

Questions and Answers

Listing and Critical Habitat Proposals for the Peppered Chub

Q1: What action is the U.S. Fish and Wildlife Service (FWS) taking?

A1: The FWS is proposing to protect the peppered chub (*Macrhybopsis tetranema*; formerly referred to as the Arkansas River speckled chub), as an endangered species under the Endangered Species Act (ESA). The FWS was petitioned to list the species on June 25, 2007.

We also propose to designate critical habitat for the species. In total, approximately 1,068 river miles (1,719 river kilometers) in four units in Kansas, New Mexico, Oklahoma and Texas fall within the boundaries of the proposed critical habitat designation. Finally, the FWS is also announcing the availability of a draft economic analysis of the proposed critical habitat designation.

The proposals will publish in the *Federal Register* on Dec. 1, 2020 and public comments will be accepted until Feb. 1, 2020. We encourage the public, academia, federal and state agencies, industry and other stakeholders to review the proposals and provide comments. The FWS's decision to list the peppered chub or withdraw our proposal will be based on the best available science. A final decision to list or withdraw the proposal is typically made within a year after proposal.

Q2: Why is the FWS proposing to list the peppered chub as endangered?

A2: The FWS is proposing to list the peppered chub as endangered because it has declined significantly across its historical range and faces the threat of extinction. Historically, the peppered chub was known from five populations found in Colorado, Kansas, New Mexico, Oklahoma and Texas. The species is now restricted to one population in New Mexico and Texas. The remaining population is presently being impacted by the loss of habitat as a result of habitat fragmentation and reduced water quality and quantity. The proposal to list the species is based on the best scientific and commercial data available.

Q3: What is the peppered chub?

A3: The peppered chub is a freshwater fish native to the Arkansas River Basin in Colorado, Kansas, New Mexico, Oklahoma and Texas. It has a nearly transparent slender body with dark dots scattered on its back. Generally, adult fish reach a maximum length of 3 inches (in) (77 millimeters (mm)) and do not live beyond two years.

Q4: Where is the peppered chub found?

A4: Historically, the fish is known to have existed throughout the Arkansas River basin in Colorado, Kansas, New Mexico, Oklahoma and Texas. Currently, the peppered chub is found in the South Canadian River between Ute Reservoir in New Mexico and Lake Meredith in the Texas panhandle. This represents approximately six percent of its historical range.

The peppered chub occurs in shallow, relatively wide and braided channels where current flows over sand, although they show some preference for cobble substrate during the spring and gravel substrate during the summer. Peppered chubs are more adapted for headwaters of streams than other closely related chub species.

Q5: What are the threats to the peppered chub?

A5: The primary factors affecting the current and future conditions of the peppered chub are river fragmentation and alterations of the natural flow regime (largely due to water diversions and impoundments) and degradation of water quality.

Q6: What areas are proposed for critical habitat designation for the peppered chub?

A6: The FWS has identified and delineated the following four proposed critical habitat units, totaling approximately 1,068 river miles in Kansas, New Mexico, Oklahoma and Texas:

- Unit 1 (Upper South Canadian River): approximately 197 stream miles
- Unit 2 (Lower South Canadian River): approximately 400 stream miles, but will be refined as discussed below
- Unit 3 (Arkansas/Ninnescah River): approximately 179 stream miles
- Unit 4 (Cimarron River): approximately 292 stream miles

Unit 1 is considered occupied year-round. Units 2, 3 and 4 are currently unoccupied. The peppered chub has been completely extirpated from all but a single river reach within its historical range. The FWS is including the three unoccupied units within the peppered chubs' historical range in an effort to ensure ecological diversity; the ability of the species to adapt and evolve; and to protect it from any future catastrophic events.

Q7: What is critical habitat?

A7: Critical habitat is an Endangered Species Act (ESA) term that identifies geographic areas occupied at the time a species is listed that contain the physical or biological features essential to the species' conservation. Critical habitat may also include areas outside the geographic area the species occupied when listed that are essential for conserving the species. The ESA defines "conservation" as the actions leading to a species' eventual recovery so that it no longer requires ESA protections.

Critical habitat provides protection against "destruction or adverse modification" from actions carried out, funded or authorized by a federal agency and carried out through required consultation under the ESA, section 7. Under such consultations, the FWS reviews federal actions for how they affect the "physical or biological features essential to conserving a listed species," and that habitat's ability to support the species throughout its life cycle and to meet the species' recovery needs.

Designating critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve or other conservation area. A critical habitat designation identifies areas that are important to conserving federally listed threatened or endangered species. A critical

habitat designation requires federal agencies to consult with the FWS on any of their actions that may affect designated critical habitat. The FWS can then recommend ways to minimize any adverse effects. It imposes no requirements on state or private actions on state or private lands where no federal funding, permits or approvals are required.

Critical habitat designation has several benefits including: (1) triggering consultation under section 7 of the ESA in designated areas for actions in which there may be a federal nexus and where it would not otherwise occur. For example, the area has become unoccupied or the occupancy is in question. Additional benefits include (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to state or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

Q8: What is the purpose of designating critical habitat?

A8: A critical habitat designation is a tool used to identify areas that are important to the recovery of a species. It is also a tool used to notify federal agencies of areas that must be given special consideration when they are planning, implementing or funding activities. Federal agencies are required to consult with the FWS on their actions that may affect critical habitat. A critical habitat designation has no effect when a federal agency is not involved. For example, a private landowner undertaking a project that involves no federal funding or permit has no additional responsibilities regarding critical habitat if his or her property falls within critical habitat boundaries.

Q9: Do listed species with designated critical habitat receive more protection than listed species without it?

A9: A critical habitat designation does not set up a preserve or refuge. A designation only affects activities with federal involvement, such as federal funding or a federal permit. Listed species and their habitats are protected by the ESA whether or not they are in areas designated as critical habitat.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species. Critical habitat also alerts the public as well as land management agencies to the importance of these areas.

Q10: Do federal agencies have to consult with the FWS outside critical habitat areas?

A10: Even when there is no critical habitat designation, federal agencies must consult with the FWS if an action that they fund, authorize or permit may affect federally listed species.

Q11: How did the FWS determine which areas to propose as critical habitat?

A11: All areas proposed as critical habitat for the peppered chub contain one or more of the features essential to the conservation of the species. When determining critical habitat,

biologists considered physical and biological habitat features needed to support the life history functions of the species. Habitat areas essential to peppered chub conservation are those that provide the biological needs of reproducing, feeding, sheltering, dispersal and genetic exchange.

Q12: What information is the FWS requesting?

A12: Any final actions (listing or proposal withdrawal) resulting from the proposed rule will be based on the best scientific and commercial data available and will be as accurate and as effective as possible. With respect to the listing and critical habitat proposals for the peppered chub, the FWS is seeking information regarding:

- (1) The species' biology, range and population trends, including:
 - (a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding and sheltering; CWA
 - (b) Historical and current range, including distribution patterns;
 - (c) Historical and current population levels, and current and projected trends; and
 - (d) Past and ongoing conservation measures for the species, its habitat or both.
- (2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms or other natural or manmade factors.
- (3) Biological, commercial trade or other relevant data concerning any threats (or lack thereof) to the species and existing regulations that may be addressing those threats.
- (4) Additional information concerning the historical and current status, range, distribution and population size of the species, including the locations of any additional populations.
- (5) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the ESA, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.
- (6) Specific information on:
 - (a) The amount and distribution of peppered chub habitat;
 - (b) What areas, that were occupied at the time of listing (*i.e.*, are currently occupied) and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;
 - (c) Special management considerations or protection that may be needed in critical habitat areas the Service is proposing, including managing for the potential effects of climate change; and
 - (d) What areas not occupied at the time of listing are essential for the conservation of the species and why.
- (7) Land-use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

- (8) Any probable economic, national security or other relevant impacts of designating any area that may be included in the final designation, and the benefits of including or excluding areas that may be impacted.
- (9) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.
- (10) Information on land ownership within proposed critical habitat areas, particularly tribal land ownership (allotments, trust and/or fee) so that the Service may best implement Secretarial Order 3206 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act).
- (11) Whether any specific areas the Service is proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the ESA, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the ESA. Specific information we seek includes:
 - (a) The extent to which the existing state critical habitat designation in Kansas provides for the conservation of the species and its habitat in that state;
 - (b) The effectiveness of the management plan for the Arkansas River shiner (*Notropis girardi*) for the Canadian River from U.S. Highway 54 at Logan, New Mexico, to Lake Meredith, Texas, in providing conservation for the peppered chub in Texas; and
 - (c) Information on any other conservation plans within the proposed designated critical habitat areas that provide conservation for the peppered chub and its habitat.
- (12) Whether the Service could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.
- (13) Ongoing or proposed conservation efforts which could result in direct or indirect ecological benefits to the associated habitat for the proposed species; as such, those efforts would lend to the recovery of the species and therefore areas covered may be considered for exclusion from the final critical habitat designation.

Q13: How can the public submit information on the proposal?

A13: Written comments and information concerning the proposed listing and critical habitat rules will be accepted until Feb. 1, 2020. and may be submitted by one of the following methods:

- (1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R2-ES-2019-0019, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rules box to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R2-ES-2019-0019, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

The FWS will post all comments on <http://www.regulations.gov>. This generally means the agency will post any personal information provided through the process. The FWS is not able to accept email or faxes.

For additional information, contact Debra Bills, Field Supervisor, U.S. Fish and Wildlife Service, Arlington Ecological Services Field Office, 2005 Northeast Green Oaks Boulevard, Suite 140, Arlington, TX 76006; telephone 817-277-1100. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

Q14: Did the ESA require an economic analysis be prepared for the proposed critical habitat?

A14: Yes. A draft economic analysis was prepared for the proposed critical habitat that estimates the incremental costs associated with the proposed designation. Based on the economic analysis, critical habitat designation for the peppered chub is unlikely to generate costs exceeding the rule-making benchmark of \$100 million in a single year. The economic analysis forecasts that for the proposed critical habitat no more than 153 consultations are likely to occur in any given year and that the incremental costs of designating critical habitat are likely to be limited to additional administrative efforts. These costs are estimated to be \$900k per year, borne by federal action agencies.

The FWS took into account the economic and other relevant impacts of specifying any particular areas as critical habitat.

The draft economic analysis and other information about the peppered chub are available online [here](#) or by contacting the Arlington Ecological Services Field Office at 817-277-1100.

Q15: What conservation efforts are currently being undertaken for the peppered chub?

A15: Targeted conservation efforts specific to the peppered chub are minimal at this time. The FWS and state partners are conducting monitoring. Approximately 95 percent of the adjacent land within the historical range of the peppered chub is private land, and the FWS is not aware of any conservation plans or management activities that are in place with private landowners that would benefit the peppered chub.

The Canadian River Municipal Water Authority (in conjunction with several other partners) has a management plan in place for the Arkansas River shiner, a similar species that shares many of the same life-history characteristics and habitat requirements as the peppered chub. This plan has been in place since 2005 and covers the last remaining occupied habitat for the peppered chub.

Management plan implementation has improved riparian health through the removal of non-native trees and has potentially slowed the rate of habitat decline; however, the FWS does not believe this conservation plan, in its current form, is sufficient to address the needs to this last remaining population of peppered chub. Important species' needs that the current plan does not fully address include (but are not limited to) maintenance of important flow patterns, including baseflows that maintain river connectivity allowing for fish movement and moderate to high flows that are effective in maintaining wide and complex river channels.

Although the peppered chub does not currently range in Kansas, the Kansas Department of Wildlife, Parks and Tourism finalized a recovery plan for the peppered chub in May 2005. This species is listed as endangered and protected under the authority of the state's Nongame and Endangered Species Conservation Act of 1975. The recovery plan outlines specific strategies and methods to recover and delist the peppered chub under the act. The recovery plan also includes designated critical habitat (DCH) as required for endangered species conservation and recovery. Peppered chub DCH overlaps the federally proposed critical habitat Unit 3 in Kansas.

There are discussions underway regarding a captive propagation program at the Kansas Aquatic Biodiversity Center and at the Tishomingo National Fish Hatchery in Oklahoma. At this time, however, there are no peppered chub in captivity or being propagated for reintroduction efforts. Both programs are likely several years away from being able to reintroduce peppered chub on the landscape.

Q16: How would the peppered chub benefit from an ESA listing?

A16: Species listed as endangered or threatened under the ESA benefit from conservation measures that include recognition of threats to the species, implementation of recovery actions, and federal protection from harmful practices.

Recognition under the ESA results in public awareness and conservation by federal, state, tribal and local agencies as well as private organizations and individuals. The ESA encourages cooperation with the states and other partners to conserve listed species.

The ESA also requires the FWS to develop and implement recovery plans for the conservation of threatened and endangered species. Recovery plans outline actions that are needed to improve the species' status such that it no longer requires protection under the ESA. The FWS develops and implements these plans in partnership with species experts; other federal, state and local agencies; Tribes; nongovernmental organizations; academia; and other stakeholders. Recovery plans also establish a framework for recovery partners to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Examples of typical recovery actions include habitat protection, habitat restoration (e.g., restoration of stream flow and floodplain access), research, captive propagation and reintroduction and outreach and education.

Under the ESA, federal agencies must ensure that actions they approve, fund or carry out do not jeopardize the continued existence of a listed species or destroy its critical habitat. In addition, under the ESA, endangered animal species cannot be killed, hunted, collected,

injured or otherwise subjected to “harm.” Endangered species cannot be purchased or sold in interstate or foreign commerce without a federal permit.

Q17: Would the proposed listing and critical habitat designation affect water management, grazing or other activities in the rivers and streams where the peppered chub is found?

A17: Activities in the streams and rivers designated as critical habitat where a federal nexus exists (approved, funded or carried out by a federal agency) would require consultation under the ESA to ensure the action does not result in adverse modification. Thus, water management activities on federal property or those requiring a federal permit or authorization on private land, and would necessitate ESA consultation by the action agency as required by the Clean Water Act (CWA). Activities on private lands with no federal nexus would not require ESA consultation.