

the Act. The Fund filed suit on October 11, 1994 (*Orleans Audubon Society v. Babbitt*, Civ. No. 94–3510 (E.D. La.)). Following a court order on August 9, 1995, granting the Fund's motion for summary judgement, the Services published a notice of decision on critical habitat designation for the Gulf sturgeon on August 23, 1995 (60 FR 43721). We determined that critical habitat designation was not prudent based on the lack of additional conservation benefit to the species.

On September 22, 1995, the Services and the Gulf States Marine Fisheries Commission approved the Gulf Sturgeon Recovery/Management Plan (FWS *et al.*, 1995). The recovery plan established the criteria that must be met prior to the delisting of the Gulf sturgeon. The recovery plan also identified the actions that are needed to assist in the recovery of the Gulf sturgeon.

On August 12, 1996, the plaintiffs filed a motion to add the Department of Commerce as a defendant in the lawsuit. The Fund amended their complaint to challenge the August 1995 "not prudent" determination. On October 30, 1997, the court granted the plaintiffs' motion for summary judgment, with relief restricted to a remand of the "not prudent" determination to the Services, requiring that the Services publish a determination on designation of critical habitat, based on the best scientific information available. On February 27, 1998, we published a notice of decision (63 FR 9967) on critical habitat designation for the Gulf sturgeon. We again determined that lack of additional conservation benefit from critical habitat designation for this species made such designation not prudent.

On December 18, 1998, the Sierra Club sued the Services challenging the new determination not to designate critical habitat for the Gulf sturgeon (*Sierra Club v. U.S. Fish and Wildlife Service et al.* CA No. 98–3788 (E.D. La.)). On January 25, 2000, the Court issued an order granting our motion for summary judgment and dismissing the complaint. The Sierra Club filed an appeal and, in March 2001, the United States Court of Appeals for the 5th Circuit reversed the decision of the District Court and instructed the District Court to remand the decision to us for reconsideration (*Sierra Club v. U.S. Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001)). On August 3, 2001, the District Court issued an order directing us to publish a proposed decision concerning critical habitat designation for the Gulf sturgeon by February 2, 2002, and a final decision by August 2, 2002. Negotiation with the plaintiff

resulted in an agreement to submit the proposed decision to the **Federal Register** on or by May 23, 2002, and the final decision on or by February 28, 2003.

On June 6, 2002, we published a proposed rule in the **Federal Register** in which we announced our determination that designation of critical habitat was prudent, proposed designation of critical habitat for Gulf sturgeon, announced four public meetings and hearings, and requested comments on the proposal by September 23, 2002 (67 FR 39106). On August 8, 2002, we published a notice in the **Federal Register** (67 FR 51530) announcing the availability of the draft economic analysis and the extension of the comment period through October 7, 2002. We also corrected the address of a public hearing to be held in Defuniak Springs, FL on August 20, 2002. We held public meetings and public hearings on the proposed rule and draft economic analysis at four locations: Live Oak, Florida, on August 19, 2002; Defuniak Springs, Florida, on August 20, 2002; Biloxi, Mississippi, on August 21, 2002; and Kenner, Louisiana, on August 22, 2002.

#### *Summary of Comments and Recommendations*

We contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposal to designate critical habitat for the Gulf sturgeon. In addition, we published newspaper notices inviting public comment on the proposed rule and the draft economic analysis, and announced the public meetings and hearings in the following newspapers: *St. Petersburg Times*, *Pensacola News Journal*, *Panama City The News Herald*, *Fort Walton Daily News*, *Crystal River Citrus County Chronicle*, *Tallahassee Democrat*, and *The Gainesville Sun*, in Florida; *The Brewton Standard*, *Dothan Eagle*, *Geneva County Reaper*, and *Mobile Register*, in Alabama; *Hinds County The Clarion-Ledger* and *Gulfport's The Sun Herald*, in Mississippi; and New Orleans *The Times-Picayune* and Baton Rouge's *The Advocate* in Louisiana.

We held four public meetings and four public hearings on the proposed rule (see "Previous Federal Action" section for dates and locations). Transcripts of these hearings are available for inspection (see **ADDRESSES**).

We received written letters or e-mails from a total of 126 parties which included 2 congressional representatives from Georgia, 10 Federal

agencies, 13 State agencies, 5 county governments, 93 groups or individuals, and 3 peer reviewers. Of the 128 total responses, 29 supported the proposed rule, 2 opposed it, and the rest were neutral.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from six knowledgeable individuals having expertise either with the species, with the geographic region where the species occurs, and/or familiarity with the principles of conservation biology. Three of these experts provided a written response generally supporting the designation and provided additional information that we have incorporated into the rule as appropriate. We appreciate the responses of these peer reviewers, and believe their input has improved the content of this rule.

We reviewed all comments received for substantive issues and new data regarding critical habitat and Gulf sturgeon. Some comments resulted in changes between the proposed and final designations, and those comments are discussed in the "Summary of Changes From the Proposed Rule" section of this document. Written comments and oral statements presented at the public hearings and received during the comment period are addressed in the following summary. For readers' convenience we have assigned comments to major issue categories. We have combined similar comments into single comments and responses.

#### *Peer Review Comments*

*Comment 1:* Three peer reviewers recommended that additional areas be included as critical habitat, sometimes stating that the areas contain the primary constituent elements upon which Gulf sturgeon rely. Others requested inclusion based on historic use or potential use by the Gulf sturgeon in these areas. The areas requested for inclusion were St. Joseph Bay in Florida, the western portion of Lake Pontchartrain and all of Lake Maurepas in Louisiana, and the Strong River in Mississippi.

Also, twenty eight commenters recommended that additional areas be included as critical habitat, with some stating that the areas contain the primary constituent elements. Others requested inclusion based on historic use or potential use by the Gulf sturgeon in these areas. Other commenters expressed concerns that the proposed designation did not include all of the current range of the Gulf sturgeon. The areas requested for inclusion were the Ochlockonee River, Withlacoochee