteria levels recommended for protection of aquatic life in the Willamette Valley (Materna and Buck 2007, p. 67). The source of the contamination is likely agricultural runoff from farm fields adjacent to the Refuge (Materna and Buck 2007, p. 68). We note that EPA's recommended criteria for protection of aquatic life are not intended to be protective of all aquatic life, and may not be fully protective of the Oregon chub. EPA and the Service are working together to assess the effects of pollutants on the Oregon chub through section 7 consultation on Oregon water quality standards.

Fluctuating water levels in Lookout Point Reservoir on the Middle Fork Willamette River were limiting the breeding success of the Oregon chub population in Hospital Pond, which provides habitat for the species in a pool connected to the reservoir by a culvert. In 2001, 2002, and 2003, the Corps, which manages Lookout Point Reservoir, implemented a series of projects to protect the population of Oregon chub in Hospital Pond. The goal was to allow the Corps to manage the water level in Lookout Point Reservoir independently of the water elevation in Hospital Pond. The Corps installed a gate on Hospital Pond's outlet culvert and lined the porous berm between the pond and reservoir; these modifications allow the Corps to maintain the water level needed to support Oregon chub

spawning in Hospital Pond independent of the water level in the reservoir (U.S. Fish and Wildlife Service 2002, pp. 1–11). The Corps also excavated additional area to create more suitable spawning habitat in the pond (U.S. Fish and Wildlife Service 2003, pp. 1–3). The result of these management actions has been a large stable population of Oregon chub in Hospital Pond (Scheerer 2008a, p. 6).

Most of the known Oregon chub populations occur on lands with some level of protective status and management (see Table 1 above). The Service manages several Oregon chub populations on the Finley and Ankeny units of the Willamette Valley National Wildlife Refuge Complex (Refuge). Recovery of the Oregon chub is a high priority for the Refuge. The Refuge actively monitors the status of the populations, habitat quality, and nonnative fish presence; when threats are detected, the Refuge implements management actions to reverse the threats (Smith 2008, p. 1).

Five populations of Oregon chub occur on lands managed by the Corps; the Corps manages Oregon chub in accordance with the Service's biological opinion on the Willamette Project. In July 2008, the Corps, Bonneville Power Administration (BPA), and Bureau of Reclamation (BOR) completed formal consultation with the Service under section 7(a)(2) of the Act on the operation and maintenance of the Willamette Project, the system of 13 dams and associated impoundments that provide flood control, irrigation, municipal and industrial water supply, navigation, fish and wildlife conservation, flow augmentation, hydroelectric power generation, and recreation to the Willamette Valley. The Service concluded that the project would not jeopardize the continued existence of the Oregon chub (U.S. Fish and Wildlife Service 2008b, p. 170). The Service's biological opinion describes the measures that will be implemented by the Corps, BPA, and BOR to maintain and improve habitat for the Oregon chub. These measures include:

- (1) Monitoring the status of Oregon chub populations affected by operation and maintenance of the dams to gain a better understanding of the influence of the Willamette Project on the species;
- (2) Managing water levels in Oregon chub habitats directly affected by reservoir operations;
- (3) Relocating Oregon chub from ponds adversely affected by reservoir operations to new locations with better prospects for long-term protection;

(4) Conducting studies to identify the effects of flow management on Oregon chub habitats; and

(5) Funding a pilot study to investigate the impact of floodplain restoration and reconnection on fish communities in river reaches below Willamette Project dams.

Operation and maintenance of the Willamette Project under the new biological opinion will result in improved protections for the Oregon chub and new information that will benefit the species throughout the Willamette Basin.

The Oregon Department of Transportation has developed and is implementing a plan to protect and enhance Oregon chub populations on the agency's properties or those which may be affected by highway maintenance on the Santiam River, Coast Fork Willamette River, and Middle Fork Willamette River (Scheerer 2005, pp. 1–21).

The Oregon chub populations at Elijah Bristow State Park and Jasper Park on the Middle Fork are managed by the Oregon Parks and Recreation Department, which uses the Service's recovery plan as guidance to ensure conservation of the chub populations within the parks (Schleier 2008).

The U.S. Forest Service monitors and manages several Oregon chub populations on the Middle Fork (Scheerer 2008b, p. 1).

In addition to the management and protection provided to the Oregon chub on Federal and State lands, two individual Safe Harbor Agreements and a new programmatic Safe Harbor Agreement have been completed to guide management of Oregon chub populations on private lands. Safe Harbor Agreements are voluntary arrangements between the Service and cooperating non-Federal landowners to promote management for listed species on non-Federal property while giving assurances to participating landowners that no additional future regulatory restrictions will be imposed. The programmatic Safe Harbor Agreement with ODFW (Oregon Department of Fish and Wildlife and U.S. Fish and Wildlife Service 2009, pp. 1–30) will substantially contribute to the recovery of the Oregon chub.

#### Summary of Factor A

The Oregon chub has experienced extensive loss of slough and side-channel habitat due to hydrological changes resulting from dam construction and channelization in the Willamette Valley. However, many new habitats have been artificially created and are being managed to maintain

populations of Oregon chub. There is evidence that some populations are threatened by water quality degradation and associated reduction in habitat quality, although this has been documented at only a few sites. Habitat conditions have improved to the point where the species is not presently in danger of extinction. However, without the continued protections provided by the Act, or long-term management agreements, the Oregon chub would likely become endangered in the foreseeable future due, in part, to the destruction, modification, or curtailment of its habitat. In addition, a changing climate is expected to place an added stress on the species and its habitats, although there is substantial uncertainty regarding the future environmental conditions in the Willamette Basin (see Summary of Comments and Responses section, above).

#### Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial, recreational, scientific, or educational purposes was not a factor in listing, nor is it currently known to be a threat to the Oregon chub.

#### Factor C. Disease or Predation

The proliferation of predatory, nonnative fish is the most significant current threat to Oregon chub populations (Scheerer *et al.* 2007, p. 14). The basin contains 31 native fish species and 29 nonnative species (Hulse *et al.* 2002, p. 44). The large-scale alteration of the Willamette Basin's hydrologic system (*i.e.*, construction of dams and the resultant changes in flood frequency and intensity) has created conditions that favor nonnative, predatory fishes, and reservoirs throughout the basin have become sources of continual nonnative fish invasions in the downstream reaches (Li *et al.* 1987, p. 198).

Oregon chub are most abundant at sites where nonnative fishes are absent (Scheerer 2007, p. 96). Predatory, nonnative centrarchids (bass and sunfish) and *Ameiurus* spp. (bullhead catfish) are common in the off-channel habitats used by Oregon chub (Scheerer 2002, p. 1075). Sites with high connectivity to adjacent flowing water frequently contain nonnative, predatory fishes and rarely contain Oregon chub (Scheerer 2007, p. 99). The presence of centrarchids and bullhead catfishes is probably preventing Oregon chub from recolonizing otherwise suitable habitats throughout the basin (Markle *et al.* 1991, p. 291).

Management for Oregon chub has focused on establishing secure, isolated habitats free of nonnative fishes. However, natural flood events may breach barriers to connectivity allowing invasion by nonnative fishes. During the 1996 floods in the Willamette Basin, nonnative fishes invaded the habitats of the two largest Oregon chub populations in the Santiam River (Geren Island North Channel and Santiam Easement). In the next 2 years, these populations declined by more than 50 percent, and have not recovered to pre-1996 levels more than 10 years later (Scheerer 2002, p. 1078; Bangs *et al.* 2008, p. 7).

Game fish have also been intentionally introduced into chub ponds. An illegal introduction of largemouth bass (*Micropterus salmoides*) at an Oregon chub population site on the Middle Fork apparently caused a significant decline in that population from over 7,000 fish to approximately 3,000 fish from 2000 to 2008 (Scheerer *et al.* 2007, p. 14; Bangs *et al.* 2008, p. 7). The ubiquity of nonnative fishes in the Willamette Basin has created a substantial challenge to the recovery of the Oregon chub. Scheerer *et al.* (2007, pp. 10–14) conclude, “The resulting paradox is that the frequent interaction of the river with the floodplain habitats \* \* \*, conditions which historically created off-channel habitats and aided in the dispersal of chub and the interchange of individuals among populations, now poses a threat to Oregon chub by allowing dispersal of nonnative species.”

Nonnative fishes may also serve as sources of parasites and diseases for the Oregon chub. However, disease and parasite problems have not been identified in this species, nor has the issue been studied.

#### Summary of Factor C

Predatory, nonnative fishes are the most significant current threat to the recovery of the Oregon chub. Nonnative fishes are abundant and ubiquitous in the Willamette River Basin, and continual monitoring and management are required to protect existing Oregon chub populations from invasion. Predation remains a concern, but as the status of the species has improved since listing (*i.e.*, more populations have been established and are being managed to minimize threats), the relative effect of the threat of predatory, nonnative fishes has declined. Nevertheless, predation continues to impact the Oregon chub such that it is likely to become endangered in the foreseeable future without continued protection under the Act.

#### Factor D. The Inadequacy of Existing Regulatory Mechanisms

Before we listed the Oregon chub as endangered in 1993, the species had no regulatory protections. Upon its listing as endangered, the species benefited from the protections of the Act, which include the prohibition against take and the requirement for interagency consultation for Federal actions that may affect the species. Section 9 of the Act and Federal regulations prohibit the take of endangered and threatened species without special exemption. 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 (16 U.S.C. 1532(19)). Our regulations define “harm” to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Our regulations also define “harass” as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Section 7(a)(1) of the Act requires all Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered species and threatened species. Section 7(a)(2) of the Act requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of listed species or adversely modify their critical habitat. Thus, listing the Oregon chub provided a variety of protections, including the prohibition against take and the conservation mandates of section 7 for all Federal agencies. Because the Service has regulations that prohibit take of all threatened species (50 CFR 17.31(a)), unless modified by a special rule issued under section 4(d) of the Act (50 CFR 17.31(c)), the regulatory protections of the Act are largely the same for species listed as endangered and as threatened; thus, the protections provided by the Act will remain in place if the Oregon chub is reclassified as a threatened species.

The Oregon chub is designated as “Sensitive-Critical” by ODFW. This designation is a nonregulatory tool that helps focus wildlife management and research activities, with the goal of preventing species from declining to the point of qualifying as “threatened” or

“endangered” under the Oregon Endangered Species Act (ORS 496.171, 496.172, 496.176, 496.182 and 496.192). Sensitive-Critical designation encourages, but does not require, the implementation of any conservation actions for the species; however other State agencies, such as the Oregon Department of State Lands, the Water Resources Department, and the Oregon State Marine Board, refer to the Sensitive Species List when making regulatory decisions.

The Oregon chub is not protected by any other regulatory mechanisms.

#### Summary of Factor D

The regulatory mechanisms in effect under the Act provide a prohibition against take, the affirmative conservation mandate of section 7(a)(1), and the duty of all Federal agencies to avoid jeopardizing the continued existence/destroying or adversely modifying critical habitat of section 7(a)(2); these regulatory mechanisms will remain in place with the Oregon chub’s downlisting to threatened. A program of conservation actions will be implemented by the Corps, BPA, and BOR as a result of the Service’s biological opinion on the Willamette Project. However, because there are no other regulatory mechanisms in place beyond the Act, the inadequacy of regulatory mechanisms still threatens the Oregon chub.

#### Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Almost half of all the fish species in the Willamette River are not native to the basin (Hulse *et al.* 2002, p. 44). Along with the direct threat of predation (see Factor C, above), nonnative fish compete with Oregon chub for food resources. Competition with nonnative fishes may contribute to the decline and exclusion of Oregon chub from suitable habitats. The observed feeding strategies and diets of nonnative fishes, particularly juvenile centrarchids and adult mosquitofish (*Gambusia affinis*), overlap with the diet and feeding strategies described for the Oregon chub (Li *et al.* 1987, pp. 197–198). Thus, direct competition for food between Oregon chub and nonnative species may limit the distribution and expansion of the species; however, no studies have focused on the topic of competitive exclusion to date.

Historically, floods provided the mechanism of dispersal and genetic exchange for Oregon chub populations throughout the Willamette Basin (Scheerer 2002, p. 1078). The current management focus on protecting Oregon



chub populations in isolation, which protects the species from the introduction of predatory, nonnative fishes, may be having negative genetic implications (Scheerer 2002, p. 1078). This lack of connectivity means that movement of individuals among populations occurs rarely, if at all, which results in little or no genetic exchange among populations (Scheerer *et al.* 2007, p. 9). Research is under way to determine if Oregon chub populations have distinct genetic characteristics in the different sub-basins of the Willamette River; preliminary results seem to indicate that genetic differences exist among the major sub-basins of the Willamette Basin (Ardren *et al.* 2008, p. 1). There is concern that an unintended effect of managing for isolated populations may be genetic drift and inbreeding. If this proves to be the case, managers may need to move fish among populations to fulfill the role that natural flooding once played (Scheerer *et al.* 2007, p. 15).

Summary of Factor E

Competition from nonnative species and the potential loss of genetic diversity as a result of managing Oregon chub populations in isolated habitats

are threats that could affect Oregon chub populations throughout the species' range. However, the magnitude of these threats is unknown.

Conclusion of 5-Factor Analysis

We have carefully assessed the best scientific and commercial data available and have determined that the Oregon chub is not currently in danger of extinction. We believe that the species now meets the definition of a threatened species throughout all of its range. It has exceeded two of the downlisting criteria and is on the brink of meeting the third. Recovery plans are intended to guide and measure recovery. Recovery criteria for downlisting and delisting are developed in the recovery planning process to provide measurable goals on the path to recovery; however, precise attainment of all recovery criteria is not a prerequisite for downlisting or delisting. Rather, the decision to revise the status of a listed species is based solely on the analysis of the five listing factors identified in section 4 of the Act. The Act provides for downlisting from endangered to threatened when the best available data indicate that a species, subspecies, or distinct population segment is no longer in danger of

extinction, but is likely to become endangered in the foreseeable future without the continued protection of the Act.

At the time we completed the Oregon Chub Recovery Plan in 1998, we attempted to describe what the range, abundance, and distribution of Oregon chub populations should be before downlisting and delisting. These estimates were manifested in the downlisting and delisting criteria discussed above, and these criteria effectively established the Service's position on what constitutes "threatened" for the Oregon chub, in the case of downlisting criteria, and "recovered," in the case of the delisting criteria. Because the downlisting criteria have not been precisely met, the finding in this rule represents a departure from the Service's previously articulated description of "threatened" for the Oregon chub, and so must be further explained.

We compared current Oregon chub population information with the downlisting criteria for each sub-basin and estimated the amount by which each population goal's had been exceeded. The result of this comparison is shown in Table 2.

TABLE 2—COMPARISON OF NUMERICAL POPULATION GOALS FOR DOWNLISTING FROM THE OREGON CHUB RECOVERY PLAN WITH CURRENT POPULATION ESTIMATES, BY SUB-BASIN (CURRENT POPULATION DATA FROM BANGS ET AL. 2008, P. 7)

Sub-basin	Downlisting goal (number of fish/number of populations)	Current population estimate (number of fish/number of populations)	Percent of downlisting goal achieved (number of fish/number of populations)
Santiam .....	1,500/3	5,622/9	375/300
Mainstem Willamette .....	1,500/3	90,442/13	6,029/433
Middle Fork Willamette .....	1,500/3	32,484/16	2,166/533

Although these totals do not incorporate the 5-year stable or increasing trend aspect of the downlisting criteria, the number of chub in these basins greatly exceeds the minimum required in the downlisting criteria for both the number of populations and the number of individual fish. Taken together, along with the 5-factor analysis discussed above, it is clear that the status of the chub is far more secure than it might be with 4,500 fish in 9 populations across 3 sub-basins with 5-year stable or increasing trends.

The number of populations has increased from 9 to 38 since we listed the species in 1993; there are 16 large (>500 individuals) populations with stable or increasing trends. The species

is well distributed throughout the Willamette Basin, and most of these populations have some type of protective management and appear to be viable as long as they are monitored and adaptively managed. Although many of the threats have been reduced by recovery efforts, threatened status is appropriate because the species is likely to become endangered in the foreseeable future without the protections of the Act or long-term management agreements and adaptive management actions. In addition, concerns remain regarding the genetic implications of managing Oregon chub in isolated ponds, cut off from potential interactions with other populations in the basin.

Threats to existing habitats remain, including manipulation of flows which

can lead to desiccation, nutrient and pesticide runoff, and vegetative succession in shallow pond environments. The chief threat to existing Oregon chub populations is nonnative fish invasions, which may occur as a result of flood events, intentional introductions, or through connections between isolated chub habitats and adjacent watercourses. However, as the status of the species has improved since listing (*i.e.*, more populations have been established and are being managed to minimize threats), the relative effect of the threat of predatory nonnative fishes has declined. Monitoring for nonnative fish invasions and adaptively managing in response to such invasions is necessary for the long-term viability of this species.

In the absence of the Act's regulatory protections, predation by nonnative fishes, as well as population declines and range contraction resulting from habitat loss are expected to continue. We have no information to suggest that the threats identified above are likely to be reduced in the foreseeable future. We also do not have any indication that regulatory mechanisms will materialize to address or ameliorate the ongoing threats to the species. Thus, future Oregon chub population declines and range contraction, similar to what has been observed in the past, is a reasonable expectation without the continued protections of the Act.

Having determined that the Oregon chub is threatened throughout its range, we must next determine if the species is endangered in any significant portion of its range. The primary remaining threats to the species are introduction of predatory, nonnative fishes into chub ponds and water quality degradation. Extensive surveys of the Willamette Basin have found that predatory, nonnative fishes are abundant and widespread in each of the sub-basins (Scheerer 2007, p. 97). Threats to water quality, including chemical spills, agricultural runoff, and drought, are not restricted to any portion of the Oregon chub's range, and are equally likely to occur in any of the three sub-basins. While the threats associated with reduced genetic exchange among populations are not yet well understood it seems likely that the potential genetic consequences of management for isolated populations (*e.g.*, inbreeding and genetic drift) would be experienced across the range of the species, as protection of isolated ponds is the management goal for populations in all three of the sub-basins.

In summary, the primary threats to the Oregon chub are relatively uniform throughout the species' range. We have determined that none of the existing or potential threats, either alone or in combination with others, currently place the Oregon chub in danger of extinction throughout any significant portion of its range. However, without the continued protections of the Act or long-term management agreements, the Oregon chub is likely to become endangered throughout its range in the foreseeable future. Threatened status is therefore appropriate for the Oregon chub throughout its entire range.

#### Effects of This Rule

This final rule revises 50 CFR 17.11(h) to reclassify the Oregon chub from

endangered to threatened on the List of Endangered and Threatened Wildlife. However, this reclassification does not significantly change the protection afforded this species under the Act. The regulatory protections of sections 7 and 9 of the Act (see Factor D, above) remain in place. Anyone taking, attempting to take, or otherwise possessing Oregon chub, or parts thereof, in violation of section 9 is subject to a penalty under section 11 of the Act. Under section 7 of the Act, all Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Oregon chub or adversely modify its critical habitat.

Whenever a species is listed as threatened, the Act allows us to propose a special rule under section 4(d) of the Act. The special rule would modify the standard protections for that threatened species under section 9 of the Act and Service regulations at 50 CFR 17.31 and 17.71, if that action is deemed necessary and advisable to provide for the conservation of the species. However, 4(d) rules are only one of the tools that the Service uses to promote species conservation and may not be necessary in circumstances where other tools (*e.g.*, Safe Harbor Agreements) have already proven effective in eliciting conservation partnerships. There are no 4(d) rules in place or proposed for the Oregon chub, because there is currently no conservation need to do so for the species. For the Oregon chub, we have developed a programmatic Safe Harbor Agreement with ODFW (Oregon Department of Fish and Wildlife and U.S. Fish and Wildlife Service 2009, pp. 1–30) that allows ODFW to work with private landowners to establish new populations of Oregon chub on private lands, directly advancing the recovery of the species (*see* Additional Conservation Measures above). This final rule does not affect our Oregon chub Programmatic Safe Harbor Agreement with ODFW.

#### Required Determinations

##### *Paperwork Reduction Act of 1995*

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction

Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

##### *National Environmental Policy Act*

We have determined we do not need to prepare an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### References Cited

A complete list of all references cited in this rule is available upon request from the Oregon Fish and Wildlife Office (*see* ADDRESSES).

#### Authors

The primary authors of this rule are Cat Brown and Doug Baus of the Oregon Fish and Wildlife Office (*see* ADDRESSES).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for “Chub, Oregon” under FISHES in the List of Endangered and Threatened Wildlife to read as follows:

#### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
FISHES							
*	*	*	*	*	*	*	*
Chub, Oregon .....	<i>Oregonichthys crameri.</i>	U.S.A. (OR) .....	Entire .....	T	520,769	17.95(e)	NA
*	*	*	*	*	*	*	*

\* \* \* \* \*  
 Dated: April 13, 2010.

**Rowan W. Gould,**  
*Acting Director, Fish and Wildlife Service.*  
 [FR Doc. 2010-9375 Filed 4-22-10; 8:45 am]  
**BILLING CODE 4310-55-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 080521698-9067-02]

RIN 0648-XW04

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Closure of the Eastern U.S./Canada Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure and possession restriction.

**SUMMARY:** NMFS announces a temporary closure of the Eastern U.S./Canada Area to limited access Northeast (NE) multispecies days-at-sea (DAS) vessels and a prohibition on the harvest, possession, and landing of Georges Bank (GB) yellowtail flounder by all federally-permitted vessels within the entire U.S./Canada Management Area. Based upon vessel monitoring system (VMS) reports and other available information, the Administrator, Northeast Region, NMFS (Regional Administrator) has projected that 100 percent of the fishing year (FY) 2009 total allowable catch (TAC) of GB yellowtail flounder allocated to be harvested from the U.S./Canada Management Area has been harvested. This action is being taken to prevent the FY 2009 TAC for GB yellowtail flounder in the U.S./Canada Management Area

from being exceeded during FY 2009 in accordance with the regulations implemented under Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** Effective 0001 hours April 20, 2010, through April 30, 2010.

**FOR FURTHER INFORMATION CONTACT:** Brett Alger, Fisheries Management Specialist, (978) 675-2153, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for FY 2009 (May 1, 2009–April 30, 2010) was set at 1,617 mt by the 2009 interim final rule (74 FR 17030, April 13, 2009). An action published on March 16, 2010 (75 FR 12462), removed a restriction on the use of specific trawl gear in parts of the Western U.S./Canada Area (effective March 11, 2010) and removed a trawl gear restriction in the Eastern U.S./Canada Area (effective on April 13, 2010). Additionally, the trip limit for GB yellowtail flounder in the U.S./Canada Management Area was raised from 2,500 lb (1,134 kg) to 5,000 lbs (2,268 kg) per trip on March 24, 2010 (75 FR 15625). These actions increased vessels' opportunity to fully harvest the GB yellowtail flounder TAC for FY 2009. The regulations at § 648.85(a)(3)(iv)(C)(3) authorize the Administrator, Northeast (NE) Region, NMFS (Regional Administrator) to close the Eastern U.S./Canada Area to groundfish DAS vessels and prohibit all vessels from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area to

prevent the GB yellowtail flounder TAC from being exceeded.

According to the most recent VMS reports and other available information, the cumulative GB yellowtail flounder catch is approximately 98.6 percent of the TAC as of April 19, 2010. Therefore, to ensure that the TAC for GB yellowtail flounder will not be exceeded, the Eastern U.S./Canada Area is closed to all limited access NE multispecies DAS vessels and all vessels are prohibited from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area, effective 0001 hr April 20, 2010, through April 30, 2010.

**Classification**

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment and a delayed effectiveness would be impracticable and contrary to the public interest. This action will temporarily close the Eastern U.S./Canada Area to NE multispecies DAS vessels and prohibit all vessels from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area. This action is necessary to halt the catch of GB yellowtail flounder in the U.S./Canada Management Area and prevent the FY 2009 GB yellowtail flounder TAC from being exceeded during FY 2009. Because of the rapid increase in GB yellowtail harvest rate, it is projected that 100 percent of the GB yellowtail flounder TAC will be harvested prior to the end of FY 2009.

This action is required by the regulations at § 648.85(a)(3)(iv)(C)(3) to prevent over-harvesting the U.S./Canada