

on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound, this amount would equate to about \$6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act does not specifically provide rights to tribes for the subsistence taking of wildlife, fish, and shellfish. And while, for this rule, EO 13175 does not require the agencies to consult with tribes, the Secretaries have elected to provide tribes an opportunity to consult on this rule. The Board will provide a variety of opportunities for consultation through: Proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Advisory Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, e-mail, or phone at any time during the rulemaking process.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Drs. Warren Eastland and Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Calvin Casipit, Alaska Regional Office, U.S. Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2010–11 and 2011–12 regulatory years.

Dated: May 4, 2009.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: May 1, 2009.

Calvin Casipit,

Acting Subsistence Program Leader, USDA-Forest Service.

[FR Doc. E9–11130 Filed 5–14–09; 8:45 am]

BILLING CODE 3410–11–P, 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2009–0005; 92220–1113–0000–C6]

RIN 1018–AW42

Endangered and Threatened Wildlife and Plants; Proposed Rule To Reclassify the Oregon Chub (*Oregonichthys crameri*) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), propose to reclassify the Oregon chub (*Oregonichthys crameri*) from endangered to threatened. This proposal is based on a thorough review of the best available scientific data, which indicate that the species' status has improved such that it is not currently in danger of extinction throughout all or a significant portion of its range. We seek information, data, and comments from the public regarding the Oregon chub and this proposal.

DATES: We will accept comments received on or before July 14, 2009. Public hearing requests must be received by June 29, 2009.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018-AW42; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Public Hearing Requests: To request a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266; (telephone 503/231-6179). 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:

Public Comments Solicited

Our intent is to use the best available commercial and scientific data as the foundation for all endangered and threatened species classification decisions. Comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule to downlist the Oregon chub are hereby solicited. Comments particularly are sought concerning:

- (1) Biological information concerning the Oregon chub, including competition from non-native species and the risks associated with loss of genetic diversity in isolated populations;

- (2) Relevant data concerning any current or likely future threats (or lack thereof) to the Oregon chub;

- (3) Additional information concerning the range, distribution, population size and population trends of the Oregon chub, including the locations of any additional populations; and

- (4) Information regarding management plans or other mechanisms that provide protection to Oregon chub or their habitats.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the

ADDRESSES section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment on <http://www.regulations.gov>. Before including your address, phone number, or e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment during normal business hours at the Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266, (503/231-6179).

Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be made in writing and addressed to the Field Supervisor (see **FOR FURTHER INFORMATION CONTACT** section above).

Previous Federal Action

In our December 30, 1982, Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species Under the Act, 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). A final rule listing the Oregon chub as endangered was published in the **Federal Register** on October 18, 1993 (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 does meet the definition of a threatened species, under the Act. The review, therefore, recommended that the Oregon chub should be downlisted from endangered to threatened.

On March 10, 2009, the Service published a proposed rule to designate critical habitat (74 FR 10412) for the Oregon chub. The public comment period on the proposed critical habitat rule closes on May 11, 2009.

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 (8 sites), Mid-Willamette River (6 sites), McKenzie River (4 sites), Middle Fork (14 sites), and Coast Fork (3 sites) (Scheerer *et al.* 2007, p. 2). There are currently 19 populations that contain more than 500 adults each; 16 of these have a stable or increasing trend (Scheerer 2008a, p. 6).

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 the Oregon chub was listed 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 two percent of its historical range (58 FR 53800, p. 53801). Since 1992, the Service, Oregon Department of Fish and Wildlife (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 dramatically improved 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 exhaustive 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 15 sites (7 in the Mainstem Willamette Sub-basin, 5 in the Middle Fork Sub-basin, and 3 in the Santiam Sub-basin) (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 6). Introduced populations have been established in suitable habitats with low connectivity to other suitable aquatic habitats to reduce the risk of invasion by nonnative fishes (*see* Factor C below for more information) (Scheerer 2007, p. 98). At present, 9 of these populations

persist and exhibit stable or increasing trends; 1 population was reintroduced too recently to evaluate success (*i.e.*, the population introduced in 2008 at St. Paul Ponds); 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 36 Oregon chub populations, of which 19 have more than 500 adults (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 6). Fifteen 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 and 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 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 (table 1).

Downlisting Criterion 2: All of these populations 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 (table 1). 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 (table 1).

Downlisting Criterion 3: At least three populations (which meet 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 (Table 1). 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 Scheerer *et al.* 2007, p. 2; Scheerer, 2008a, p. 6, Scheerer 2008b, p. 1]

| Population site name | Owner ¹ | Population estimate ² | 5-Year trend ³ |
|---|-----------------------|----------------------------------|---------------------------|
| Santiam River Sub-Basin | | | |
| Foster Pullout Pond | Corps | 2,640 | stable. |
| Gray Slough | Private | 660 | stable. |
| South Stayton Pond | ODFW | 1,710 | |
| Geren Island North Channel | City of Salem | 210 | declining. |
| Pioneer Park Backwater | Private | 320 | |
| Stayton Public Works Pond | City of Stayton | 70 | |
| Santiam I-5 Side Channels | ODOT | (22) | |
| Green's Bridge Slough | Private | (8) | |
| Mainstem Willamette Sub-Basin (Includes McKenzie River and Coast Fork) | | | |
| Ankeny Willow Marsh | USFWS | 36,450 | increasing. |
| Dunn Wetland | Private | 34,530 | stable. |
| Finley Gray Creek Swamp | USFWS | 2,140 | increasing. |
| Finley Cheadle Pond | USFWS | 3,520 | increasing. |
| Finley Display Pond | USFWS | 830 | increasing. |
| Muddy Creek | Private | (3) | |
| Russell Pond | Private | 650 | stable. |
| Shetzline Pond | Private | 200 | |
| Big Island | Private | 130 | |
| Green Island | Private | (12) | |
| Herman Pond | USFS | 180 | |
| Coast Fork Side Channels | OPRD/ODOT | 80 | |
| Lynx Hollow Side Channels | OPRD | (2) | |
| 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 | 4,020 | increasing. |
| 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 | 1,620 | 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) | |
| St. Paul Ponds | ODFW | (21) | |

¹ Owner abbreviations: Corps = U.S. Army Corps of Engineers, USFWS = U.S. Fish and Wildlife Service, ODOT = Oregon Department of Transportation, OPRD = Oregon Parks and Recreation Department, ODFW = Oregon Department of Fish and Wildlife.

² Population estimate is the most recent available (Fall 2007 or Spring 2008). Abundances are marked—recapture estimates except those shown in parentheses, which are the number of fish collected.

³ 5-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, academics, 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). ODFW, Oregon Department of Parks and Recreation, Corps, U.S. Bureau of

Land Management, U.S. Fish and Wildlife Service, 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 “threatened” or “endangered” 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 threatened or endangered would be appropriate if immediate conservation actions were not taken. This designation encourages but does not require the implementation of any conservation actions for the species.

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 (16 U.S.C. 1532(16)). 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 threatened or endangered, 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.

Following a rangewide threats analysis we evaluate whether the Oregon chub is threatened or endangered 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 1991, p. 288). When the Oregon chub was listed as endangered in 1993, the species was known to exist at only nine locations, representing only 2 percent of the species’ historical range (Markle 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 during the period 1950 to 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 used by 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 these 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 15 years since the Oregon chub was listed as endangered, concerted efforts by Federal, State, and local governments and private landowners have increased the number of Oregon chub populations from 9 to 36 (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 6). 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 15 locations, resulting in the successful establishment of 9 populations (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 6).

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, agricultural fields, and within public park and campground facilities, and there was 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, October 18, 1993; U.S. Fish and Wildlife Service 1998, p. 14, Scheerer 2008c, p. 1). In the 15 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 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). 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 Endangered Species 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, pp. 1–204). 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 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) 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 Safe Harbor Agreements 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 Service's Oregon Fish and Wildlife Office is preparing a programmatic Safe Harbor Agreement to allow more landowners to enroll in the program, which, based on past experience, is likely to result in the reintroduction of Oregon chub populations on more private lands throughout the species' historical range.

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. Habitat quality is threatened by water quality degradation, though 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 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.

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

Overutilization 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 largest current threat to Oregon chub populations (Scheerer *et al.* 2007, p. 14). Nearly half of the fish species found in the Willamette Basin are introduced; 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 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; in the next 2 years, these populations declined by more than 50 percent, and had not recovered to pre-1996 levels more than 5 years later (Scheerer 2002, p. 1078).

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 2,000 fish from 2000 to 2007 (Scheerer *et al.* 2007, p. 14). 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 greatest 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 the Oregon chub was federally listed as endangered in 1993, the species had no regulatory protections. Upon its listing as endangered, the species benefited from the protections of the Endangered Species 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 pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species without special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (50 CFR 17.3). "Harm" is further defined 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; "harass" is defined 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 authorized, funded, or carried out by them 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 pursuant to 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 (*see* the discussion above under Additional Conservation Measures).

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

Summary of Factor D: The regulatory mechanisms in effect under the Endangered Species Act provide a prohibition against take, the affirmative conservation mandate of section 7(a)(1), and the protection against jeopardy of section 7(a)(2); these regulatory mechanisms will remain in place if the Oregon chub is downlisted 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. Observed feeding strategies and diet 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 (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 loss of genetic diversity as a result of managing Oregon chub populations in isolated habitats are potential threats that could affect Oregon chub populations throughout the species’ range. However, the magnitude of these threats is unknown.

Foreseeable Future

The term “threatened species” means any species (or subspecies or, for vertebrates, distinct population segments) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act does not define the term “foreseeable future.” For the purpose of this proposed rule, we defined the “foreseeable future” to be the extent to which, given the amount and substance of available data, we can anticipate events or effects, or reliably extrapolate threat trends, such that we reasonably believe that reliable predictions can be made concerning the future as it relates to the status of the species at issue.

In considering the foreseeable future as it relates to the status of the Oregon chub, we considered the threats to the Oregon chub, historical declines, and ongoing conservation efforts.

With respect to the Oregon chub, in the absence of the Act’s regulatory protections, historical population declines, and range contraction, which were the result of habitat loss, predation by nonnative fishes, and the lack of sufficient regulatory mechanisms are expected to continue throughout the species’ range. We have no information to suggest that the threats identified above are likely to be reduced in the

foreseeable future, nor 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 continued protection under the Act.

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 5 listing factors identified in section 4 of the Act. The Act provides for downlisting from endangered to threatened when the best available data indicates that a species, subspecies, or distinct population segment is no longer in danger of extinction.

At the time we completed the Recovery Plan for the Oregon Chub 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,” 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 proposed finding in this rule represents a departure from the Service’s previously articulated description of “threatened,” 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

| 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 | 5,640/8 | 376/267 |
| Mainstem Willamette | 1,500/3 | 78,727/13 | 5,248/433 |
| Middle Fork Willamette | 1,500/3 | 35,142/14 | 2,343/467 |

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 analyses discussed above, it is clear that the status of the chub is likely 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 36 since the species was listed 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.

Significant Portion of the Range Analysis

Having determined that the Oregon chub is threatened throughout its range, we next considered whether it is in danger of extinction in any significant portions of its range.

The Act defines an endangered species as one “in danger of extinction throughout all or a significant portion of its range,” and a threatened species as one “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The term “significant portion of its range” is not defined by statute. For purposes of this finding, a significant portion of a species’ range is an area that is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

The first step in determining whether a species is threatened or endangered in a significant portion of its range is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion

warrants further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions of a species’ range that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient in some cases for the Service to address the significance question first, and in others the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. If the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant. If the Service determines that both a portion of the range of a species is significant and the species is threatened or endangered there, the Service will specify that portion of the range where the species is in danger of extinction pursuant to section 4(c)(1) of the Act.

The terms “resiliency,” “redundancy,” and “representation” are intended to be indicators of the conservation value of portions of the species’ range. Resiliency allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species. Thus, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other

portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, it may help to evaluate the historical value of the portion and how frequently the portion is used by the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation ensures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetic diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

Applying the process described above, we evaluated the range of the Oregon chub to determine if any units could be considered a significant portion of its range. A case could be made that each of the three sub-basins discussed in the recovery plan (Mainstem Willamette River, Middle Fork Willamette, and Santiam River) (U.S. Fish and Wildlife Service 1998, pp. 27–28) are significant portions of the range of the Oregon chub. As discussed above, a portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species. Each of the three sub-basins clearly meets these criteria, as described in the recovery plan (U.S. Fish and Wildlife Service 1998, pp. 27–28).

Next we must determine if the threats to the Oregon chub are nonuniformly distributed, such that populations in any of the sub-basins experience a higher level of threat than populations in any other sub-basin. 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. The threats associated with reduced genetic exchange among populations are not yet well understood; it seems likely, however, that the potential genetic consequences of management for isolated populations (*e.g.*, inbreeding and genetic drift) could be experienced across the range of the species, since 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 all or a 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

If this proposed rule is made final, it would revise 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 section 9 and section 7 of the Act (*see* Factor D, above) would 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. Pursuant to 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. Whenever a species is listed as

threatened, the Act allows promulgation of special rules under section 4(d) that modify the standard protections for threatened species found under section 9 of the Act and Service regulations at 50 CFR 17.31 and 17.71, when it is deemed necessary and advisable to provide for the conservation of the species. 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. This reclassification would have no effect on the current proposal to designate critical habitat for the Oregon chub.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and the Office of Management and Budget's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek the expert opinions of at least three appropriate and independent specialists regarding the science in this proposed rule. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed downlisting. We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5)(D) of the Act requires that we hold one public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register** (*see* DATES). Such requests must be made in writing and be addressed to the Field Supervisor at the address in the **FOR FURTHER INFORMATION CONTACT** section above.

Clarity of This Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one

of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Required Determinations

Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations at 5 CFR part 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 pursuant to 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 herein is available upon request from the Oregon Fish and Wildlife Office (*see FOR FURTHER INFORMATION CONTACT*).

Author

The primary authors of this document are Cat Brown and Doug Baus at the Oregon Fish and Wildlife Office in Portland, Oregon (*see FOR FURTHER INFORMATION CONTACT*).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we hereby propose to 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 | NA | NA |
| * | * | * | * | * | * | | * |

* * * * *

Dated: May 8, 2009.
Rowan W. Gould,
Acting Director, Fish and Wildlife Service.
 [FR Doc. E9–11322 Filed 5–14–09; 8:45 am]
BILLING CODE 4310–55–P