

Agenda Item Summary

BACKGROUND

Oregon maintains a State List of Threatened and Endangered Species (State List) under OAR 635-100-0125. The primary, direct protections afforded to species on the State List are for those that occur on state lands, where the state agency responsible for these lands must work to meet survival guidelines for species or develop a species management plan. Additionally, many state natural resource agencies have adopted rules requiring special consideration in their land and water management regulatory processes for species on the State List and species on the Sensitive Species List (e.g., water withdrawals and storage, removal-fill within streams and wetlands, energy facility siting, mineral exploration, and others). The Sensitive Species List (OAR 635-100-0040) is developed and maintained by the Oregon Department of Fish and Wildlife (ODFW) “for the purpose of prioritizing conservation actions to prevent species from becoming eligible for listing as threatened or endangered species”.

The Borax Lake Chub (*Gila boraxobius*) is listed as endangered on the State List, as well as under the federal Endangered Species Act (ESA). The Foskett Spring Speckled Dace (*Rhinichthys osculus* ssp.) is listed as threatened on the State List, as well as under the federal ESA. Both species are naturally limited in their distribution, occurring in isolated aquatic habitats in southeast Oregon. Subsequent to listing under the federal ESA, habitat has been protected through land acquisitions, fencing, and other actions. Additionally, substantial monitoring and research has been conducted for both species, indicating that populations are “healthy.” ODFW is proposing to remove Borax Lake Chub and Foskett Spring Speckled Dace from the State List, which would require the Oregon Fish and Wildlife Commission (Commission) to modify OAR 635-100-0125 to remove them from this list. If removed from the State List, ODFW would place these species on the Oregon Sensitive Species List due to their naturally limited range. There are several bases for including a wildlife species on the Sensitive Species List. As relevant here, a species qualifies for the list if its “habitat is threatened...in quantity...such that it may become eligible for listing as a threatened species.” OAR 635-100-0040(2)(b). This placement on the Oregon Sensitive Species List effectively affords these species the same state protections as being on the State List because they do not inhabit state lands (i.e., if species inhabit state lands, then being on the State List provides additional protections over those provided by being on the Sensitive Species 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 has conducted a status review using the best available science and data for each of these species relative to state and federal delisting criteria. These reviews are contained in the attachments for Commission consideration.

PUBLIC INVOLVEMENT

Recovery actions for Borax Lake Chub have been coordinated among ODFW, The Nature Conservancy (which owns the Borax Lake property),

U.S. Bureau of Land Management (BLM), and U.S. Fish and Wildlife Service (USFWS). This coordination has resulted in the development of a draft Cooperative Management Plan aimed at long-term conservation of Borax Lake Chub and their habitat.

Recovery actions for Foskett Spring Speckled Dace have been coordinated among ODFW, BLM, and USFWS. This coordination has resulted in the development of a finalized and signed Cooperative Management Plan aimed at long-term conservation of Foskett Spring Speckled Dace and their habitat.

Consistent with coordination requirements in OAR 635-100-0105(10), recovery actions for Borax Lake Chub and Foskett Spring Speckled Dace have involved state (ODFW), federal (BLM, USFWS), and nonprofit (TNC) organizations. No part of these species' distribution falls within tribal lands or other states, and the Natural Heritage Advisory Council is no longer in existence. ODFW held public meetings in Burns (the closest city to Borax Lake) on November 7, 2016, in Lakeview (the closest city to Foskett Spring) on November 10, 2016, and in Salem on November 21, 2016. During these meetings, ODFW staff provided background information on the actions taken to recover these species and took public comment. ODFW provided a period of written public comment in 2016. Additionally, ODFW staff will present this agenda item at the April 21, 2017 Commission meeting.

A status review for Borax Lake Chub (Attachment 4), a regulatory review (Attachment 5), and a status review for Foskett Spring Speckled Dace (Attachment 6) were provided to BLM, USFWS, and TNC for peer-review and comment from November 23, 2016 through January 27, 2017; BLM, USFWS, and TNC provided comment (Attachment 7). Methods used to assess the status of Borax Lake Chub and Foskett Spring Speckled Dace were published in the peer-reviewed scientific literature (North American Journal of Fisheries Management 35:491-502).

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. The Commission listed Borax Lake Chub as endangered in 1987 on the basis of its federal ESA-listed status (per OAR 635-100-0105(2)(a), which is commonly referred to as the "grandfathering" rule).

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, TNC, BLM, and USFWS have developed a draft Cooperative Management Plan aimed at managing Borax Lake Chub and their habitat for long-term persistence of the species.

In their own review, the USFWS recommended downlisting Borax Lake Chub from endangered to threatened under the federal ESA in 2012. The primary issue of concern for not delisting under the federal ESA 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 of a proposed development (discussed in Attachments 4 and 5).

Based on the actions that have occurred, the status review outcome, the draft Cooperative Management Plan, and the equivalent protections afforded as a Sensitive Species, 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 would place this species on the Oregon Sensitive Species List.

ODFW has also identified downlisting the Borax Lake Chub from endangered to threatened as a potential alternative action for the Commission's consideration. Downlisting is an appropriate action if the Commission determines that "the likelihood of survival of the species has increased such that the species is not in danger of extinction at the present time throughout any significant portion of its range within the state" (OAR 635-100-0111(2)), but concludes that one or more of the additional criteria required for delisting (*see* OAR 635-100-0112) have not been met. However, in this case ODFW believes that all delisting criteria have been met and therefore recommends delisting.

OPTIONS

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

STAFF
RECOMMENDATION

Option 1.

ISSUE 2

**REMOVE FOSKETT SPRING SPECKLED DACE FROM THE
STATE LIST OF THREATENED AND ENDANGERED SPECIES**

ANALYSIS

The Foscett Spring Speckled Dace (*Rhinichthys osculus* ssp.) is a naturally-occurring population that inhabits Foscett Spring and an introduced population that inhabits Dace Spring, both located on the west side of Coleman Lake in Lake County, Oregon. Foscett Spring Speckled Dace was listed as threatened under the federal ESA in 1985 (USFWS 1985). Because of this federal listing status, the Commission listed Foscett Spring Speckled Dace as threatened in 1987 (OAR 635-100-0105(2)(a)).

Since the time of listing a number of recovery actions have been conducted that have improved the status of Foscett Spring Speckled Dace; these are discussed in the status review (Attachment 6). The status review also indicates that the historical range of Foscett Spring Speckled Dace is intact, Foscett Spring Speckled Dace abundance is variable among years, natural reproduction is occurring, and the species and its habitat are not subject to overuse for commercial, recreational, or scientific, or educational purposes. The entire distribution of Foscett Spring Speckled Dace is on land owned and managed by the BLM. Additionally, ODFW, BLM, and USFWS have signed a Cooperative Management Plan aimed at managing Foscett Spring Speckled Dace and their habitat for the long-term persistence of the species. As a result of these actions, the USFWS recently recommended delisting of Foscett Spring Speckled Dace in their 2015 5-year status review.

Based on the actions that have occurred, the state and federal status review outcomes, the existing cooperative management plan, and the equivalent protections afforded as a Sensitive Species, ODFW believes that the delisting criteria identified in OAR 635-100-0112 are met and recommends that Foscett Spring Speckled Dace be removed from the Oregon State List of Threatened and Endangered Species. If the Commission takes this action, ODFW would place this species on the Oregon Sensitive Species List.

OPTIONS

1. Adopt the proposed rule in Attachment 3 to remove Foscett Spring Speckled Dace from the State List of Threatened and Endangered Species.
2. No action: Retain Foscett Spring Speckled Dace as threatened on the State List of Threatened and Endangered Species.

STAFF
RECOMMENDATION

Option 1.

DRAFT MOTION

I move to determine that the delisting determinations in OAR 635-100-0105 and 635-100-0112 are satisfied and to amend OAR 635-100-0125 as shown in Attachment 3 to remove Borax Lake Chub and Foskett Spring Speckled Dace from the State List of Threatened and Endangered Species.

EFFECTIVE DATE

Administrative Rules will be effective when filed with the Secretary of State