Done in Washington, DC, this 14th day of February 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–3610 Filed 2–16–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Request for Comments on the Strategy for American Innovation

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice and Request for Information; Correction.

SUMMARY: On February 4, 2011, the Department of Commerce published a Request for Information (FRI) seeking input on a range of policy matters that can affect our innovativeness and competitiveness but particularly the Administration's Innovation Strategy (*see http://www.Commerce.gov/competes* for a link to the report). Due to an inadvertent error, that RFI contained an incorrect e-mail address where the public may submit comments and an incorrect phone number for the public contact. This notice provides the correct e-mail address and contact phone number. The public may submit e-mail comments to *competitiveness@doc.gov* and may contact Sabrina L. Montes at 202–482–6495 for any questions on the notice.

DATES: Comments must be postmarked or submitted by no later than April 1, 2011.

ADDRESSES: You may submit comments, identified by "Innovation Strategy RFI" by any of the following methods:

E-mail: competitiveness@doc.gov. Mail: Office of the Chief Economist, U.S. Department of Commerce, 1401 Constitution Avenue, NW., HCHB Room 4852, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Sabrina L. Montes: e-mail *SMontes@doc.gov*; telephone 202–482–6495.

Dated: February 9, 2011.

John Connor,

Office of the Secretary of Commerce.

[FR Doc. 2011–3560 Filed 2–16–11; 8:45 am]

BILLING CODE 3510–EA–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 10–2011]

Foreign-Trade Zone 274—Butte-Silver Bow, MT; Application for Manufacturing Authority REC Silicon (Polysilicon and Silane Gas) Butte, MT

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City and County of Butte-Silver Bow, grantee of FTZ 274, requesting manufacturing authority on behalf of REC Silicon, located in Butte, Montana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 11, 2011.

The REC Silicon facility (300 employees, 3,450 metric ton capacity) is located within Site 1 of FTZ 274. The facility is used for the manufacturing of polysilicon and silane gas for the photovoltaic industry using domestic and imported silicon metal (duty rate 5.3–5.5%). Materials sourced from abroad represent 8% of the value of the finished polysilicon and 5% of the value of the finished silane gas. REC Silicon has indicated that they will not admit foreign status silicon metal subject to antidumping or countervailing duty orders into the facility and would accept a restriction on such admissions.

FTZ procedures could exempt REC Silicon from customs duty payments on the foreign components used in export production. The company anticipates that some 95% of the plant's shipments will be exported. On its domestic sales, REC Silicon would be able to choose the duty rates during customs entry procedures that apply to polysilicon and silane gas (duty rate ranges from duty-free to 3.7%) for the imported silicon metal noted above. FTZ designation would further allow REC Silicon to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 18, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 3, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: February 11, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–3641 Filed 2–16–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 100603239–0275–02]

RIN 0648–XW85

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

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

ACTION: Notice of 90-day petition finding.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list Alabama shad (*Alosa alabamae*) as threatened or endangered and designate critical habitat under the ESA. We find that the petition does not present substantial scientific or commercial information indicating that the petitioned actions may be warranted.

ADDRESSES: Copies of the petition and related materials are available upon request from the Assistant Regional Administrator, Protected Resources Division, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or on the NMFS Southeast Region's Web site at *http://*

sero.nmfs.noaa.gov/pr/AlabamaShad.htm.

FOR FURTHER INFORMATION CONTACT: Kelly Shotts, NMFS, Southeast Region, (727) 824–5312; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

In 1997, we added Alabama shad to our Candidate Species List (62 FR 37562; July 14, 1997). At that time, a candidate species was defined as any species being considered by the Secretary of Commerce (Secretary) for listing as an endangered or a threatened species, but not yet the subject of a proposed rule (49 FR 38900; October 1, 1984). In 2004, we created the Species of Concern list (69 FR 19975; April 15, 2004) to encompass species for which we have some concerns regarding their status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA. Twenty-five candidate species, including the Alabama shad, were transferred to the Species of Concern list at that time because they were not being considered for ESA listing and were better suited for Species of Concern status due to some concerns and uncertainty regarding their biological status and threats. The Species of Concern status does not carry any procedural or substantive protections under the ESA.

On April 20, 2010, the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and the West Virginia Highlands Conservancy (petitioners) submitted a petition to the Secretaries of Interior and Commerce, as well as to the Regional Director of the Southeast Region of the U.S. Fish and Wildlife Service (USFWS), to list 404 aquatic, riparian, and wetland species from the Southeastern United States as threatened or endangered under the ESA. The petitioners also requested that critical habitat be designated under the ESA for all petitioned species. NMFS' Southeast Region notified the USFWS' Southeast Region by letter dated May 3, 2010, that we believe the Alabama shad, one of the 404 petitioned species, falls under NMFS' jurisdiction based on the August 1974 Memorandum of Understanding regarding jurisdictional responsibilities and listing procedures between the two agencies. We proposed to evaluate the petition, for the Alabama shad only, for the purpose of the 90-day finding and any required subsequent listing action. On May 14, 2010, we sent the petitioners confirmation that we would be evaluating the petition for Alabama shad.

ESA Statutory Provisions and Policy Considerations

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (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, within 12 months of receipt of the petition, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted. 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 prejudge the outcome of the status review.

Under the ESA, a listing determination may 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 NOAA-U.S. Fish and Wildlife Service (USFWS) 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 because of any one or a combination of the following five 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) inadequacy of existing regulatory mechanisms; and (5) 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 NMFS and the U.S. Fish and Wildlife Service (USFWS; 50 CFR 424.14(b)) define "substantial information" in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Court decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action "may be" warranted. As a general matter, these decisions hold that a petition need not establish a "strong likelihood" or a "high probability" that a species is either threatened or endangered to support a positive 90-day finding.

We evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. 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 petitioner's 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 would conclude it supports the petitioner's 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 negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

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, along with 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 at issue faces extinction risk that is cause for concern; 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 at issue (*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 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 other organizations or agencies, as evidence of extinction risk for a species. Risk classifications of the petitioned species by other organizations or made under other Federal or State statutes may be informative, but the classification alone may not provide the rationale for a positive 90-day finding under the ESA. Thus, when a petition cites such classifications, we will evaluate the source information that the classification is based upon, in light of the standards on extinction risk and impacts or threats discussed above.

Distribution and Life History of Alabama Shad

The Alabama shad is a euryhaline, anadromous species that spawns in medium to large flowing rivers from the Mississippi River drainage to the Suwannee River, Florida. They once reached into freshwater systems as far inland as eastern Oklahoma, Iowa, and West Virginia. Present distributions extend up the Mississippi River drainage into eastern Arkansas and central Missouri. They are found in some Gulf coast drainages, but are thought to be extirpated from those drainages west of the Pascagoula drainage in Mississippi (Adams *et al.,* 2000; Mettee and O'Neil, 2003; Boschung and Mayden, 2004). Although once abundant enough to support commercial fisheries in Alabama, Arkansas, Kentucky, Indiana, and Iowa, Alabama shad are rarely collected throughout much of their former range (Ross, 2001; Adams *et al.,* 2000). Gunning and Suttkus (1990) report on collections between 1963 and 1988 in the Pearl River, Louisiana and Mississippi, in which the majority of individuals (384) were collected before 1965, with only 34 collected since then. None have been taken from the Pearl River since 1981 (Gunning and Suttkus, 1990; Ross, 2001). Barkuloo *et al.* (1993) report large declines in the Mobile River basin occurred shortly after new dams were built on the Alabama and lower Tombigbee rivers in the 1960s. Five adults have been captured in the basin in the past 25 years, and then only in years with very high river flows (Mettee and O'Neil, 2003), suggesting that no spawning population remains. The largest remaining population probably occurs in the Apalachicola River, Florida, downstream of the Jim Woodruff Lock and Dam (Barkuloo *et al.,* 1993). Outside of Florida, spawning populations are thought to persist in the Choctawhatchee and Conecuh Rivers, Alabama; the Pascagoula River, Mississippi; the Ouachita River, Arkansas; and, the Missouri, Gasconade, Osage and Meramec Rivers, Missouri.

Alabama shad belong to the family Clupeidae and are closely related to, as well as similar in appearance and life history to, the American shad (*A. sapidissima*). They also resemble the skipjack herring (*A. chrysochloris*), which occurs in the same areas. Defining characteristics of the Alabama shad are their upper jaw with a distinct median notch, and the number of gill rakers (41 to 48) on the lower limb of the anterior gill arch. Alabama shad differ from other members of their family in the same area in that the lower jaw does not protrude beyond the upper jaw, black spots are present along the length of the lower jaw, and the dorsal fin lacks an elongate filament.

Alabama shad are a schooling species. Research in the Pascagoula River system indicates that Alabama shad shift between riverine habitats during their first year (age 0). In early summer (June to mid-July) in the Pascagoula River system, small juveniles use sandbar habitats, then switch to open channel and steep bank habitats containing large woody debris in late summer and fall (Mickle, 2006). Within habitat types, they tend to select cooler water temperatures (Mickle, 2006). While little is known of the Alabama shad's thermal tolerance, alosids in general are notoriously sensitive to thermal stress (Beitinger *et al.,* 2000; McCauley and Binkowski, 1982). Little is known of the species' behavior and habitat use in marine environments. Juveniles remain in fresh water for the first 6 to 8 months of their lives, feeding on small fishes and invertebrates (Ross, 2001). Adults broadcast spawn in the spring or early summer over coarse sand and gravel sediments swept by moderate currents when river temperatures are between 18 and 23 degrees Celsius. Males appear to enter the river at earlier dates and lower water temperatures than females (Laurence and Yerger, 1966). Male and female spawning site arrival also varies by age (Mettee and O'Neil, 2003). Adults likely do not feed during the spawning run; otherwise, they are thought to forage on small fish. Females become larger than males, reaching 18 inches (457 mm), while males reach 16.5 inches (419 mm). Age-2 adults are the most prevalent age class of spawning adults. Repeat spawning is common, but the percentage of returning spawners is highly variable among years. Annual fecundity ranges from 40,000 to 360,000

eggs per female. Juvenile growth rate is about 1.2 inches (30 mm) per month from July to September and then 0.4 inches (10 mm) per month until December. Juveniles enter the seawater in late summer/early autumn when they are about 2 to 5 inches (50 to 130 mm). Some natal homing tendency is evidenced by genetic differences among drainage basins (Bowen, 2005). The Alabama shad is relatively short lived (up to 6 years).

Analysis of the Petition

First, we evaluated whether the petition presented the information indicated in 50 CFR 424.14(b)(2). The petition clearly indicates the administrative measure recommended and gives the scientific and common name of the taxonomically valid species involved; contains a narrative justification for the recommended measure, describing the distribution of the species, as well as the threats faced by the species; and is accompanied by supporting documentation in the form of bibliographic references. However, the petition does not include information required under 50 CFR 424.14(b)(2)(ii–iii) on the past and present numbers of the species, or information regarding the status of the species over all or a significant portion of its range, other than conclusions and opinions. We have additional information in our files, acquired since our last evaluation of Alabama shad in 2004 and its designation as a Species of Concern, on the abundance and age structure of the Apalachicola population of Alabama shad, which we discuss in more detail below.

The petition states that Alabama shad have likely experienced dramatic long-term population declines, as well as short-term population declines of as much as 30 percent, and attributes these trends to habitat loss and degradation caused by impoundments, pollution, dredging, and other factors. The petition also states that commercial fishing in the Ohio River was a threat historically, and even though there is no longer a commercial fishery, intentional eradication or indirect impacts of fishing may be contributing to the species' declining status. The petition states that it is unknown whether any occurrences of Alabama shad are "appropriately protected," noting the lack of fish passage at locks and dams as a primary management concern, and cites lack of regulatory protections associated with status classifications assigned Alabama shad by NatureServe, NMFS, and the States of Mississippi, Alabama, and Georgia. Other factors, such as pollution, sedimentation, and drought, are cited in the petition as contributing to declines in shad populations. Thus, the petition states that four of the five causal factors in section 4(a)(1) of the ESA are adversely affecting the continued existence of Alabama shad: Habitat modification and degradation due to dams, dredging, and pollution; overutilization in historical commercial fisheries and continued indirect effects from fishing and eradication programs; inadequacy of existing regulatory mechanisms associated with current status classifications; and other natural or manmade factors, such as pollution, sedimentation, and drought.

Information on Species Status

The petition states that Alabama shad has undergone a major geographic contraction of its historical range, which originally spanned the Gulf Coast from the Suwannee River, Florida, to the Mississippi River, and westward in the Ouachita River system (Arkansas and Louisiana) to eastern Oklahoma. The species' current range is stated to include the Apalachicola River system below Jim Woodruff Lock and Dam in Florida; the Pascagoula River drainage in Mississippi; and, the Conecuh, Choctawhatchee, and Mobile Rivers in Alabama. The petition describes Alabama shad populations as small and states that the species is considered very rare in large portions of its historical range. The petition cites a NatureServe (2008) estimate that only 6 to 20 populations of Alabama shad remain. The petition also includes an observation by Mettee *et al.* (1996) that there are only two known remaining spawning runs in the Mississippi River System, with other spawning runs occurring in the Florida Panhandle and southern Alabama, and the conclusions by Mettee and O'Neil (2003) that spawning populations of shad are "relatively small." Though the petition describes Alabama shad populations as "small" and the species as "rare throughout its historic range" and concludes that spawning populations are "relatively small," it does not present estimates for historical or current abundance of Alabama shad for comparison and evaluation. While the petition states that 6 to 20 populations of Alabama shad exist today, it does not state the location of those populations, the size of the populations, or the number, locations, and size of historical Alabama shad populations for comparison.

The petition cites various status classifications made by the International Union for Conservation of Nature (IUCN), the American Fisheries Society (AFS), NatureServe, and NMFS to support its assertion that Alabama shad should be listed as threatened or endangered under the ESA. We do not give any particular weight to classifications established by other scientific and conservation organizations, which may or may not be based on criteria that directly correspond to the listing standards of the ESA. However, we have reviewed and evaluated the underlying information used to develop the various classifications given to Alabama shad by entities listed in the petition.

The petition cites the IUCN's classification of Alabama shad as "endangered," which the IUCN defines as "a very high risk of extinction in the wild." The IUCN bases its species classifications on evidence indicating that the species meets any of the five general criteria (A through E) that relate to population size (A), rate of population decline (B), reductions in geographic range (C), specific population sizes relative to rates of decline (D), and quantification of extinction risk (E). Based on its 1996 assessment, the IUCN classified Alabama shad as endangered because it believed the species met one of the five criteria (B). Specifically, the IUCN assigned Alabama shad a generic criterion of "B1+2e," which indicates (B) the extent of occurrence is estimated to be less than 5,000 km^2 or the area of occupancy is estimated to be less than 500 km^2, with (1) either severely fragmented populations or the species is known to exist at no more than five locations, and (2) continuing inferred, observed, or projected decline in (e) the number of mature individuals. However, this generic criterion does not describe how the 5,000 km^2 area of occurrence or the 500 km^2 area of occupancy were determined to be the thresholds below which a species is facing "a very high risk of extinction" and does not provide information on how the current areal extent of Alabama shad was determined. While the IUCN criterion indicates that the number of mature individuals is declining, no abundance estimates were provided to quantify that decline. In fact, the IUCN recently updated its classification of Alabama shad (version 2010.4), relying on a more current 2007 assessment of the species (citing NatureServe as the "assessor"), and reclassified it from "endangered" to "data deficient." While the IUCN notes declines in the population and geographic range of the species, it states in its justification of the current classification that "there has been no quantification of the rate of

range or population decline" of the Alabama shad (IUCN, 2010).

NatureServe (2008) gave the species a rank of "G3" or "vulnerable" and attributed the rank to the species' limited distribution in Gulf of Mexico tributaries, reduction in population due to the effects of dams in blocking spawning migration, and degradation of habitat by siltation and pollutants. The petition cites NatureServe (2008) in its assertion that Alabama shad have experienced as much as a 30 percent population decline in the short term, with dramatic long-term declines. NatureServe (2008) defines short-term trends for species as the observed, estimated, inferred, suspected, or projected short-term trend over a period spanning the past 10 years or 3 generations (whichever is longer, up to a maximum of 100 years). The full description of the short-term trends for Alabama shad in the NatureServe (2008) source is "declining to stable, with +/− 10 percent fluctuation to 30 percent decline" and notes that while Alabama shad are "probably" declining, the "rate of decline is unknown." NatureServe (2008) also describes range-wide trends over the "long-term" (covering an approximately 200-year period) in very broad terms: "substantial decline to relatively stable (25 percent change to 75 percent decline)." The range that the percentage of population change/decline represents is very large and demonstrates a great deal of uncertainty in the actual rate of change in Alabama shad populations, making reliable quantification of long-term population trends difficult at best. The ability to interpret NatureServe's (2008) quantification of long-term trends is further confounded because there is no description of how these percentages were determined. While NatureServe (2008) is cited in the petition as the major source presenting the declines in Alabama shad, the actual descriptions of the short- and long-term trends by NatureServe actually allow for stability and even some increases in Alabama shad populations.

Alabama shad were designated as "threatened" (in imminent danger of becoming endangered throughout all or a significant portion of its range) by AFS in 2008 based on (1) present or threatened destruction, modification, or reduction of habitat or range, and (2) over-exploitation for commercial, recreational, scientific, or educational purposes. The AFS designation does not provide any information on historical or current numbers, populations, or rates of decline, and also refers to NatureServe's (2008) ranking of "G3/vulnerable" (discussed in the previous section of this finding).

As previously noted, NMFS transferred Alabama shad to the Species of Concern list from the Candidate Species list in 2004. The entirety of the scientific and commercial information presented in the petition on the apparent population decline of Alabama shad and the threats that contributed to the apparent decline were considered by NMFS in its last evaluation of Alabama shad in 2004 and resulted in its designation as a Species of Concern. Further, much of the information on the status and threats presented in the petition is included in the NMFS Species of Concern fact sheet for Alabama shad, which is publicly available on the Internet (*http://www.nmfs.noaa.gov/pr/pdfs/species/alabamashad_detailed.pdf*). The fact sheet describes the rationale for the Species of Concern designation, citing Alabama shad's rarity throughout much of its former range and on-going threats that may have contributed to its decline, such as dams, poor water quality, siltation, habitat alteration, dredging, bycatch, and thermal stress. By definition, a Species of Concern is one for which we have some concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA. We believe that no new substantial information (information not already considered by NMFS in designating Alabama shad as a Species of Concern) is presented in the petition.

In addition to these classifications by national and international organizations, Alabama shad has received several State classifications/designations. Mississippi lists the Alabama shad as a "Tier 1" "species of greatest conservation need," defined as "species that are in need of immediate conservation action and/or research because of extreme rarity, restricted distribution, unknown or decreasing population trends, specialized habitat needs, and/or habitat vulnerability. Some species may be considered critically imperiled and at risk of extinction/extirpation." Alabama also lists Alabama shad as a "species of greatest conservation need" with a priority of "2." A priority of "2" is considered by Alabama to be a "high conservation concern" and is given to species that meet three of the following factors: Rarity; very limited, disjunct, or peripheral distribution; decreasing population trend/population viability problems; and/or, specialized habitat needs/habitat vulnerability due to natural/human-caused factors. This designation notes that timely research and/or conservation action is needed. Neither Mississippi nor Alabama indicate which of the multiple factors resulted in the "Tier 1" and "Priority 2" classifications, and no population abundance estimates were provided by either State. The shad is also listed as a "species of special concern" by the State of Georgia and is given a State ranking of "S1," defined as "critically imperiled in the State because of extreme rarity (5 or fewer occurrences)." Georgia lists the State status of Alabama shad as "threatened," defined as "a species which is likely to become an endangered species in the foreseeable future throughout all or parts of its range." While Georgia's "S1" ranking indicates that there are "5 or fewer occurrences" in the State, it is unclear what constitutes an "occurrence," and it does not provide information on population abundance.

The classification of Alabama shad as "data deficient," "vulnerable," "threatened," and a "Species of Concern" by national and international organizations, as well as their designations as "Tier 1" and "Priority 2" "species of greatest conservation need" by Mississippi and Alabama, respectively, and an "S1" "threatened" "species of special concern" by Georgia, demonstrate that there is general concern about the status of Alabama shad. However, it also demonstrates that there is no consensus on the severity of the decline and magnitude of the threats faced by Alabama shad. We reviewed the underlying information for these classifications and found that none of the sources cited in the petition provide current population sizes of Alabama shad or historical population sizes for comparison and insight into any rate of decline of the species that may be occurring.

In addition to the information presented in the petition, we evaluated information in our own files, particularly new information obtained since our last review of Alabama shad in 2004 that resulted in its designation as a Species of Concern. Most of these sources contained in our files are also publicly available on the Internet.

The first population abundances of Alabama shad, estimated for the Apalachicola River population, were published by Ely *et al.* (2008). The population sizes varied greatly during the 2005 to 2007 study period (approximately 2,000 to 26,000 Alabama shad), and were described by Ely *et al.* (2008) as lower than expected based on a comparison with American shad in the Savannah and Altamaha Rivers (between 100,000 and 200,000

American shad). Given the similarities in life history characteristics of Alabama and American shad and the similarities in discharge, drainage area, and latitude between the Apalachicola River and the other Atlantic Coast rivers, the authors expected the populations of adult Alabama shad and American shad to be similar. Ingram (2007) compared growth and age class structure of Alabama shad in the Apalachicola River in 2005 and 2006 with studies conducted in 1967 and 1972 and indicated that the current structure, with fewer age classes and an earlier age at maturity, was indicative of a declining population and asserted that "concern over the long-term sustainability of Alabama shad populations appears to be justified." Ingram (2007) also noted that populations comprised of few year classes tend to rebound quickly when environmental conditions change (Rutherford *et al.,* 1992), but also tend to be less stable than populations comprised of more year classes and may be extirpated under prolonged periods of degraded environment (Everhart and Youngs, 1981). Additionally, Ely *et al.* (2008) noted that fluctuations in abundance of American shad are well documented (Hattala *et al.,* 1996; Atlantic States Marine Fisheries Commission, 1998; Moring, 2005) and variations in year-class strength typically observed in this genus suggest that populations of Alabama shad are capable of recovering quickly to historical levels under favorable conditions.

The resilience of Alabama shad and the species' ability to respond positively to conservation efforts is evident in the Apalachicola-Chattahoochee-Flint (ACF) River System. Beginning in 2005, a cooperative study supported by multiple local, academic, State, and Federal conservation partners, including NMFS, started tracking Alabama shad and other fish species in the Apalachicola River (USFWS, 2008; TNC, 2010; Ely *et al.,* 2008). The study also evaluated the feasibility of passing fish upriver of the Jim Woodruff Lock and Dam (JWLD), located at the confluence of the Chattahoochee and Flint Rivers, which presents the first major impediment on the Apalachicola River to the upstream migration of Alabama shad to their historical spawning grounds. The results of this collaborative study showed that the existing lock could be used to pass fish upriver where they could potentially reproduce in great numbers. Based on these findings, in 2008, the U.S. Army Corps of Engineers (USACE) began operating the lock at JWLD to allow fish passage. The locks are operated twice a day to correspond with the natural movement patterns of migrating fish during spawning seasons—February through May each year. Alabama shad have been found to pass upstream of the lock with 45 percent efficiency (Young, 2010) and, as a result, can access over 150 miles of historical habitat and spawning areas in the ACF River System for the first time in more than 50 years (TNC, 2010). The current 2010 population estimate for the ACF River System of 98,469 Alabama shad obtained as a result of this study (Young, 2010) is almost four times larger than the previous high estimate of 25,935 obtained in 2005 (Ely *et al.,* 2008). Since age-2 adults are the most prevalent age class of spawning adults, the large increase in the Alabama shad population in the Apalachicola in 2010 is likely a direct result of JWLD being operated for fish passage beginning in 2008.

The information presented in the petition on the status and trends of Alabama shad populations does not present new substantial information indicating that listing as threatened or endangered under the ESA may be warranted. While the petition notes that Alabama shad populations are small and there has been an overall reduction in its geographic range, none of the sources cited provide current population sizes of Alabama shad or historical population sizes for comparison and insight into any rate of decline of the species that may be occurring. Further, the majority of the information contained in the petition was already considered in NMFS' 2004 evaluation of Alabama shad that resulted in its retention on the Species of Concern list. In addition to the petition, we also reviewed information in our own files. Since our evaluation in 2004, the first abundance estimates for Alabama shad were obtained in the Apalachicola River. The current 2010 estimate for that river is four times higher than the previous high estimate, likely evidence of the success of conservation efforts that resulted in fish passage at JWLD beginning in 2008. While we only have population estimates from the Apalachicola River, information on the status of the species contained in the petition and our files does not indicate that the listing of Alabama shad as threatened or endangered under the ESA may be warranted. We will next consider how threats facing Alabama shad may be contributing to their extinction risk.

Information on Threats to the Species

We evaluated whether the information in the petition and contained in our files concerning the extent and severity of one or more of the ESA section 4(a)(1) factors suggests these impacts and threats may be posing a risk of extinction for Alabama shad that is cause for concern. The bulk of the information in the petition on threats is an overview of many of the past and ongoing categories of threats that are believed to have contributed to the decline of 404 aquatic, riparian, and wetland species in the Southeast. The majority of this information on threats is either general for all species in the Southeast, specifically linked to species other than Alabama shad, or characterized in areas where shad are not known to occur. The following discussion on threats focuses on the information presented in the section of the petition on Alabama shad.

Habitat Modification and Destruction

The petition states that Alabama shad have experienced widespread declines because of loss of habitat to dams, rapid urbanization, pollution, and other factors (Mettee and O'Neil, 2003; Mirarchi *et al.,* 2004; NMFS, 2008). The petition states that shad have been cut off from many historical spawning areas by dams and locks (Robison and Buchanan, 1988; Etnier, 1997; Mirarchi *et al.,* 2004) and provides the example of dams built on the lower Tombigbee and Alabama Rivers in the 1960s resulting in "steep declines in shad populations" in the Mobile River Basin (Barkuloo *et al.,* 1993; Mettee and O'Neil, 2003; NMFS, 2008; NatureServe, 2008). The petition also states that agricultural operations, dredging, and possible reservoir construction for water supply on major tributaries are major threats to remaining populations in Alabama (Mettee, 2004) and that these threats likely apply throughout the species' range. NMFS listed dredging as a factor for the Alabama shad's decline in its rationale for the 2004 Species of Concern designation. Dredging can remove necessary spawning substrate, increase siltation, and reduce water quality. However, neither the petition nor our files contain specific information on the nature or the degree of threat to Alabama shad from dredging. We also noted the presence of locks and dams as factors in the decline of Alabama shad in our Species of Concern designation, including the specific example cited in the petition of reduction in shad populations in the Mobile River Basin resulting from dam construction on the Tombigbee and

Alabama Rivers. We further noted in our evaluation of the impacts of dams on Alabama shad that the population in the Pascagoula River is small, even though that river lacks dams and other barriers to migration. While dredging and dams represent generalized threats to the species, as stated in the petition and by us in our rationale for designating Alabama shad as a Species of Concern, the petition does not provide substantial information detailing how the significance of these threats to the species indicates that listing may be warranted. The petition cites reservoir construction as a threat to the species, with recent information that new reservoirs are currently proposed on Murder Creek, the Little Choctawhatchee, and on smaller tributaries "that further threaten the shad" (SFC and CBD, 2010). However, the petition does not state whether Alabama shad are present in these locations and does not describe, either quantitatively or qualitatively, the anticipated effects (*e.g.,* blockage of spawning migrations or modifications of downstream habitat) to Alabama shad from the proposed reservoirs. Further, the petition asserts that habitat loss due to rapid urbanization and pollution has contributed to the widespread declines in Alabama shad populations, but provides no explanation or examples describing how or where this has occurred. Therefore, we find that the petition does not present new substantial information on the threat to Alabama shad from habitat destruction and modification indicating that listing may be warranted.

Overutilization

The petition states that commercial fishing in the Ohio River was a threat historically, but with the decline in fish numbers, there is no longer a commercial fishery (NatureServe, 2008). The petition cites AFS (Jelks *et al.,* 2008), which classified this species as threatened in part because of over-exploitation for commercial, recreational, scientific, or educational purposes, including intentional eradication or indirect impacts of fishing. As part of the rationale for the Alabama shad's 2004 Species of Concern designation, we noted that early commercial harvest of Alabama shad may have contributed to its decline, but that the catches were small and the fishery was short lived. NMFS (2004) also noted that threats to Alabama shad may include bycatch (*i.e.,* indirect impacts of fishing, as stated by the petition), but neither the petition nor our files provide additional details on the nature or degree of the threat of bycatch to Alabama shad. There is no information in our files, nor does the petition provide sources or citations, for the historical or current existence of a recreational fishery of Alabama shad, scientific or educational activities that could threaten shad, or the nature or location of programs intended to eradicate the species. Therefore, we find the petition does not present new substantial information on the threat to Alabama shad from overutilization indicating that listing may be warranted.

Inadequacy of Existing Regulatory Mechanisms

The petition states that it is not known whether any occurrences of Alabama shad are appropriately protected and cites NatureServe (2008) that a "primary management need is the creation of fishways so that shad can migrate through or around locks and dams." Dams are documented to block anadromous species, such as Alabama shad, from accessing habitat upstream, while also degrading habitat downstream. Hydropower dams are regulated by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act (FPA). The FPA provides for cooperation between FERC and other Federal and State agencies, including resource agencies, in licensing and relicensing power projects, including the authority to issue mandatory fishway prescriptions. However, the timing of project relicensing (once every 30 to 50 years per facility) and the existence of dams, such as those operated by the Army Corps of Engineers, to which the FPA does not apply, can hinder the efficacy of the FPA. Even where fish passage currently exists, passage efficiency varies and is often less than 100 percent. The petition does not quantify the amount of historical Alabama shad habitat that is blocked by dams or the reductions in abundance of shad resulting from the lack of passage at dams. However, the presence of dams and the lack of passage is recognized by NMFS as a general threat to Alabama shad and was documented as part of the rationale for its 2004 Species of Concern designation. As part of the proactive conservation initiative under the Species of Concern program, we are a partner in the multi-agency collaborative project at JWLD that resulted in the USACE operating the lock for purposes of fish passage during spawning season. This project appears to have been highly successful at enhancing the Alabama shad population in the ACF River System.

As previously discussed, the petition notes classifications of the Alabama shad by various States within its range. Mississippi lists the shad as a Tier 1 "species of greatest conservation need." This designation provides no regulatory protection for the shad. Alabama also lists the species as a "species of greatest conservation need" with a priority of "2." Although the State of Alabama has developed a "comprehensive wildlife strategy," this strategy is entirely voluntary and provides no regulatory protection for the shad. The petition also states that there is no evidence that adherence to the strategy will ensure the survival and recovery of the shad. The shad is also listed as a species of special concern by the State of Georgia and NMFS, though these designations, like the others, do not provide any regulatory protection. Other than fish passage at dams discussed in the previous section, the petition does not indicate what threats require adequate regulation by these States or NMFS. Therefore, we have determined that information in the petition and contained in our files does not constitute substantial information indicating existing regulatory mechanisms are inadequate to prevent, or are contributing to, the extinction risk for Alabama shad to the extent that listing as threatened or endangered under the ESA may be warranted.

Other Natural or Manmade Factors

The petition lists pollution "from a variety of sources" and drought as additional threats to Alabama shad. As stated in the discussion of habitat modification and destruction, the petition cites Mettee (2004), which lists increased sedimentation, pesticide runoff from agricultural operations, and prolonged drought as major threats to populations in Alabama, and Metee and O'Neil (2003), which lists siltation and water pollution as causes of decreasing shad populations. Siltation and poor water quality are already documented as part of the rationale for the Alabama shad's 2004 Species of Concern designation by NMFS, and the petition does not provide additional information indicating the significance of these generalized threats to Alabama shad. Therefore, there is no new substantial information indicating listing may be warranted as a result of these threats. Prolonged drought is recognized as a potential threat to riverine and anadromous species, as it can decrease water depths and velocity, increase thermal stress, and exacerbate existing water quality issues. However, the petition does not present information that indicates the extent to which Alabama shad have been affected by drought or evaluate how their current

extinction risk would be increased to an unacceptable level by the onset of future droughts. Therefore, we find that the petition does not present new substantial information on the threat to Alabama shad from other natural and manmade factors, such as water pollution, siltation and drought, indicating listing as threatened or endangered under the ESA may be warranted.

Petition Finding

We have reviewed the petition, the literature cited in the petition, and other literature and information contained in our files. We find that the petition does not present substantial scientific or commercial information indicating that the requested listing actions may be warranted. Alabama shad is currently designated as a NMFS Species of Concern. We periodically review the species on the Species of Concern list to evaluate whether they should be retained or removed from the list or proposed for listing under the ESA. For the Alabama shad, NMFS is currently scheduled to release a Species of Concern review in 2011.

References Cited

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

Authority

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

Dated: February 11, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–3628 Filed 2–16–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA222

Gulf Spill Restoration Planning; Notice of Intent To Begin Restoration Scoping and Prepare a Programmatic Environmental Impact Statement

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

ACTION: Notice of intent to begin restoration scoping and prepare a Programmatic Environmental Impact Statement (PEIS).

SUMMARY: The purpose of the Gulf Spill Restoration Planning PEIS is to identify restoration types and establish a programmatic framework and procedures that will enable the Trustees to expedite the selection and implementation of restoration projects to compensate the public and the environment for loss of natural resources and services from the Deepwater Horizon Oil Spill that began on April 20, 2010, Mississippi Canyon Block 252 ("the Oil Spill"). The Trustees will prepare a PEIS that will evaluate a range of restoration types that could be used to compensate the public for the environmental and human use damages caused by the Oil Spill. The Trustees seek public involvement in the scoping process and development of the PEIS. This notice explains the scoping process the Trustees will use to gather input from the public. Comments on what the Trustees should consider in the PEIS may be submitted in written form or verbally at any of the public scoping meetings; or may be submitted in written or electronic form at any other time during the scoping process.

DATES: Public comments must be received by May 18, 2011. Preliminary public scoping meeting locations are being scheduled for:

- Pensacola, FL
- Belle Chasse, LA
- Grand Isle, LA
- Port Arthur, TX
- Galveston, TX
- Houma, LA
- Morgan City, LA
- Gulfport, MS
- Spanish Fort, AL
- Panama City, FL
- Washington, DC

The specific dates and times for each are to be determined and will be announced in the **Federal Register**, on the Web site, and in local newspapers no later than two weeks prior to each meeting.

ADDRESSES: Written scoping comments on suggested restoration types should be sent to NOAA Restoration Center, Attn: DWH PEIS Comments, 263 13th Avenue South, Suite 166, St. Petersburg, FL 33701. Electronic comments are strongly encouraged, and can also be submitted to *http://www.gulfspillrestoration.noaa.gov.* All written scoping comments must be received by the close of the scoping process to be considered during the scoping process. The exact dates and venues of scoping meetings, as well as the closing date for scoping comments, will be announced in a public notice to be released two weeks prior to the first public scoping meetings to be held pursuant to this notice.

FOR FURTHER INFORMATION CONTACT: NOAA—Brian Hostetter at 888.547.0174 or by e-mail at *gulfspillcomments@noaa.gov*;

DOI—Robin Renn by e-mail at *Robin_Renn@fws.gov*;

AL— Will Gunter by e-mail at *William.Gunter@dcnr.alabama.gov*;

FL—Lee Edminston or Gil McRae by e-mail at *Lee.Edmiston@dep.state.fl.us* or *Gil.McRae@myfwc.com*;

LA—Karolien Debusschere by e-mail at *karolien.debusschere@la.gov*;

MS—Richard Harrell by e-mail at *Richard_Harrell@deq.state.ms.us*;

TX—Don Pitts by e-mail at *Don.Pitts@tpwd.state.tx.us.*

To be added to the Oil Spill PEIS mailing list, please visit: *http://www.gulfspillrestoration.noaa.gov.*

SUPPLEMENTARY INFORMATION: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce is the lead agency for the preparation of the PEIS on behalf of United States Department of the Interior (on behalf of the Fish and Wildlife Service, the National Park Service, the Bureau of Land Management and the Bureau of Indian Affairs) ("DOI"); the Louisiana Coastal Protection and Restoration Authority, the Louisiana Oil Spill Coordinator's Office, the Louisiana Department of Environmental Quality, the Louisiana Department of Wildlife and Fisheries, and the Louisiana Department of Natural Resources, for the State of Louisiana; the Mississippi Department of Environmental Quality, for the State of Mississippi; the Alabama Department of Conservation and Natural Resources and the Geological Survey of Alabama, for the State of Alabama; the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission for the State of Florida; and the Texas Parks and Wildlife Department, Texas General Land Office, and the Texas Commission on Environmental Quality, for the State of Texas.

Under the Oil Pollution Act (OPA), 33 U.S.C. 2701 *et seq.* Responsible Parties incur liability for the costs of cleaning up the oil and for the restoration of injured natural resources and their services. Liability for natural resource injuries caused by the Oil Spill can also flow from the Park System Resource Protection Act (PSRPA) (16 U.S.C. 19jj), the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*), and other federal