

avoid jeopardy or critical habitat destruction resulting from reservoir construction, or reasonable and prudent measures to minimize take resulting from reservoir construction, would depend entirely on the size, location, and operational plan of the reservoir and its effects on the primary constituent elements (e.g., flow regime, water quality, passage). Reservoirs constructed downstream of spawning habitat would have far different and likely greater impacts than those constructed upstream of spawning habitat or on tributaries.

Comment 24: Three commenters requested clarification and examples of specific activities that may affect essential features of the designated area, a quantitative definition or explanation of “appreciably reduce,” and information on how we intend to quantify the degree of impacts. One commenter requested that a mechanism be developed to assess the severity of the action based on the ability of the impacted area to recover as viable habitat.

Our Response: The value of critical habitat is appreciably diminished when an action considerably reduces the capability of designated or proposed critical habitat to satisfy requirements essential to the conservation of a listed species. We continue to consult with agencies to determine the effects of an action on the primary constituent elements within the designated critical habitat by utilizing the best available scientific data. It is our intent to carefully assess each proposed project within Gulf sturgeon critical habitat and analyze how the proposed action may impact (both directly and indirectly; both temporally and spatially) those physical or biological features that were the basis for determining the habitat to be critical. As stated in the proposed rule, actions that may destroy or adversely modify Gulf sturgeon critical habitat may include, but are not limited to, dredging; dredge material disposal; channelization; in-stream mining; land uses that cause excessive turbidity or sedimentation; water impoundment; hard-bottom removal for navigation channel deepening; water diversion; dam operations; release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater via point sources or dispersed non-point sources; release of chemical or biological pollutants that accumulate in sediments; and other physical or chemical alterations of channels and passes. Note, however, that these same activities may be carried out in a way that does not destroy or adversely modify critical habitat. Such

assessments are highly site and fact specific and the information about the species and its habitat is continually expanding. Therefore, whether the “appreciably diminish” threshold has been met is a consultation-specific determination.

Comment 25: One commenter expressed concerns that the critical habitat designation will prevent maintenance dredging which is required for continued use of the Gulf Intracoastal Waterway (GIWW).

Our Response: Gulf sturgeon migration and feeding may occur within the GIWW in some of the proposed units. As stated in the proposed rule (67 FR 39114), portions of the GIWW that consist primarily of excavated land cuts and canals have been excluded from this designation because they were not available to the species historically, and therefore, are not considered to be essential for the conservation of the species.

The GIWW requires periodic dredging by the USACE to maintain safe and adequate passage. As stated in the proposed rule (67 FR 39125), dredging is an action that may destroy or adversely modify Gulf sturgeon critical habitat. We will work closely with the USACE to identify appropriate measures to reduce dredging impacts to Gulf sturgeon critical habitat while allowing maintenance dredging to continue in the GIWW without interruption.

Issue E: Public Involvement

Comment 26: Three commenters had questions and concerns regarding boating and sturgeon with regard to records of boat strikes on sturgeon and options for regulating boat speed. One commenter stated that critical habitat is just another way to impose restrictions and regulations on the boating public.

Our Response: Regulating speed of boats to prevent sturgeon injury or death would be an issue related to “take” of Gulf sturgeon and not related to critical habitat. Boat speed is unlikely to have any significant effect on primary constituent elements for Gulf sturgeon.

Comment 27: One commenter asked how anyone can be of help in our project of recovery and designation of critical habitat for the Gulf sturgeon.

Our Response: Maintaining a natural vegetative buffer along streams and rivers, and participating in watershed conservation groups that work on protecting and restoring river and bay habitat help conserve the sturgeon’s critical habitat.

Comment 28: One commenter wondered how the critical habitat designation would raise public

awareness and offer additional educational and informational benefit.

Our Response: Critical habitat provides non-regulatory benefits to the species by informing the public (via newspaper articles, newspaper notices, public meetings, public hearings, etc.) of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat helps focus conservation activities for a listed species on the areas that contain the physical and biological features that are essential for conservation of that species, and alerts the public and land-managing agencies to the importance of those areas.

Issue F: Methods

Comment 29: One commenter suggested that we have not included unoccupied habitat upstream of dams in the Apalachicola River Basin and the Hillsborough River Basin because access is not available. The commenter believes that these areas may be essential to the conservation of the species.

Our Response: The commenter provided no data to support why these two areas may be essential. Further, we have no historic records of Gulf sturgeon using the Hillsborough River. Areas upstream of water control structures were included elsewhere because they contain the only known suitable spawning habitat for a subpopulation that shows evidence of reproduction, and therefore, were deemed essential to the conservation of the species. We believe there is sufficient habitat downstream of the Jim Woodruff Lock and Dam on the Apalachicola River to sustain a population of Gulf sturgeon. We believe that what we have designated for the Gulf sturgeon is based on the best available scientific information and includes what we consider to be essential to the conservation of the Gulf sturgeon.

Comment 30: The Services intend to protect spawning habitats from catastrophic occurrences by including both the main stem spawning sites and at least one tributary site. One commenter asked why we included just one tributary site.

Our Response: Each subpopulation for which critical habitat was designated had historic records of sturgeon using a mainstem river and at least one additional tributary. We included at least one tributary for relief from potentially catastrophic events. Including additional tributaries without historic records was not feasible because we have no indication that the sturgeon