



AGENDA ITEM SUMMARY

BACKGROUND

Oregon maintains a State List of Threatened and Endangered Species (State List) under OAR 635-100-0125. The Borax Lake Chub (*Gila boraxobius*) was placed on the State List at the time it was adopted by the Commission in 1987 because they had already been listed in 1980 and 1982 on the federal Endangered Species Act (ESA) list as “endangered” (per OAR 635-100-0105(2)(a)). They are naturally limited in their distribution, occurring in isolated aquatic habitats in southeast Oregon. Subsequent to their original listing, the primary threats have been addressed through land acquisitions, fencing, and other actions. Additionally, substantial monitoring and research has been conducted, indicating that the populations are not declining.

As a result of the work to address all threats, the Oregon Fish and Wildlife Commission (Commission) “down-listed” Borax Lake Chub from “endangered” to “threatened” on the State List in April 2017. In July of 2020, in recognition that all remaining threats had been addressed and the population is stable, the USFWS formally removed the Borax Lake Chub from the federal ESA list. ODFW is now proposing that the Commission modify OAR 635-100-0125 to remove Borax Lake Chub from the State List.

To remove a species from the State List, the Commission must review the “best available scientific and other data” (OAR 635-100-0112). ODFW’s status review using the best available science and data relative to state delisting criteria is contained in Attachments 4 and 5.

PUBLIC INVOLVEMENT

Recovery actions for Borax Lake Chub have been coordinated among ODFW, The Nature Conservancy (TNC, which owns the Borax Lake property), U.S. Bureau of Land Management (BLM), and U.S. Fish and Wildlife Service (USFWS). This coordination included the development of a Cooperative Management Plan among the State and Federal agencies aimed at long-term conservation of Borax Lake Chub and their habitat.

Methods used to assess the status of Borax Lake Chub were published in the peer-reviewed scientific literature (North American Journal of Fisheries Management 35:491-502). The coordination requirements of OAR 635-100-0105(10) for removing a species from the State List were addressed. Affected agencies (BLM and USFWS), counties (Harney), tribes (Burns Paiute Tribe), and interested parties (TNC) were contacted and directly provided the status and regulatory reviews (Attachments 4 and 5) for feedback. Note that cities and other states are not affected given the species’ limited distribution, and the Natural Heritage Advisory Council is no longer in existence.

Additionally, a written comment period for the status and regulatory reviews (Attachments 4 and 5) was provided for the public. This period was announced in an agency news release that was distributed on January 5, 2021. The review documents were posted to the ODFW website and the comment period ran through February 05, 2021.

Finally, public review, comment, and participation will occur through the regular process for the February 12, 2021 Commission meeting, when the Commission will consider removing Borax Lake Chub from the State List.

ISSUE 1

Remove Borax Lake Chub from the State List of Threatened and Endangered Species

ANALYSIS

The Borax Lake Chub (*Gila boraxobius*) is a minnow that is endemic to Borax Lake and adjacent wetlands in the Alvord Basin in Harney County, Oregon. The Borax Lake Chub was listed as endangered under the federal ESA, first in 1980 by emergency rule and later in 1982 by final rule. At the time of the listing, Borax Lake was threatened by habitat alteration from proposed geothermal energy development and alteration of the lakeshore crust to provide irrigation to surrounding pasturelands. The basis for the Borax Lake Chub's listed status was not population size, but the vulnerability of a very limited, unique, and isolated habitat.

Since the time of the initial listing, ODFW has been working with partners to implement the actions described in the Federal Recovery Plan. Once those actions were successfully implemented, ODFW conducted a status review to determine whether the criteria to remove Borax Lake Chub from the list of threatened and endangered species have been met (per OAR 635-100-0112). The status review of Borax Lake Chub (Attachment 4) summarizes past actions that address the concerns leading to the species' initial listing. The status review also identifies that the historical range of Borax Lake Chub is intact; Borax Lake Chub abundance is variable among years; natural reproduction is occurring; and the species and its habitat are not subject to overuse for commercial, recreational, scientific, or educational purposes. The entire distribution of Borax Lake Chub is on land owned and managed by TNC, and the surrounding land is owned and managed by the BLM and designated as an Area of Critical Environmental Concern. Additionally, ODFW, BLM, and USFWS have developed a Cooperative Management Plan that outlines roles and responsibilities for managing Borax Lake Chub and their habitat for long-term persistence of the species.

In their own review for delisting, the USFWS determined that the implementation of the recovery plan has been successful, the recovery objectives have been met, and threats to the species are largely ameliorated. The USFWS delisted Borax Lake Chub from the federal ESA in 2020. The primary issue of concern that was evaluated during the federal delisting process is centered on the potential for future geothermal energy development in the area. Although there are no current development efforts, geothermal development was one of the reasons for the original listing and there is some level of regulatory and hydraulic uncertainty around the outcome if a development was proposed (discussed in Attachments 4 and 5).

ODFW proposed to delist Borax Lake Chub during the April 2017 Commission meeting. The Commission decision was to down-list to threatened. The two primary concerns for not delisting at that time were the lack of support from TNC (which submitted a comment letter supporting a down-listing, but not a delisting), and a low abundance data point in 2015. ODFW has subsequently monitored the abundance in 2016, 2017, and 2019 and all the

estimates were well above the 2015 number, and in 2019 we saw the highest abundance estimate to date.

OAR 635-100-0112 provides for delisting of a species if the Commission makes the following determinations:

- (1) The species is not, or is not likely to become within the foreseeable future, in danger of extinction throughout any significant portion of its range in this state, or is not at risk of becoming endangered throughout any significant portion of its range in this state.
- (2) That the natural reproductive potential of the species is not in danger of failure due to limited population numbers, disease, predation or other natural or human-related factors affecting its continue existence; and
- (3) The species no longer qualifies for listing under OAR 635-100-0105(6).

At this time, ODFW proposes delisting the Borax Lake Chub for the following reasons. First, a number of recovery actions have been taken to safeguard the habitat for Borax Lake Chub following the federal listing action. These actions have protected the species' habitat, ameliorating the primary threat and reason for the initial listing.

Second, ODFW and partners have been monitoring the abundance, reproductive potential, and other factors to ensure the species' continued existence is not in danger. The results of the monitoring efforts show a natural fluctuation of abundance, common for minnow species, and there is no current threat of disease, predation, or other any other factor.

Third, factors in OAR 635-100-0105(6) were evaluated and criteria have been met. The natural reproductive potential of the species is not in danger of failure, the species is not undergoing imminent or active deterioration of range or primary habitat, overutilization of the species or its habitat is not occurring and is not likely to occur, and existing state or federal programs or regulations are adequate to protect the species and its habitat.

A more detailed review with respect to satisfaction of delisting criteria is provided in "Analysis of State List delisting requirements" in the Status Review (Attachment 4). The full details of a regulatory review for the primary habitat threat are provided in Attachment 5.

Another consideration for removal from the State List is that, if removed, ODFW will determine if this species meets the criteria to be placed on a different list: the Sensitive Species List (OAR 635-100-0040). This list is developed and maintained by ODFW "for the purpose of prioritizing conservation actions to prevent species from becoming eligible for listing as a threatened or endangered species". Functionally in this instance, state protections for this species as a Sensitive Species will not be significantly different than as a "threatened" species on the State List. The primary, direct protections afforded to species on the State List are for those species that occur on state lands, and there are no state lands within Borax Lake Chub distribution. Additionally, many state natural resource agencies have adopted rules requiring special consideration in their land and water management regulatory processes for species on both the State List and the Sensitive Species List (e.g., water withdrawals and storage,

removal-fill within streams and wetlands, energy facility siting, mineral exploration, and others).

Based on the recovery actions that have occurred and the findings made in the status review (Attachment 4), ODFW believes that the delisting criteria identified in OAR 635-100-0112 are met and recommends that Borax Lake Chub be removed from the Oregon State List of Threatened and Endangered Species. If the Commission takes this action, ODFW will determine if this species should be placed on the Oregon Sensitive Species List.

OPTIONS

1. Adopt the proposed rule in Attachment 3 to remove Borax Lake Chub from the State List of Threatened and Endangered Species.
2. No action: Retain Borax Lake Chub on the State List of Threatened and Endangered Species as threatened.

STAFF RECOMMENDATION

1. Adopt the proposed rule in Attachment 3 to remove Borax Lake Chub from the State List of Threatened and Endangered Species.

DRAFT MOTION

I move to amend OAR 635-100-0125 as shown in Attachment 3 to remove Borax Lake Chub from the State List of Threatened and Endangered Species, because the Commission finds the delisting criteria in 635-100-0112 are met as established in the agenda summary and cited attachments.

EFFECTIVE DATE: Upon filing