

(RFI) OCC published in July 2023. Additional discussion of proposed changes in section 3 of the preamble serves as the Tribal impact statement. We intend to notify Tribal lead agencies about the opportunity to provide comment on the NPRM no later than the day of publication. Further, shortly after publication of the NPRM, we will host consultation with Tribal Leaders and hold briefing sessions with Tribal lead agencies and any other interested tribe on the contents of the NPRM.

Jeff Hild, Principal Deputy Assistant Secretary for the Administration for Children and Families, performing the delegable duties of the Assistant Secretary, approved this document on May 22, 2024.

(Catalog of Federal Domestic Assistance Program Number 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

List of Subjects in 45 CFR Part 98

Child care, Grant programs—social programs.

Dated: July 8, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we propose to amend 45 CFR part 98 as follows:

PART 98—CHILD CARE AND DEVELOPMENT FUND

■ 1. The authority for part 98 continues to read as follows:

Authority: 42 U.S.C. 618, 9858.

■ 2. Amend § 98.81 by revising paragraph (b)(1)(ii) to read as follows.

§ 98.81 Application and Plan procedures.

* * * * *

(b) * * *

(1) * * *

(ii) The basis for determining family eligibility may be determined by the Tribe notwithstanding family income as described in § 98.20(a)(2).

* * * * *

[FR Doc. 2024-15244 Filed 7-12-24; 8:45 am]

BILLING CODE 4184-87-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2022-0012; FXES1111090FEDR-245-FF09E21000]

Endangered and Threatened Wildlife and Plants; 90-Day Finding and 12-Month Determination on a Petition To Revise Critical Habitat for Sonora Chub

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of a 90-day petition finding and 12-month determination.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 90-day finding and 12-month determination on how to proceed in response to a petition to revise critical habitat for Sonora chub (*Gila ditaenia*) pursuant to the Endangered Species Act of 1973, as amended (Act). The petition requests that the Service revise the existing critical habitat designation in Arizona by adding California Gulch. Our 90-day finding is that the petition, in conjunction with information readily available in our files, presents substantial scientific information indicating that the requested revision may be warranted. Our 12-month determination is that we intend to proceed with processing the petition by assessing critical habitat during the next 5-year status review for Sonora chub scheduled for release as soon as fiscal year 2027, as resources allow.

DATES: The finding and the determination announced in this document were made on July 16, 2024.

ADDRESSES: A detailed description of the basis for this finding and this determination is available on the internet at <https://www.regulations.gov> at Docket No. FWS-R2-ES-2022-0012. Information and supporting documentation used in preparing this finding and determination is also available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning this finding to the contact listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Heather Whitlaw, Arizona Ecological Services Field Office, 9828 North 31st Ave. C3, Phoenix, AZ 85051-2517; telephone 602-242-0210. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY,

TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary of the Interior (Secretary) that such areas are essential for the conservation of the species.

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. Our implementing regulations at 50 CFR 424.02 define the “physical or biological features essential to the conservation of the species” as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. In addition, our implementing regulations at 50 CFR 424.02 define “special management considerations or protection” as methods or procedures useful in protecting the physical or biological features essential to the conservation of listed species.

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat for listed species on the basis of the best scientific data available and after taking into consideration the economic impact,

national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any particular area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines that the failure to designate such area as critical habitat will result in the extinction of the species concerned. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (81 FR 7226, February 11, 2016). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled "The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act" (M-37016).

A provision of the Administrative Procedure Act, codified at 5 U.S.C. 553(e), gives interested persons the right to petition for the issuance, amendment, or repeal of a Federal rule. Section 4(b)(3)(D) of the Act requires that we make a finding on whether a petition to revise critical habitat for a species presents substantial scientific information indicating that the revision may be warranted. Our regulations at 50 CFR 424.14(i)(1)(i) state that substantial scientific information refers to credible scientific information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the revision proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific information will not be considered substantial information.

In determining whether substantial scientific information exists, we consider several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. Our regulations at 50 CFR 424.14(e)(5) require that, for areas petitioned to be added to or removed from designated critical habitat that were outside the geographical area occupied by the species at the time it was listed, the petitioner must present information indicating why the petitioned areas are essential (if areas are being added) or are not essential (if areas are being removed) for the conservation of the species.

To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notification of the finding promptly in the **Federal Register**. We

are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. If we find that a petition presents substantial scientific information indicating that the revision may be warranted, we are required to determine how we intend to proceed with the requested revision within 12 months after receiving the petition and promptly publish notification of such intention in the **Federal Register** (16 U.S.C. 1533(b)(3)(D)(ii)). We generally refer to these documents as 90-day findings and 12-month determinations or findings.

Our regulations further state that we will consider whether a petition presents a complete and balanced representation of the relevant facts when making our finding of whether a petition presents substantial information that the requested action may be warranted. Thus, if we find that a petition presented only information that would be favorable to the petition outcome, ignored relevant and readily available information, and presented a biased and incomplete representation of facts, we should consider whether the petition has met the requirement to present substantial information.

Previous Federal Actions

Sonora chub, a fish found in southeastern Arizona, was listed under the Act as a threatened species with critical habitat in 1986 (51 FR 16042, April 30, 1986). Thus, the Sonora chub appears in the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h), and a critical habitat designation for the Sonora chub in Santa Cruz County, Arizona, is set forth at 50 CFR 17.95(e).

On August 6, 2021, we received a petition dated July 30, 2021, from the Center for Biological Diversity (CBD) to revise critical habitat for Sonora chub. The July 30, 2021, petition (hereafter referred to as "the 2021 petition") requested that we revise critical habitat to include the length of California Gulch from at least approximately 1 mile above the Tinaja Dam to the international border, and the lower extent of Warsaw Canyon. The 2021 petition stated that the Sonora chub is currently known to occur in California Gulch, which was not occupied at the time of listing in 1986, and that it may be affected by livestock grazing and that there was an alleged state of noncompliance with various aspects of prior biological opinions issued under section 7 of the Act. The petitioner drew the conclusion that section 7 consultation alone did not ensure protection of Sonora chub in California

Gulch. Additionally, the 2021 petition alleged that our methodology of assigning a 25-foot riparian area (along each side of Sycamore and Peñasco Creeks) as part of the 1986 critical habitat could be applied to the same 25-foot riparian area along California Gulch.

As per our regulations at 50 CFR 424.14(e)(5), for areas petitioned to be added to designated critical habitat that were outside the geographical area occupied by the species at the time it was listed, we assessed whether the petition presented substantial information indicating why the petitioned areas are essential for the conservation of the species. We determined that none of the assertions or opinions presented in the 2021 petition met the definition of substantial scientific information as that term is defined at 50 CFR 424.14(i)(1)(i). Based on our review of the petition, sources cited in the petition, and other readily available information, we determined that the 2021 petition did not provide substantial scientific information indicating that California Gulch is essential for the conservation of Sonora chub, as required by our regulations (50 CFR 424.14(e)(5)). Therefore, in our 90-day finding published in the **Federal Register** on August 23, 2022 (87 FR 51635), we determined that the 2021 petition did not provide substantial information that revising critical habitat for Sonora chub may be warranted.

Current Petition History

On March 15, 2023, we received a petition dated March 14, 2023, from CBD requesting that critical habitat be revised for Sonora chub. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). Section 4 of the Act, specifically 16 U.S.C. 1533(b)(3)(D), allows any interested individual to petition us to revise a listed species' critical habitat. As such, we considered the requested critical habitat revision in this 90-day finding.

Species Information

Sonora chub is a small fish in the minnow family. It is usually less than 5 inches long and is dark-colored with two prominent black lateral bands on the sides and a dark oval spot at the base of the tail. Breeding males develop a red color at the base of the lower fins and some orange color on the belly (Miller 1945, p. 108). Sonora chub mostly inhabits pools within creeks, sometimes located under cliffs in erosive creeks (Rinne and Minckley 1991, p. 25).

At the time of listing, Sonora chub was known to occur in Sycamore Canyon in Sycamore Creek proper, Yanks Spring, and in two of its tributaries, located in Santa Cruz County, Arizona. Critical habitat for Sonora chub is designated in Sycamore Creek, starting from and including Yank's Spring, downstream approximately 5 miles to the international border with Mexico, plus the lower 1.25 miles of Peñasco Creek, and the lower 0.25 miles of an unnamed stream that enters Sycamore Creek from the west in the NW $\frac{1}{4}$ of Section 23, T.23S., R.11E. in Santa Cruz County. Critical habitat includes a 25-foot-wide riparian area along each side of Sycamore and Peñasco Creeks. No riparian zone was designated around Yank's Spring because it was impounded in a concrete tank. No riparian zone was designated for the unnamed stream because this reach consisted of bedrock pools that were unaffected by the riparian zone. Since its listing, the species was discovered in 1995 in California Gulch in Santa Cruz County and its tributary streams. The species' occurrence there is considered to be a natural population, but the species was not known to occur here at the time of listing in 1986 (AGFD 1995, pp. 1–2).

Evaluation of Information for the 90-Day Finding

Section 4(b)(2) of the Act requires us to designate and revise critical habitat for listed species on the basis of the best scientific data available. Section 4(b)(3)(D)(i) requires us to make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. For the purposes of findings on petitions to revise critical habitat, we apply the definition of "substantial scientific information" set forth at 50 CFR 424.14(i)(1)(i). In making this finding, we relied on information provided by the petitioners, sources cited by the petitioners, and information readily available in the Service's files. Since the request was for unoccupied critical habitat, the standards we applied to our analysis are set forth in 50 CFR 424.14(e)(5), meaning that the petition must present substantial scientific information that the requested areas are essential for the species' conservation.

90-Day Finding

In accordance with 50 CFR 424.14(h)(1)(iii), the "substantial scientific or commercial information" standard must be applied in light of any prior reviews or findings the Service has

made on the listing status of the species that is the subject of the petition. As discussed above, in our 90-day finding on the 2021 petition, we concluded that none of the assertions or opinions presented in the 2021 petition met the definition of substantial scientific information as that term is defined at 50 CFR 424.14(i)(1)(i). However, in reviewing the current information provided by the petitioners, we have determined that the March 15, 2023, CBD petition (hereafter referred to as "the 2023 petition") does present substantial information indicating that California Gulch is essential for the conservation of the Sonora chub. The petition did not identify California Gulch as occupied by Sonora chub at the time of listing, citing that this area was only found to be occupied by the species in 1995 (Service 2013, p.13). Therefore, we apply our regulations at 50 CFR 424.14(e)(5) that require that, for areas petitioned to be added to or removed from designated critical habitat that were outside the geographical area occupied by the species at the time it was listed, the petitioner must present information indicating why the petitioned areas are essential for the conservation of the species.

The content and emphasis of the 2021 petition differed substantively from the 2023 petition. The 2021 petition requested designating critical habitat in California Gulch based primarily on the threats of livestock grazing and border activities on Sonora chub and the need to add an additional locus for interagency consultation under section 7 of the Act to address those threats. The 2023 petition also discusses the effects of livestock grazing and border activities as threats (CBD 2023, pp. 12–20). However, in the 2023 petition, these impacts were discussed regarding the assertion that increased redundancy of the Sonora chub by designating critical habitat in California Gulch would in turn help minimize the effects of these impacts on the species. The 2023 petition's focus on redundancy, resiliency, and representation represents a different approach based on principles of conservation biology to support the petitioner's contention that California Gulch is essential for the conservation of Sonora chub. The 2023 petition's focus on the substantial information available to support the principles of conservation biology required to support a finding that a critical habitat designation is essential for the conservation of the species was a marked change from the 2021 petition. This change in the information presented to support the petition led to

our conclusion that the latter petition provided substantial information indicating that California Gulch is essential for the conservation of Sonora chub as set forth in our regulations at 50 CFR 424.14(e)(5).

The petition requests that the Service revise the existing critical habitat designation by adding the stretch of California Gulch downstream from the small dam above the tinaja (a plunge pool with a bedrock substrate) to the international border with Mexico, along with a 25-foot riparian buffer along each side of the stream channel. The petitioner first states that designating critical habitat in California Gulch is essential to the conservation of the Sonora chub as defined in the Service's recovery plan (CBD 2023, p. 34). The petitioner reiterates the recovery objectives from the Sonora chub recovery plan and specifically refers to recovery objective I "Protect Remaining Populations of Sonora chub" and its subtask "Recognize Critical Habitat" (Service 1992, pp. 21–39), correctly noting that recovery criteria have not been developed (CBD 2023, p. 34; Service 1992, pp. 22–23). The petitioner correctly notes that conservation equates to recovery in that the former is defined as using all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary, *i.e.*, the species is recovered in accordance with 50 CFR 402.02. We agree that the recovery plan's stated intent is to guide management actions to conserve Sonora chub in its natural habitat (Service 1992, p. 21) and that conservation equates to recovery. However, recovery plan objective I(A) does not, without context, support the assertion that California Gulch, now known to be within Sonora chub's natural habitat, is essential to the species' conservation.

The petition then demonstrates that protecting Sonora chub habitat in California Gulch may also be essential to the conservation of the species as it allows for increased redundancy, resiliency, and representation and, therefore, viability. The petition quotes the Service's critical habitat determination for the northern spotted owl (57 FR 1796) and includes that "a species can be said to be recovered when its continued viability is highly certain" (CBD 2023, p. 34). The petition provides the Service's definitions of redundancy, resiliency, and representation as applied in the Species Status Assessment Report for the Arkansas River Shiner (*Notropis girardi*) and Peppered Chub (*Macrhybopsis*

tetranema) (Service 2018, entire). The Arkansas River shiner and peppered chub are cyprinid fishes (minnow family), as is the Sonora chub, and all three species occur in lotic (riverine) ecosystems. The concepts contained in the species status assessment report for the Arkansas River shiner and peppered chub are therefore generally transferrable to Sonora chub.

Sycamore Canyon and California Gulch support the only two wild populations of Sonora chub in the United States (Service 2013, p. 18). Sonora chub was most recently detected in Sycamore Canyon on site visits in 2019 and 2022, but fish were absent from dry reaches of Peñasco Creek and an unnamed tributary (Service 2022, p. 4). Sonora chub exists on a permanent basis in California Gulch in the United States, and during periods of adequate flow move out from two core areas in that stream to occupy the intervening channel (Stefferd and Stefferud 2007, p. 18). Sonora chub was not detected by the Arizona Game and Fish Department in a single sampling visit to California Gulch in June of 2022, although the pools sampled may have only recently become inundated by rains (Service 2022, p. 4). Sonora chub is temporally absent from much of California Gulch during times of reduced runoff, but it is likely the species repopulates the stream from residually occupied sites in the United States (Stefferd and Stefferud 2007, p. 18) and/or via upstream movements from occupied reaches in Mexico when hydrologic conditions become favorable (Service 2013, p. 27).

The confluence of Sycamore Canyon and California Gulch is located south of the international border with Mexico. Recent detection data for Sonora chub in Mexico indicates the species is still present in some locations there. Sonora chub was collected from the Rio Cocospera at Rancho El Aribabi in Sonora in 2015 (Service 2022, p. 4). Sonora chub was again detected in the Rio Cocospera in 2017, in two Rio Cocospera locations in 2022, and in the Rio Bambuto in 2022 (Service 2022, p. 4).

Regardless of the species' status in Mexico, the redundancy of Sonora chub in the United States is low. The petition therefore presents substantial information that California Gulch, since it is most likely repopulated by the species when hydrologic conditions allow, may be essential to ensuring the redundancy of Sonora chub and that the stream therefore contributes to the conservation of the species.

The petition cites severe fire or misplaced fire-retardant drops as examples of catastrophic events that

could severely impact or even remove one of the two Sonora chub populations in the United States, or significantly affect the species' genetic diversity, limiting the ability of the Sonora chub to recover (Service 2013, p. 18). Sonora chub is a desert fish adapted to the fluctuations of a desert environment; after drought conditions, it has been known to rapidly expand and recolonize California Gulch and newly re-wetted reaches. If habitat conditions along waterways can be maintained, then this ability to respond to favorable water conditions is encouraging for the population to avoid the danger of extinction (Service 2013, p. 27). The petition asserts that designating critical habitat is necessary to ensure that the California Gulch population is resilient enough for the species to avoid extinction should the Sycamore Canyon population be extirpated by a catastrophic event, back-to-back stochastic events, or the combined effect of multiple threats, such as livestock grazing and border infrastructure. Resiliency describes a population's ability to withstand either periodic or stochastic disturbance events that do not rise to the level of catastrophic. California Gulch can serve as a source population for downstream reaches in Mexico as well as Sycamore Canyon if the latter were to experience a periodic or stochastic event, not necessarily having to rise to the level of catastrophic. The petition therefore presents substantial information indicating that California Gulch may be essential to ensuring the resiliency of Sonora chub and, thus, contributes to the conservation of the species.

Representation describes a species' ability to adapt to changing environmental conditions over time. Representation can be measured based on the range of adaptive diversity within and among populations and the ecological diversity of populations across the species' range. Representation or genetic diversity within Sonora chub is difficult to determine as the Sonora chub's genetic variability in the wild remains unknown (Service 2019, p. 10) and information on morphological variability appears to be limited. According to the Arizona Game and Fish Department (2021, p. 1), Sonora chub may achieve lengths of up to 7.9 inches (20 centimeters) in the United States whereas Sonora chub in Mexico may grow up to 10 inches (25 centimeters) long. A high degree of genetic differentiation between populations in California Gulch and Sycamore Canyon is unlikely given that

at least occasional interactions and thus, gene flow, may occur between the two.

However, additional genetic diversity may exist due to variation in the habitats or niches occupied in the two locations, enhancing the species' ability to adapt to changing environmental conditions. Sycamore Canyon is an intermittent stream with a perennial-interrupted flow that comprises isolated pools or sometimes continuous flow in the approximately 6 miles upstream of the international border (Stefferd and Stefferud 2007, p. 44). Sycamore Canyon is a mix of Madrean evergreen oak woodland and Sonoran Desert-dominated habitat, and there are significant reaches of high-elevation riparian vegetation, with species including Fremont cottonwood, willow, velvet mesquite and scattered Arizona sycamore (Audubon et al. 2020, pp. 1–2). California Gulch is a small intermittent to ephemeral stream with perennial water at the tinaja, the livestock enclosure at the international border with Mexico, as well as artificial ponds in the nearby town of Ruby, Arizona (Stefferd and Stefferud 2007, p. 18). California Gulch is unique with quality thornscrub habitat and a dense shrub layer on its steep sides (Audubon et al. 2020, p. 2). The differing habitat conditions means it is possible for there to exist a small degree of intraspecific diversity via a temporal cline between Sonora chub simultaneously occupying Sycamore Canyon and California Gulch during times when hydrologic conditions temporarily prohibit the exchange of individuals (and gene flow) between the streams and other waters in the Rio de la Concepción (Rio Magdalena) watershed in Mexico. The petition therefore presents substantial information that California Gulch may be essential to ensuring Sonora chub representation is maintained such that it contributes to the conservation of the species.

In summary, the petition presents several arguments asserting that revision of critical habitat for Sonora chub may be essential for the conservation of the species. We find that information presented in the petition regarding the importance of California Gulch to ensure the redundancy, resiliency, and representation of Sonora chub, provides information that this area is essential for the conservation of the species as required by our regulations at 50 CFR 424.14(e)(5).

12-Month Determination

Section 4(b)(3)(D)(ii) of the Act states that if we find that a petition presents substantial information indicating that a revision to critical habitat may be

warranted, then within 12 months of receiving the petition we are to indicate how we intend to proceed with the requested revision and promptly publish a notice of our intention in the **Federal Register**. Pursuant to the provisions of the Act regarding revision of critical habitat and petitions for revision, we hereby provide notification as to how we intend to proceed with the requested revision to the critical habitat for Sonora chub.

We intend that any revisions to the critical habitat designated for Sonora chub be as accurate and comprehensive as possible. Therefore, we intend to assess potential revisions to Sonora chub critical habitat following the completion of the next 5-year status review for the species scheduled for release as soon as fiscal year 2027, as resources allow. Once the 5-year review is complete, a rulemaking process may be initiated after revisions to the

species' critical habitat have been assessed and if they are determined to be appropriate.

The currently designated critical habitat in Arizona, as well as areas that support the species but are outside of the current critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act. Actions affecting Sonora chub, or its designated critical habitat, are subject to the regulatory protections afforded by section 7(a)(2) of the Act, which requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

References Cited

A complete list of references cited in this document is available on the internet at <https://www.regulations.gov> at Docket No. FWS-R2-ES-2022-0012 and upon request from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Arizona Ecological Services Field Office.

Authority

The authority for this 90-day finding and 12-month determination is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024-15490 Filed 7-15-24; 8:45 am]

BILLING CODE 4333-15-P