

the non-compliant fibers contained in the end item does not exceed 10 percent of the total purchase price of the end item.

(h) Acquisitions of items otherwise covered by (HSAR) 48 CFR 3025.7002–1(a) and (b) for which restricting a procurement of the items to those that have been grown, reprocessed, reused, or produced in the United States would be inconsistent with United States obligations under international agreements. Acquisitions of products that are eligible products per (FAR) 48 CFR subpart 25.4 are not covered by these restrictions; see (HSAR) 48 CFR 3025.7002–3 for specific application of trade agreements.

**PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 6. The authority citation for part 3052 continues to read as follows:

**Authority:** 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 41 U.S.C. 1303(a)(2), 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

■ 7. In section 3052.225–70 revise the clause, date, paragraphs (a)(1) through (4), (b) introductory text, (c) introductory text, and (d)(2) to read as follows:

**3052.225–70 Requirement for Use of Certain Domestic Commodities.**

\* \* \* \* \*

Requirement for Use of Certain Domestic Commodities (DATE)

\* \* \* \* \*

(a) \* \* \*

(1) “Commercial,” as applied to an item described in paragraph (b) of this clause, means an item of supply, whether an end item or component, that meets the definition of “commercial item” set forth in (FAR) 48 CFR 2.101.

(2) “Component” means any item supplied to the Government as part of an end item or of another component.

(3) “End item” means supplies delivered under a line item of this contract.

(4) “Non-commercial,” as applied to an item described in paragraphs (b) or (c) of this clause, means an item of supply, whether an end item or component, that does not meet the definition of “commercial item” set forth in (FAR) 48 CFR 2.101.

\* \* \* \* \*

(b) The Contractor shall deliver under this contract only such of the following commercial or non-commercial items, either as end items or components, that

have been grown, reprocessed, reused, or produced in the United States:

\* \* \* \* \*

(c) The Contractor shall deliver under this contract only such of the following non-commercial items, either as end items or components, that have been grown, reprocessed, reused, or produced in the United States:

\* \* \* \* \*

(d) \* \* \*

(2) To the covered items in paragraphs (b) and (c) of this Clause containing non-compliant fibers when the total value of the non-compliant fibers contained in the end item does not exceed 10 percent of the total purchase price of the end item; or

\* \* \* \* \*

**Paul Courtney,**  
*Chief Procurement Officer, U.S. Department of Homeland Security.*

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**BILLING CODE 9112–FE–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 223 and 224**

[Docket No. 240718–0199; RTID 0648–XR134]

**Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List the Alabama Shad as Threatened or Endangered Under the Endangered Species Act**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** 90-Day petition finding; request for information, and initiation of a status review.

**SUMMARY:** We, NMFS, announce a 90-day finding on a petition to list the Alabama shad (*Alosa alabamae*) as threatened or endangered under the Endangered Species Act (ESA). The petitioners also request that we designate critical habitat. We find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, we are initiating a status review of the Alabama shad to determine whether listing under the ESA is warranted. To support a comprehensive status review, we are soliciting scientific and commercial information regarding this species from any interested party.

**DATES:** Scientific and commercial information pertinent to the petitioned action must be received by September 23, 2024.

**ADDRESSES:** You may submit scientific and commercial information relevant to our review of the status of Alabama shad, identified by “Alabama shad Petition” or by the docket number, NOAA–NMFS–2024–0052 by the following method:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2024–0052 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Interested persons may obtain a copy of the petition online at the NMFS website: <https://www.fisheries.noaa.gov/endangered-species-conservation/candidate-species-under-endangered-species-act>.

**FOR FURTHER INFORMATION CONTACT:** Calusa Horn, NMFS Southeast Region, at [Calusa.Horn@noaa.gov](mailto:Calusa.Horn@noaa.gov), (727) 551–5782; or Heather Austin, NMFS Office of Protected Resources, at [Heather.Austin@noaa.gov](mailto:Heather.Austin@noaa.gov), (301) 427–8422.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 9, 2024, we received a petition from the Center for Biological Diversity, the Miccosukee Tribe of Indians, Alabama Rivers Alliance, American Whitewater, Black Warrior Riverkeeper, Cahaba Riverkeeper, Chattahoochee Riverkeeper, Choctawhatchee Riverkeeper, Coosa Riverkeeper, Forest Keeper, Healthy Gulf, Healthy Oceans Coalition, Mobile Baykeeper, and Pearl Riverkeeper (Petitioners) to list the Alabama shad (*Alosa alabamae*) as an endangered or threatened species under the ESA, and to designate critical habitat concurrent with the listing. The petition asserts that

Alabama shad is threatened by all five of the ESA section 4(a)(1) factors: (1) the present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms to address identified threats; and (5) other natural or manmade factors affecting its continued existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)). The petition is available online (see **ADDRESSES**, above).

This is the second petition we have received from the Center for Biological Diversity to list the Alabama shad under the ESA. The first petition was received on April 20, 2010. On February 17, 2011, we published a negative 90-day finding (76 FR 9320) stating that the petition did not present substantial scientific or commercial information indicating that the petitioned action to list Alabama shad may be warranted. On April 28, 2011, in response to the negative 90-day finding, the Center for Biological Diversity filed a notice of intent to sue the Department of Commerce and NMFS for alleged violations of the ESA in making its finding. The Center for Biological Diversity filed the lawsuit in the U.S. District Court for the District of Columbia on January 18, 2012. On June 21, 2013, Center for Biological Diversity and Department of Commerce settled the lawsuit. We agreed to reevaluate the original listing petition, as well as information in our files, and publish a new 90-day finding. On September 19, 2013, we published a 90-day finding with our determination that the petition presented substantial scientific and commercial information indicating that the petitioned action may be warranted (78 FR 57611). On January 12, 2017, we determined that listing Alabama shad as threatened or endangered under the ESA was not warranted and published a 12-month finding in the **Federal Register** (82 FR 4022).

#### **ESA Statutory, Regulatory, and Policy Provisions, and Evaluation Framework**

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When

it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a “positive 90-day finding”), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the review with a finding as to whether the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a “may be warranted” finding does not prejudice the outcome of the status review.

Under the ESA, a listing determination must address a species, which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS–U.S. Fish and Wildlife Service (USFWS) (jointly, “the Services”) policy clarifies the agencies’ interpretation of the phrase “distinct population segment” for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is “endangered” if it is in danger of extinction throughout all or a significant portion of its range, and “threatened” if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered based on any one or a combination of the following five section 4(a)(1) factors: the present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms to address identified threats; or any other natural or manmade factors affecting the species’ existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by the Services (50 CFR 424.14(h)(1)(i)) define “substantial scientific or commercial information” in the context of reviewing a petition to list, delist, or reclassify a species as credible scientific or commercial information in support of the petitioner’s claims such that a

reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered “substantial information.” In reaching the initial (90-day) finding on the petition, we will consider the information described in 50 CFR 424.14(c), (d), and (g) (if applicable). Our determination as to whether the petition provides substantial scientific or commercial information indicating that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information: (1) information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available; (2) identification of the factors under section 4(a)(1) of the ESA that may affect the species and where these factors are acting upon the species; (3) whether and to what extent any or all of the factors alone or in combination identified in section 4(a)(1) of the ESA may cause the species to be an endangered species or threatened species (*i.e.*, the species is currently in danger of extinction or is likely to become so within the foreseeable future), and, if so, how high in magnitude and how imminent the threats to the species and its habitat are; (4) information on adequacy of regulatory protections and effectiveness of conservation activities by States as well as other parties, that have been initiated or that are ongoing, that may protect the species or its habitat; and (5) a complete, balanced representation of the relevant facts, including information that may contradict claims in the petition. *See* 50 CFR 424.14(d).

If the petitioners provide supplemental information before the initial finding is made and states that it is part of the petition, the new information, along with the previously submitted information, is treated as a new petition that supersedes the original petition, and the statutory timeframes will begin when such supplemental information is received. *See* 50 CFR 424.14(g).

We may also consider information readily available at the time the determination is made (50 CFR 424.14(h)(1)(ii)). We are not required to consider any supporting materials cited by the petitioners if the petitioners do not provide electronic or hard copies, to the extent permitted by U.S. copyright law, or appropriate excerpts or quotations from those materials (*e.g.*,

publications, maps, reports, and letters from authorities). See 50 CFR 424.14(c)(6).

The “substantial scientific or commercial information” standard must be applied in light of any prior reviews or findings we have made on the listing status of the species that is the subject of the petition (50 CFR 424.14(h)(1)(iii)). Where we have already conducted a finding on, or review of, the listing status of that species (whether in response to a petition or on our own initiative), we will evaluate any petition received thereafter seeking to list, delist, or reclassify that species to determine whether a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted despite the previous review or finding. Where the prior review resulted in a final agency action—such as a final listing determination, 90-day not-substantial finding, or 12-month not-warranted finding—a petitioned action will generally not be considered to present substantial scientific and commercial information indicating that the action may be warranted unless the petition provides new information or analysis not previously considered.

At the 90-day finding stage, we do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners’ sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition’s information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person conducting an impartial scientific review would conclude it supports the petitioners’ assertions. In other words, conclusive information indicating the species may meet the ESA’s requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone necessitates a negative 90-day finding if a reasonable person conducting an impartial scientific review would conclude that the unknown information itself suggests the species may be at risk of extinction presently or within the foreseeable future.

To make a 90-day finding on a petition to list a species, we evaluate

whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, in light of the information readily available in our files, indicates that the petitioned entity constitutes a “species” eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species faces an extinction risk such that listing, delisting, or reclassification may be warranted; this may be indicated in information expressly discussing the species’ status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species (e.g., population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information indicating that listing may be warranted. We look for information indicating that, not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by nongovernmental organizations, such as the International Union for Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by such organizations or made under other Federal or State statutes may be informative, but such classification alone will not provide sufficient basis for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species’ conservation status do not constitute a recommendation by NatureServe for listing under the ESA,

because NatureServe assessments have different criteria, evidence requirements, purposes, and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide (<https://explorer.natureserve.org/AboutTheData/DataTypes/ConservationStatusCategories>). Additionally, species classifications under IUCN and the ESA are not equivalent; data standards, criteria used to evaluate species, and treatment of uncertainty are also not necessarily the same. Thus, when a petition cites such classifications, we will evaluate the source of information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

### Alabama Shad Species Description

Alabama shad belong to the family Clupeidae and are closely related to, as well as similar in appearance and life history, to skipjack herring (*A. chrysochloris*) which occur in the same areas as Alabama shad. The Alabama shad is an anadromous species, carrying out life stages in both marine and freshwater environments. Alabama shad are found in the Gulf of Mexico, although there is very little information about their marine habitat use. As part of their anadromous life cycle, adult Alabama shad leave the Gulf of Mexico, sometimes migrating several hundred kilometers, and move into freshwater rivers in the spring to spawn (Coker 1930; Lee *et al.* 1980; Buchanan *et al.* 1999; Kreiser and Schaeffer 2009). Alabama shad appear to be philopatric and return to the same rivers to spawn, resulting in slight genetic differences among river drainages (Meadows 2008; Mickle *et al.* 2010). Spawning typically occurs in moderate current near sandbars, limestone outcrops, or over sand substrate with water temperatures ranging from 19 to 23 °C (66 to 73 °F) (Laurence and Yerger 1967; Mills 1972; Mettee and O’Neil 2003). The Alabama shad is relatively short lived, up to 6 years (Mettee and O’Neil 2003). They are generalist insect feeders (Mickle *et al.* 2010). Age-2 and age-3 Alabama shad are the most prevalent age class of spawning adults (Laurence and Yerger 1967; Mettee and O’Neil 2003; Ingram 2007). Individuals may spawn more than once in a lifetime (Laurence and Yerger 1967; Mettee and O’Neil 2003; Ingram 2007; Mickle *et al.* 2010). Laurence and Yerger (1967) indicated that 35 percent of Alabama shad were likely repeat spawners and noted that 2–4 year old males from the Apalachicola-Chattahoochee-Flint (ACF) River system had spawning marks on their scales.

Mills (1972) also observed 35–38 percent repeat spawners (mostly age-3) as well as discernable spawning marks on scales from the ACF population. In addition, Mettee and O’Neil (2003) noted that many Alabama shad collected from the Choctawhatchee River were repeat spawners, with age-3 and age-4 females comprising the majority of repeat spawners in 1994–1995, and age-2 and age-3 females the majority in 1999–2000. In contrast, Ingram (2007) has not observed spawning marks on the scales of ACF population and most fish in that system may die after spawning (Smith *et al.* 2011). Annual fecundity ranges from approximately 16,000 to 360,000 eggs per female (Mettee and O’Neil 2003; Ingram 2007). First-year (age-0) juvenile Alabama shad typically inhabit upriver freshwater environments until late summer or fall, after which they migrate downstream toward the Gulf of Mexico (Mettee and O’Neil, 2003; Mickle *et al.* 2010).

#### Analysis of the Petition

We first evaluated whether the petition presented the information indicated in 50 CFR 424.14(c) and (d). We find that the petitioners presented the required information in 50 CFR 424.14(c) and sufficient information requested in § 424.14(d) to allow us to review the petition. The petition contains information on the Alabama shad, including the biological information, current and historical distribution, population status, and threats contributing to the species’ status. The petitioners include new literature but also rely heavily on expert opinion and personal communications with State biologists and researchers. The petitioners provide an assessment of new information that has become available since our previous finding (82 FR 4022). The petitioners assert that the new information provides substantial scientific and commercial information indicating that Alabama shad have been extirpated from 90 percent of its historical riverine habitats and is threatened by modification of habitat and curtailment of its range, overexploitation, disease, pollution, climate change, and inadequacy of existing regulatory measures. As previously stated, the substantial scientific or commercial information standard must be applied in light of any prior reviews or findings the Services have made on the listing status of the species. Therefore, we will consider the new information provided in the petition and any new information readily available in our files to determine whether a reasonable person

conducting an impartial review would conclude it presents substantial scientific or commercial information indicating that the petitioned action may be warranted.

#### New Information on Abundance and Population Trends

The petitioners assert that NMFS was incorrect in determining that low population numbers were due to challenges in Alabama shad detectability and general lack of targeted survey and sampling efforts. The petitioners also assert that detection probability and the timing and sampling methods cannot be the sole cause of estimated low abundances. To support this claim, the petitioners reference biologists and researchers who also suggest that the low numbers of Alabama shad are suggestive of long-term declining trends in abundance, rather than an artifact of high natural variability or challenges with species detectability (Rider *et al.* 2021; Schaefer, pers. comm. October 13, 2023; Quinn, pers. comm. October 17, 2023). The petitioners reference new targeted survey efforts that suggest Alabama shad have been extirpated from many river systems. In river systems where they still occur, they occur in very low numbers (Rider *et al.* 2021; Rider, pers. comm. November 3, 2023; Ingram, pers. comm. December 10, 2023; NOAA Fisheries and U.S. Fish and Wildlife Records: Georgia, Florida, Alabama, Mississippi, Louisiana, Oklahoma, Arkansas, 2023). The petitioners claim the new survey information, together with the historical data, indicate that the species has declined significantly over the last decade and has been extirpated throughout much of its historical range (Etnier and Starnes 1993; Gunning and Suttkus 1990; Musik *et al.* 2000; Ross 2001; Mettee and O’Neil 2003; Boschung and Mayden 2004; Sammons *et al.* 202; Rider *et al.* 2021). In the following section, we summarize the new information relative to the species abundance and status for Alabama, Florida, Georgia, Mississippi, Missouri, and Arkansas.

For Alabama, our previous determination concluded that it is unknown whether the lack of or low numbers of Alabama shad reported for many river systems (including the Mobile Basin, Conecuh River, and Choctawhatchee River) accurately reflects the abundance in those systems, or whether the lack of or low numbers of Alabama shad is indicative of the lack of targeted studies (82 FR 4022). At that time, directed studies and contemporary abundance data for Alabama shad were lacking for riverine systems in Alabama.

Therefore, we concluded the status of Alabama shad within most riverine systems in Alabama was unknown and that low capture rates were likely due in part to sampling bias (82 FR 4022).

The petitioners provide new information that indicates that Alabama shad are largely extirpated from Alabama. Alabama shad historically occurred in the Mobile Basin (*i.e.*, Tombigbee, Black Warrior, Cahaba, Coosa, and Alabama rivers) and the Conecuh-Escambia, Yellow, and Choctawhatchee Rivers. Notably, the second largest Alabama shad population occurs in the Choctawhatchee River (Mettee and O’Neil 2003; Ely *et al.* 2008; Young *et al.* 2012). The petitioners present a new study (Rider *et al.* 2021) that provides status information for the species in the State and importantly also directly addresses the sampling and survey bias concerns identified in our previous determination (82 FR 4022). Rider *et al.* (2021) initiated a multiyear study to assess the population status of Alabama shad with targeted sampling efforts in the major river systems of its historical occurrence in Alabama. To account for potential bias, Rider *et al.* (2021) sampled during months when Alabama shad were most likely to be present (*i.e.*, spring spawning migration) and used electrofishing, which is considered to be the most effective method to collect Alabama shad. These directed survey efforts found no Alabama shad in the Mobile River Basin (*i.e.*, Alabama and Tombigbee Rivers) and only one individual was collected from the Conecuh River (Rider *et al.* 2021). Rider *et al.* (2021) indicates that Alabama shad have largely been extirpated from the Mobile River Basin, with the only remaining Conecuh River population being “severely depressed.” Additionally, the authors determined that the Choctawhatchee River population is on the verge of extirpation, which is cause for concern as this population was once considered to have the second largest Alabama shad population behind the ACF population. Rider *et al.* (2021) determined that Alabama shad in the Choctawhatchee River have experienced a precipitous decline by 71 percent and 98 percent from 1999/2000 to 2011 and 2018, respectively. In summary, the petitioners provide new information that indicates that the species has largely become extirpated from the State of Alabama, with two remaining populations on the cusp of collapse.

For Florida and Georgia, our previous determination recognized the importance of the ACF population to the viability of the species, stating that, because the spawning population in the

ACF River system is large relative to other systems, migrants from the ACF River system may make greater contributions as compared to shad from smaller populations. The loss of the largest spawning population of Alabama shad would leave only smaller populations of Alabama shad and could make the species as a whole less resilient to environmental perturbations, including catastrophic events (82 FR 4022). The petitioners assert that Alabama shad have declined by greater than 90 percent in the ACF River system, which connects Florida and Georgia to the Gulf of Mexico. The petitioners attribute population decline due to the cessation of conservation locking at Jim Woodruff Lock and Dam (JWLD). Located 300 meters (984 feet) downstream of the confluence of the Flint and Chattahoochee Rivers, JWLD serves as the first upstream barrier to the ACF population, blocking access to all potential spawning habitat in both tributary rivers, which is approximately 78 percent of historical riverine habitat in the ACF River system (Marbury *et al.* 2021). Historically, the ACF population has been the largest (Mettee and O'Neil 2003; Ely *et al.* 2008; Young *et al.* 2012; 82 FR 4022) and most intensively studied population of Alabama shad (Laurence and Yerger 1967; Ely *et al.* 2008; Ingram *et al.* 2009; Young *et al.* 2012; Kerns 2016). The petitioners provide some new catch per unit effort data (CPUE) from 2016–2023 as well as information we previously considered. The petitioners assert that the ACF population crashed from an estimated population size of 122,578 in 2012 to an estimated population size of 324 in 2015. While no new population estimates were provided, the petition cites new survey information presented as CPUE to consider: in 2016 the CPUE was 0 (no fish were collected), in 2017 the CPUE was 4.2, in 2021 the CPUE was 2.9, and in 2022 the CPUE was 18.5 (Georgia Department of Natural Resources, Alabama shad survey and CPUE data 2007–2023). No information was provided for 2018, 2019, and 2021. The most recent CPUE in 2022 is higher than previous years. For comparison, the CPUE for the year with the highest estimated population (2012; 122,578 individuals) was 100.6 and the CPUE for the year with the lowest estimated population (2015; 324 individuals) was 6.8 (Georgia Department of Natural Resources, Alabama shad survey and CPUE data 2007–2023). The more recent CPUE data seem to suggest that CPUE ranged from 0 fish to 18.5 in 2016 and 2022; however, the data are incomplete and do not allow us to estimate

population size or trends. While CPUE can be used as an indirect measure of abundance, the information provided is lacking and does not allow us to estimate population size or the extent of the purported declining trends. However, it does suggest some cause for concern, and warrants further consideration in a status review.

In summary, the petitioners provide several lines of evidence that suggest that the ACF population may be declining based on new but incomplete survey data and the cessation of conservation locking at the JWLD (See The Present or Threatened Destruction, Modification, or Curtailment of the Alabama Shad Habitat or Range), which is blocking migration and preventing access to important spawning habitats.

For Mississippi, the petitioners assert that the Alabama shad have experienced a 50 percent decline in distribution. In our previous determination (82 FR 4022), we found that Pascagoula River, which is a relatively free-flowing river system, had one of the remaining spawning populations of Alabama shad. The petitioners claim that the species is now extirpated from the Tombigbee River (a major tributary of the Mobile River) and the Pearl River, with the remaining population located in the Pascagoula River in decline. Rider *et al.* (2021) conducted directed sampling for Alabama shad on the Tombigbee River in 2012 but collected no Alabama shad. Additionally, other recent sampling efforts in the Tombigbee River have been unable to collect or observe any Alabama shad (Dattilo 2017; S. Rider, Alabama Dept. Wildlife and Fisheries, Unpublished data, as cited in Rider *et al.* 2021). The petitioners also cite a personal communication with a biologist that indicates that the Alabama shad population in the Pearl River has collapsed with targeted sampling from 2006–2011 and recent “general surveys” having recorded few individuals over the last decade (Schaefer, pers. comm. October 13, 2023). Lastly the petitioners note that while Alabama shad still persist in the Pascagoula River, factors other than damming are likely driving declines in that system (Ellwanger, pers. comm. October 24, 2023).

In summary, the new information suggests that the Tombigbee River population may be extirpated, which is cause for concern. While the petitioners assert that the Pearl River population has also collapsed, they did not provide the supporting information. The petition does not include any new survey or status information that was not previously considered by us for Pascagoula River.

For Missouri, our previous determination (82 FR 4022), concluded that Alabama shad likely still spawned in the Missouri River, including several tributaries (*i.e.*, Gasconade, Osage, and Meramec Rivers). We acknowledged that the Missouri River and its tributaries probably supported the greatest number of Alabama shad in the State, but noted the general lack of information and potential for sampling bias. The petitioners summarize Alabama shad records from the lower Mississippi, Missouri, Meramec, Gasconade, and Osage Rivers. The petitioners state that Alabama shad can now only be found in the Meramec and Gasconade Rivers. The petitioner's reference several new studies (Dunn *et al.* 2018; Dunn *et al.* 2021; Pherigo 2019) that they claim show the species can no longer be found in the majority of Missouri's major tributaries. For example, Dunn *et al.* (2018) conducted 38 fish surveys across 11 large tributaries (*i.e.*, Black River, Blackwater River, Lamine River, Lower Gasconade River, Upper Gasconade River, Lower Grand River, Upper Grand River, Lower Meramec River, Upper Meramec River, Osage River, and Salt River) and only found Alabama shad in the Gasconade and Meramec Rivers. Alabama shad were not recorded on any other river sampled. Dunn *et al.* (2018) concluded that the Gasconade and Meramec Rivers are now the northernmost systems providing spawning and rearing habitat for this species. In addition, Dunn *et al.* (2021) evaluated tributary use patterns of riverine fishes in the Grand and Meramec Rivers, which are two large tributaries of the Missouri and Upper Mississippi Rivers, and yielded only 21 age-0 Alabama shad from the Meramec River, suggesting spawning habitat. Lastly, Pherigo (2019) sampled fish assemblages in the Osage River and Gasconade River and collected only four juveniles in the Gasconade River. None were recorded in the Osage River.

In summary, these findings indicate that the Gasconade and Meramec Rivers likely now represent the only two northernmost systems that provide spawning and habitat for Alabama shad, which is cause for concern. While these studies were not limited to Alabama shad, the studies did occur in the spring, summer, and fall when both juvenile and adult Alabama shad would have been present, and the studies used sampling techniques (*i.e.*, electrofishing, trawls, and seines) that are appropriate for sampling Alabama shad.

For Arkansas, the petitioners state that Alabama shad have not been recorded in the Arkansas reach of the Mississippi River or the Arkansas River

Basin in more than a century. In our previous determination (82 FR 4022), we concluded that the status of Alabama shad in Arkansas was unknown due to the lack of information and lack of targeted surveys needed to inform whether low numbers reflected low abundance or sampling bias. However, we noted that Alabama shad likely continued to spawn in Arkansas because spawning adults and hundreds of juvenile fish were documented in 1997 and 1998 in both the Ouachita and Little Missouri Rivers (Buchanan 1999; Buchanan *et al.* 1999). The petitioners assert that despite claims of annual spawning migrations in several rivers within Arkansas, the majority of records for the State are now limited to the Ouachita River. The petitioners provide new information from a five-year study (2017–2021) to assess the status and distribution of Alabama shad in Arkansas Rivers (Quinn *et al.* 2023). The study focused on survey efforts on the Ouachita River and the Little Missouri River, where Alabama shad have historically been collected (*i.e.*, Buchanan *et al.* (1999) reported collecting more than 300 juveniles from six localities in the Ouachita and Little Missouri rivers). Despite these directed sampling efforts, Quinn *et al.* (2023) collected one adult Alabama shad and no juveniles in the Ouachita River. Yet, an unrelated study targeting American eel recorded 16 juvenile Alabama shad on the Ouachita River in 2021/2022, suggesting some successful spawning occurred (Quinn *et al.* 2023). The new information suggests that, while some spawning is occurring in the Ouachita River, overall very few Alabama shad were recorded, even with five years of targeted sampling in the Ouachita and Little Missouri Rivers, which is cause for concern.

In summary, the new information presented in the petition indicates potentially significant population declines in the ACF River system in Florida and Georgia and the Choctawhatchee River in Alabama. These two major river systems have long been observed to have the highest abundance of Alabama shad within the species range (Burkaloo *et al.* 1993; Ely *et al.*, 2008; Mettee and O'Neil 2003; Young 2010). The new information on purported declines of these two important populations, especially as it relates to the viability of the species, is particularly concerning, and thus further investigation is warranted. The new information also suggests population declines in Ouachita, Little Missouri, and Conecuh-Escambia, and possible extirpation in the Mobile Basin

in Alabama, both of which are also concerning, considering the declines noted in the ACF and Choctawhatchee Rivers. Overall, the petitioners provide several lines of credible new information suggesting that the species' current status and trends indicate that listing may be warranted.

#### **Analysis of ESA Section 4(a)(1) Factors**

The petitioners assert that Alabama shad is threatened by all five of the ESA section 4(a)(1) factors: present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial and recreational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and other natural or manmade factors. Information in the petition and readily available in our files indicates that the primary threat facing the species is modification of its habitat, and we find that listing the Alabama shad as a threatened or endangered species under the ESA may be warranted based on this threat alone. Therefore, we focus our discussion below on the evidence of this particular threat. However, we note that, in the status review for this species, we will evaluate all ESA section 4(a)(1) factors to determine whether any one factor or a combination of these factors are causing declines in the species or are likely to substantially negatively affect the species within the foreseeable future to such a point that the Alabama shad is at risk of extinction or likely to become so in the foreseeable future.

#### *The Present or Threatened Destruction, Modification, or Curtailment of the Alabama Shad's Habitat or Range*

According to information cited in the petition and readily available in our files, the greatest threats to the Alabama shad are the dams that occur on almost all the major river systems throughout its range. The petitioners assert that over the last century at least 85 dams have been built on rivers within the Alabama shad's historical range. The petitioners provide historical information, new personal communications, relevant literature, and maps that illustrate the prevalence of the dams on rivers throughout the species range. The petitioners further summarize threats within individual rivers, which include changes in temperature, low spring and summer stream flows, passage blockages, droughts, increased sediment, degraded water quality, and poor riparian conditions. For example, the petitioners claim that changes in the flow-regime in the ACF River system have disrupted mainstream and floodplain habitats, modifying features

essential for spawning and early life stages (Mickle *et al.* 2010; Alabama Shad Restoration and Management Plan for the Apalachicola-Chattahoochee-Flint River Basin 2008). The petitioners did not provide any new information that was not previously considered by us regarding the threats to Alabama shad resulting from habitat modification or degradation caused by dams and hydropower projects.

The petitioners provide new information indicating riverine habitat connectivity has been severed by several dams that had previously provided Alabama shad passage through conservation locking regimes that are no longer in place (Williams, pers. comm. December 7, 2023; Rider, pers. comm. December 7, 2023). Most notable is the cessation of conservation locking at the JWLD, which the petitioners implicate in population collapses in that system. In our previous determination, we concluded that conservation locking is making a tremendous contribution to Alabama shad in the ACF River system, the bulk of the Alabama shad population in the ACF River system is spawning in the Flint River, and juvenile Alabama shad are able to successfully move downstream to contribute to the adult stock. We also concluded that the conservation locking was providing upstream migration to higher quality spawning and juvenile rearing habitat, which has potentially improved recruitment and led to population increases. At that time when conservation locking occurred, the locks were operated twice a day to correspond with the natural movement patterns of migrating fish during spawning seasons (February through May). In addition, we also noted that the low population estimates recorded from 2013–2015 were in part due to that fact that conservation locking did not occur in 2013 and 2014, and thus Alabama shad did not pass upstream during this period (unless they were transported by researchers), resulting in the subsequent population declines, thus indicating further that conservation locking is needed to maintain the viability of this population.

The petitioner's state that NMFS relied too heavily on the positive effects of conservation locking at the JWLD for the Alabama shad population and that we incorrectly assumed that conservation locking would continue into the foreseeable future. They present new information indicating that conservation locking at the JWLD has largely ceased and therefore Alabama shad are no longer able to access upstream spawning habitat and return to their marine habitats post spawning

(i.e., JWLD Lockage Logs 2017–2022). According to the petitioners, from 2017–2020, there were a total of 167 lock openings on the JWLD, none of which were for fish passage or conservation locking (JWLD Lockage Log 2017–2020). From 2021–2022, records indicate that 14 lock openings took place, none of which were intended for conservation locking or fish passage (JWLD Lockage Log 2021–2022). We also found information in our files that indicates that the locks at JWLD have not been opened for conservation locking from 2017 to 2022, which is cause for concern. While the locks are occasionally opened for vessel passage, those openings are increasingly rare, as the locks are in disrepair. In addition, the lockage logs (JWLD Lockage Log 2017–2022) show that the locks have been opened during this time period to allow for vessel passage; however, these events were sporadic (e.g., very few or none occurred during spawning seasons) and limited in duration (e.g., almost all were less than 45 minutes from open to close) suggesting that any passive fish passage during migration has likely been severely restricted.

The petitioners also assert that conservation locking regime and spillways at the Claiborne and Millers Ferry Locks and Dam are not an effective conservation strategy for Alabama shad (Cromwell 2022). The Claiborne and Millers Ferry Locks and Dam is part of the Alabama-Coosa-Tallapoosa River system and separates the Cahaba River from the Lower Alabama River, Mobile Delta, and the Gulf of Mexico. In our previous determination, we determined that conservation locking at Claiborne and Millers Ferry Locks and Dam would likely provide access to spawning habitat enhancing Alabama shad populations in the river system. The petitioners reference a study that examined fish passage the Claiborne and Millers Ferry Locks and Dams for the smallmouth buffalo, paddlefish, and other migratory fish species (Mckee 2019). The author found that migrating fish in general did not use the locks due to low water levels and lack of attraction flow to encourage fish to move into and exit lock chambers. In addition, they found that the crested spillway is only submerged during flooding events and passage is restricted to fish species that are considered strong swimmers (Mckee 2019; Cromwell 2022; Williams, pers. comm. November 14, 2023). The petitioners and a referenced biologist claim passage at the spillway is highly unlikely for Alabama shad because they are not strong swimmers and are

generally unable to use the spillways as passage (Aunins *et al.* 2013; Quinn, pers. comm. October 17, 2023).

The petitioners assert that oil spills, leaking wells, and oil infrastructure pose a threat to the Alabama shad in the Gulf of Mexico. The petitioner's include information on two of the largest spills known to have occurred in the Gulf of Mexico, Deepwater Horizon (DWH) spill that occurred in 2010 and Main Pass oil spill that occurred in 2023.

The petitioners included new information on the Main Pass oil spill that released at least 1.1 million gallons into the Gulf of Mexico, the second-largest oil spill after the DWH spill that released 134 million gallons (Budryk 2023; NOAA 2023). The Main Pass oil spill occurred offshore near the Mississippi Delta in the Gulf of Mexico in November 2023. Alabama shad occur in the Mississippi Delta, which serves as their overwintering habitat before they make spring spawning runs (Mickle *et al.* 2010; Smith *et al.* 2010). The petitioners and several biologists indicate that Alabama shad were likely impacted by the Main Pass oil spill as the species uses the Mississippi Delta as overwintering habitat and the spill occurred while the species would have been present (Quinn *et al.* 2023; Ingram, pers. comm. December 9, 2023; Sammons, pers. comm. December 13, 2023). The petitioners summarize information related to the chronic adverse effects that oil exposure can have on fish survival, growth, reproduction, as well as disruptions or changes to migratory behavior (Fodrie and Heck 2011; Snyder *et al.* 2015; NOAA 2014) inferring that Alabama shad would experience similar impacts as a result of the Main Pass oil spill. In addition, while the petitioners recognize that no studies have been conducted on the direct effects to Alabama shad resulting from the DWH oil spill, they claim that Alabama shad were likely impacted and have not recovered since (Ingram, pers. comm. December 9, 2023). The petitioners note that while Alabama shad were upriver when the spill occurred, they were likely exposed upon their return to the marine environment because their range overlaps with the area impacted by the spill. To support their claim, the petitioner's reference personal communications from biologists noting that Alabama shad collected in the ACF River system after the DWH oil spill had lesions, and that their progeny did not return from the Gulf of Mexico in subsequent years (Ingram, pers. comm. December 9, 2023; Quinn *et al.* 2023). Our previous finding determined that the cause of lesions were unexplained,

and while the lesions were observed in 2010, 2011, and 2013, no lesions were observed on fish captured after 2013 (T. Ingram, Georgia DNR, pers. comm. to K. Shotts, NMFS, June 6, 2016). Lastly, the petitioners include descriptions of general threats (e.g., climate change, dissolved oxygen, hurricanes, dredging, pollution, and conductivity) to riverine and marine habitats and how they may affect Alabama shad (Mettee *et al.* 1996; Robinson and Buchanan 2020; Rider *et al.* 2021).

In summary, the information provided in the petition and in our files, indicates that conservation locking at the JWLD is no longer occurring, which is likely prohibiting spawning migration of AFC population of Alabama shad that we had previously indicated likely contribute to the viability of the species as a whole because of its large relative size and potential role in enhancing other river populations through outmigration (82 FR 4022). Thus, the cessation of conservation locking at the JWLD is especially concerning as the ACF population is potentially important to the species overall viability. Similarly, it also appears that the conservation locking system at the Claiborne and Millers Ferry Locks and Dams is ineffective at passing Alabama shad due to low water levels and lack of attraction flow. In addition, while the crested spillway may be successful at passing other fish species during flooding events, they do not appear to be effective at passing Alabama shad. The petitioners also provide new information suggesting that species may have been impacted by the Main Pass oil spill while overwintering in the Mississippi Delta. While this information is incomplete, it is cause for concern and warrants further consideration in the status review report. Overall, the information provided by the petitioners and briefly summarized here regarding threats to the Alabama shad from habitat loss, degradation, and modification leads us to conclude that listing the species as threatened or endangered may be warranted.

#### Petition Finding

After reviewing the petition, the literature cited in the petition, and other information readily available in our files, we find that listing Alabama shad (*A. alabamae*) as a threatened or endangered species may be warranted. Therefore, in accordance with section 4(b)(3)(A) of the ESA and NMFS' implementing regulations (50 CFR 424.14(h)(2)), we will commence a status review of this species. During the status review, we will determine

whether Alabama shad is in danger of extinction (endangered) or likely to become so in the foreseeable future (threatened) throughout all or a significant portion of its range. As required by section 4(b)(3)(B) of the ESA, within 12 months of the receipt of the petition (January 9, 2024), we will make a finding as to whether listing the Alabama shad as an endangered or threatened species is warranted. If listing is warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final rule.

### Information Sought

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting comments and information from interested parties on the status of the Alabama shad. Specifically, we are soliciting information in the following areas:

- (1) Species abundance;
- (2) species productivity;
- (3) species distribution or population spatial structure;
- (4) genetic connectivity of historical and contemporary populations;
- (5) habitat conditions and associated limiting factors and threats for both the marine and freshwater environments;
- (6) data concerning the status and trends of identified limiting factors or threats;
- (7) information concerning the impacts of environmental variability and climate change on survival, recruitment, distribution, and/or extinction risk;
- (8) the adequacy of existing regulatory mechanisms and whether protections are being implemented and are proving effective in conserving the species;
- (9) ongoing or planned efforts to protect and restore the species and its habitat; and
- (10) other new information, data, or corrections including, but not limited to, identification of erroneous information in the previous listing determination.

We request that all data and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Please send any comments in accordance with the instructions provided in the **ADDRESSES** section above. We will base our findings on a review of the best available scientific and commercial data, including relevant information received during the public comment period.

### References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 19, 2024.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[RTID 0648-XD487]

#### Amendment 8 Revisions to Essential Fish Habitat in the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Announcement of availability of a fishery management plan amendment; request for comments.

**SUMMARY:** The Pacific Fishery Management Council (Council) submitted to NMFS Amendment 8 to the Fishery Management Plan (FMP) for the U.S. West Coast Highly Migratory Species (HMS) July 15, 2024. If approved by the Secretary of Commerce (Secretary), these Amendments would update essential fish habitat (EFH) provisions in the existing HMS FMP. This Amendment is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) which requires periodic review and revision of EFH components of FMPs as warranted based on available information.

**DATES:** Comments on the Amendments must be received by September 23, 2024.

**ADDRESSES:** You may submit comments on this document, identified NOAA-NMFS-2024-0013 by the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to

<https://www.regulations.gov> and enter NOAA-NMFS-2024-0013 in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Eric Chavez, NMFS West Coast Region Long Beach Office, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier "NOAA-NMFS-2024-0013" in the comments.

**Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Nicole Nasby-Lucas at (858) 334-2826, [nicole.nasby-lucas@noaa.gov](mailto:nicole.nasby-lucas@noaa.gov), or Eric Chavez at (562) 980-4064, [eric.chavez@noaa.gov](mailto:eric.chavez@noaa.gov).

### SUPPLEMENTARY INFORMATION:

#### Background

NMFS manages the HMS fisheries off the U.S. Pacific Coast under the HMS FMP. The MSA requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary (16 U.S.C. 1854(a)). The MSA also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment (16 U.S.C. 1854(a)(1)(B)). The Council has submitted the Amendment to the Secretary for review. This notice announces that the proposed Amendment is available for public review and comment.

The MSA mandates that each FMP describe and identify EFH for the fishery (16 U.S.C. 1853(7)). EFH is defined as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity" (16 U.S.C. 1802(10)). Under this authority, NMFS and the Council have