



Oregon

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Public Comments Processing
Attn: RIN 1018-AV87
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, Suite 222
Arlington, VA 22203

To Whom It May Concern:

Thank-you for the opportunity to respond to the U.S. Fish and Wildlife's (FWS) proposal to designate critical habitat for Oregon chub in the Willamette basin, Oregon. This response is in addition to comments submitted by Mary Hanson, Oregon Department of Fish and Wildlife (ODFW), to the FWS in her peer review of the proposed rule to designate critical habitat (see attached letter).

The proposed rule published in the Federal Register (74 FR10412) outlined the process and criteria used to identify the sites warranting designation of critical habitat for Oregon chub. Critical habitat was defined as (1) the specific areas within the geographical area occupied by a species at the time it was listed on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection and (2) specific areas outside the geographical area occupied by the species at the time it was listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined in the proposed rule, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provide under the Endangered Species Act are no longer necessary.

In this response, we have included suggested revisions to the document and to the list of sites designated as critical habitat. These are referenced below by page number and subheading:

On page 10415, under the subheading *Primary Constituent Elements (PCE's)* - The statement #5 "Habitats that are protected from disturbance or..." should clarify that you are referring to anthropogenic disturbances and not natural disturbances.

On page 10415, under the subheading *Flow Velocities and Depth*- This is the first reference in the document to a "population of 500 individuals". This 500 fish threshold is one of the population criteria in the recovery plan that was established to measure progress towards downlisting and delisting (summarized on page 10413). It is our understanding that this threshold for population abundance was used to determine whether occupied sites were included in the designation, i.e. a site was only included if it currently supports 500 or more individuals or if the site has been documented to support 500 or more individuals in the past. We suggest that this be stated implicitly in the document and

should be included on page 10417 under the heading *Criteria Used To Identify Critical Habitat*.

On page 10417, under the subheading *Criteria Used To Identify Critical Habitat*, we suggest additional sites be included under “*Sites that are capable of supporting large populations*”. It is our opinion that several sites with abundance levels less than 500 fish are “capable of supporting large populations” and these are “essential” to the recovery of the species. The following sites contain all of the PCE’s and should be included in the designated critical habitat:

- 1) Pioneer Park backwater in the Santiam subbasin,
- 2) Sprick Pond in the Coast Fork Willamette subbasin, and
- 3) Haws Pond, Elijah Bristow South Slough, and Middle Fork Willamette sites RM198.6 and RM199.5 in the Middle Fork Willamette subbasin.

For example, we have documented several populations (i.e. - Buckhead Creek and Wicopee Pond) where populations were at very low levels for many years before they increased rapidly in abundance. Both are currently stable and abundant populations meeting the downlisting criteria. We feel the sites listed above are capable of similar population increases.

On Page 10417, under the subheading *Criteria Used To Identify Critical Habitat*, we also suggest additional, unoccupied, off-channel habitats in the Jasper-Dexter reach of the Middle Fork Willamette subbasin be included in the critical habitat designation. We feel these sites are essential for the conservation of the species and necessary to bring the species to the point at which the measures provide under the Endangered Species Act are no longer necessary.

The current phase of Oregon chub recovery, now that we have met the downlisting criteria, is to determine the feasibility of recovering the species in connected habitats. The U.S. Fish and Wildlife Service (USFWS) recently signed a “Biological Opinion (BiOp) on the Continued Operation and Maintenance of the Willamette River Basin Project and Effects to Oregon Chub, Bull Trout, and Bull Trout Critical Habitat Designated under the Endangered Species Act”. To implement the Reasonable and Prudent Measures pertaining to Oregon chub, the US Army Corps of Engineers agreed to fund a pilot study investigating the impact of floodplain restoration and reconnection on native and nonnative fish communities in the river reaches below Willamette Project dams. This summer, ODFW is initiating a study to investigate the impacts of floodplain restoration, altered flow and temperature regimes, and reconnection on fish communities at potential reconnection/introduction sites in the river reach immediately below Dexter dam (Dexter to Jasper). These data will be collected prior to and post alteration/restoration to determine whether alternative flow strategies and more natural temperature regimes favor native fishes, including Oregon chub, over non-native fishes. If we find that the floodplain restoration efforts and associated flow and temperature modifications are successful in creating conditions where connected off-channel habitats can support abundant Oregon chub populations, even when nonnative fishes are present or have access, then these efforts should lead to progress towards delisting of the species. In addition, these habitats will provide a migratory corridor that will allow genetic exchange of individuals among populations/habitats in the Middle Fork Willamette River and promote successful colonization of new, unoccupied habitats by Oregon chub.

For these reasons, we feel that the critical habitat designation should include all off-channel habitats in the reach of the Middle Fork River downstream of Dexter Dam and upstream of Jasper. Habitats in this reach currently support several stable and abundant Oregon chub populations and frequently contain low abundances of nonnative fishes. If we are to succeed in establishing additional Oregon chub populations in connected habitats, we feel that the off-channel habitats in this river reach offer the best opportunities for this effort. Under the definition of conservation, protection of these unoccupied suitable habitats could bring the species to the point where protection under the Endangered Species Act is no longer necessary.

On page 10419, second paragraph, expand the sentence "Some units require special management...due to agricultural chemical runoff" to include forestry chemical runoff.

On page 10422, Unit 3A- This site is vulnerable to illegal introduction of nonnative fishes.

On page 10423, Unit 3E- Remove the word "periodically" from the sentence "This site is periodically connected to Dexter Reservoir and...". This site has open connection to the reservoir via culvert. This site is also vulnerable to the introduction of additional nonnative fishes.

On page 10423, Unit 3H- Hospital Pond is spring fed but is not fed by Hospital Creek.

On page 10424, Unit 3J, last sentence- Add the threat to water quality due to the close proximity to the railroad.

On page 10425, Unit 3K- Wicopee pond is at risk of introduction of nonnative fishes.

If you have any questions regarding the suggested revisions or would like to discuss any of these ideas in more detail, please contact us at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Paul Scheerer".

Paul Scheerer
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Oregon

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April 20, 2009

Dr. Paul Henson, State Supervisor
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Oregon Fish and Wildlife Office
2600 SE 98th Avenue, Suite 100
Portland, OR 97266

Re: Peer Review of the Proposed Rule for
Designation of Critical Habitat for the Oregon Chub *Oregonichthys crameri*

Dear Dr. Henson:

I'm responding to your agency's request for peer review of the proposed rule to designate Critical Habitat for the Oregon chub *Oregonichthys crameri*. In preparing my review, I have consulted with Paul Scheerer, Oregon Department of Fish and Wildlife's staff and regional expert on Oregon chub distribution, life history and biology.

As I understand, the Federal Register notice (74 FR10412), the proposed rule describes the process and criteria used to identify twenty-five sites warranting designation of critical habitat for Oregon chub. The author identified the biological and physical features or primary constituent elements (PCE's) essential for conservation of the species and then evaluated known sites with Oregon chub as to whether they contained one or more PCE's necessary for one or more life history functions of the Oregon chub. Thirty six occupied sites resulted from this analysis. These sites were then evaluated based on three criteria adapted from delisting criteria in the 1998 Oregon Chub Recovery Plan. The result was that 25 of the 36 sites met the three criteria. The final step in the process was to verify that the 25 proposed sites also required special management consideration or protections. All of the 25 proposed sites were found to be in need of protection from one or more ongoing and potential threats. In general, the notice did what it set out to do (identify areas to designate as critical habitat), although the path at times could have been laid out more clearly. Suggestions for improving the organization and readability are included in the sections discussed below.

Methods

The data sources cited in the Methods section and elsewhere in the notice represent, are in my opinion, the most current and up-to-date scientific information on Oregon chub available.

Primary Constituent Elements

The Primary Constituent Elements section does a good job describing the physical and biological features essential to the conservation of Oregon chub. The four PCE's derived from the background information are appropriate for Oregon chub, with the following possible exception. Number 3 (page 10417) refers to water temperature, the only water quality element identified as a PCE for Oregon chub. I would have expected some mention of absence or low level of contaminants to be part of this PCE, since contaminants could effect not only the vegetation Oregon chubs depend on for cover, but they could also interfere with chub reproduction, growth and survival. The result of this process was the identification of 36 sites that contain sufficient PCE's to provide for "one or more of the life history functions of the Oregon chub." The list includes areas occupied at the time of listing and areas not occupied at the time of listing.

The last sentence on page 10416, “All areas proposed as critical habitat for Oregon chub....” seems premature since the foregoing discussion is specific to PCE’s and not to areas designated. It would fit better on page 10419 under the section “Proposed Critical Habitat Designation”. See discussion below pertaining to this section.

Criteria Used to Identify Critical Habitat

In this section, the author used the delisting criteria from the 1998 Oregon Chub Recovery Plan to develop three criteria to define those sites that contained the physical and biological features in the amount and spatial configuration considered essential to the conservation of the Oregon chub. The three criteria are: (1) sites that support large, stable populations (500 or more adults with a stable or increasing trend over seven years or sites likely to meet the delisting criteria in the near future), (2) sites that are capable of supporting large populations (sites not already selected under the first criterion that have the greatest potential to contribute to the long-term conservation and recover of the species), and (3) sites representative of the geographic distribution of the Oregon chub (at least four populations in each of the three sub-basins). I could find no site in which the trend exceeded 5 years, so I can only assume that sites identified as meeting criterion (1), the would be considered “likely to meet the delisting criteria in the near future”. If this was the intent, it should be stated as such. However, all of the sites in which the trend was stable or increasing for five years would meet the down listing to threatened criteria in the Oregon chub recovery plan.

I think this section would benefit from moving the text from the first sentence after the heading (page 10417 middle column) down to number 5 to the previous section under PCE’s since this is what the text refers to and not to the criteria used to identify critical habitat. Also, under number 3 in this section there is reference to “recovery plan criteria described above” in the first sentence. However, the recovery plan criteria are not described until number 5. The reference to recovery plan criteria should be deleted from number 3 and the sentence started at “the next step....”.

Special Management Considerations or Protections

The section on Special Management Considerations or Protections was well written and did a good job of justifying the need for inclusion of the 25 proposed sites in the designation of critical habitat. However, in consultation with Mr. Scheerer, additional threats for several of the sites were identified that should be included in the section. Those additions are as follows:

- Unit 2B(5), Finley Gray Creek Swamp – water quality degradation from agricultural and forestry chemicals.
- Unit 3G, East Fork Minnow Creek Pond – potential threat from nonnative fish introduction and water quality degradation from agricultural and forestry chemicals.
- Unit 3K, Wicopee Pond - potential threat from nonnative fish introduction.
- Unit 3A, Fall Creek Spillway Ponds – prevent or set back vegetation succession.
- Unit 1A Santiam I-5 Side Channels - water quality degradation from agricultural and forestry chemicals.

Proposed Critical Habitat Designation

Lastly, in the “Proposed Critical Habitat Designation” section (page 10419), the second paragraph would benefit from a follow-up statement that indicates no sites outside of the geographical area occupied by the species at the time of listing were included in the 25 sites proposed for critical habitat designation. Perhaps you could move the last sentence on page 10416, “All areas proposed.....” to the paragraph at the end of page 10419.

This concludes my peer review of the Proposed Rule for Designation of Critical Habitat for the Oregon Chub *Oregonichthys crameri*. I trust your staff will find my review helpful.

Thank you for the opportunity to comment.

Sincerely,

Mary L. Hanson

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Cc: Bruce McIntosh
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