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## Center for Biological Diversity plans lawsuit to protect Clear Lake hitch

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Clear Lake hitch (*Lavinia exilicauda*). Photo courtesy of Richard Macedo, California Department of Fish and Game.

LAKE COUNTY, Calif. – The effort to seek protection for the Clear Lake hitch under the Endangered Species Act took another step on Thursday when the Center for Biological Diversity filed a notice of intent to sue the U.S. Fish and Wildlife Service over a December decision not to protect the native fish.

Jeff Miller, a senior conservation advocate at the Center for Biological Diversity, told Lake County News that the notice of intent was filed in federal court.

The process requires the center to give the government a 60-day warning about its intent to take legal action, Miller said.

The hitch is a large minnow found only in Clear Lake and its tributaries.

It was a staple food and cultural component for the area's original Pomo inhabitants, and also an important food source for numerous birds, fish and other wildlife.

Once numbering in the millions, the hitch's numbers have plummeted in recent decades. It's estimated now that the hitch is down to a few thousand spawning fish during good water years, with regular spawning in only a few tributaries."

It was the Center for Biological Diversity that submitted the state and federal listing petitions on the Clear Lake hitch in September 2012. Miller wrote the petitions.

In August 2014, the California Fish and Game Commission approved the California Department of Fish and Wildlife's recommendation to list the Clear Lake hitch as a threatened species under the California Endangered Species Act, making it the first aquatic listed species in the Clear Lake Basin, as Lake County News has reported.

A 2014 state status review for the hitch determined there has been significant degradation of its suitable habitat, with wetland habitat loss of 85 percent, spawning habitat loss of 92 percent, and degraded water quality throughout the lake and in most tributaries.

The state also found that predation and competition by introduced fishes has a significant impact on hitch.

It also predicted that climate change impacts to stream flows and hitch annual spawning cycles will be significant.

A 2013 report by California native fish experts concluded that hitch are "critically vulnerable" to the impacts of climate change.

On the federal level, however, there was a different outcome.

On Dec. 2, [the Trump administration denied protection to 11 species](#), including the hitch, the southern white-tailed ptarmigan, tufted puffin, three species of Nevada springsnail, a rare Nevada fish, Rocky Mountain monkeyflower, tidewater amphipod, Doll's daisy and Puget Oregonian snail.

The hitch, Miller said, is "the very definition of a threatened species, but Trump's Interior Department chose to ignore the science."

### **State, federal agencies draw different conclusions**

In the case of the hitch, the U.S. Fish and Wildlife Service said its determination that the hitch isn't warranted a listing under the Endangered Species Act was "based on the best available science."

The agency said major threats such as the loss of spawning habitat, climate change, drought, and predation and competition from introduced fish are "not likely to adversely affect the overall viability of the Clear Lake hitch in a biologically meaningful way."

The federal finding also claimed the hitch do not require tributary streams to reproduce, but can also

spawn successfully in Clear Lake itself, giving them “behavioral flexibility to variable environmental conditions.”

However, the state review concluded that hitch require tributary streams to successfully spawn, and a 2019 U.S. Geological Survey study concurred that within-lake spawning is not a significant source of Clear Lake hitch production and recruitment.

The Center for Biological Diversity disputes the U.S. Fish and Wildlife Service's findings and alleges that it wrongfully denied the hitch the listing needed to save it.

“There clearly was something hinky with the determination,” said Miller.

He said it's inconceivable that a federal agency could arrive at a decision that contradicts the findings of native fish experts, the California Department of Fish and Wildlife and California Fish and Game Commission.

The center reported that Clear Lake hitch numbers have declined due to water diversions, climate change and drought, degradation of spawning habitat, migration barriers, pollution, and competition and predation from invasive fish species.

After the center submitted its listing petitions, the hitch had its three worst spawning runs in recorded history from 2013 to 2015, years which also were notable for being in the midst of a drought, Miller said.

It's estimated that during those three years there was an annual average of fewer than 1,000 spawning hitch in the entire Clear Lake basin, the center reported.

While hitch numbers have increased a little since then, “they're still disturbingly low,” said Miller. Since 2013 the combined average number of spawning fish in the two most important tributaries, Kelsey Creek and Adobe Creek, has been under 1,700 fish.

Miller also is concerned that the state may be heading into another extended period of drought.

If several years of drought were to occur, Miller said a complete spawning failure could result and the species could easily be lost.

It's not an inconceivable possibility. The Clear Lake hitch's closest relative, the Clear Lake splittail, was driven to extinction in the 1970s due to habitat alterations that dried out spawning streams and barriers that prevented its spawning migration, the center reported.

The attempt to list the hitch has had the support of Lake County's tribes.

Sherry Treppa, who chairs the Habematolel Pomo of Upper Lake Executive Council, said the tribe was involved in and supported a multi-year, multi tribal project back in 2009 to provide for Hitch conservation and management by increasing the population and habitat restoration.

Once abundant, Treppa said the fish's numbers have declined over the past two centuries due to altered watersheds and habitat deterioration.

After the December listing denial, Treppa said that the decision was based on “misinformation and likely politics around global warming rather than scientific information and experts in the field.”

She said the decision saddened – but didn't surprise – her tribe. Like many Native American-related

concerns, she added, “the tribes, county and the community will be left undertaking the preservation of this important species on our own with no help from the federal government.”



**Spawning Clear Lake hitch. Photo by Jeff Miller.**

### **Next steps in the process**

Miller said the Center for Biological Diversity has taken these kinds of legal actions before, which can be very complex and are limited to what is in the listing decision record.

The focus, he said, is whether this decision was arbitrary and capricious and whether the service used the best available science, “and it seems pretty clear that they didn’t”

Because there is now a new presidential administration in place, Miller said the center is not entirely sure of what the process will look like moving ahead.

He said the Biden Administration is reviewing a number of listing determinations made under Trump, including the 11 species – which included the hitch – denied listing in December.

It’s possible, Miller said, that the Biden Administration will choose to reverse the action so the center doesn’t have to sue. “Frankly, that would be the desired outcome.”

In any event, Miller said they want to be ready to go to court, thus the notice of intent filing, as he said such legal actions can take awhile to go through the system.

Miller said the goal is to get recovery actions in place and make sure the hitch is resilient enough to survive challenges with climate, drought and what else humans have thrown at it.