

habitat unit, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, such that it is appreciably impaired for normal Gulf sturgeon behavior, reproduction, growth, or viability, such as dredging; dredged material disposal; channelization; impoundment; in-stream mining; water diversion; dam operations; land uses that cause excessive turbidity; and release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater via point sources or dispersed non-point sources.

(6) Actions that would alter sediment quality within a designated critical habitat unit such that it is appreciably impaired for normal Gulf sturgeon behavior, reproduction, growth, or viability, such as dredged material disposal; channelization; impoundment; in-stream mining; land uses that cause excessive sedimentation; and release of chemical or biological pollutants that accumulate in sediments.

(7) Actions that would obstruct migratory pathways within and between adjacent riverine, estuarine, and marine critical habitat units, such as dams, dredging, point-source-pollutant discharges, and other physical or chemical alterations of channels and passes that restrict Gulf sturgeon movement.

Previous Section 7 Consultations

Many section 7 consultations for Federal actions affecting the Gulf sturgeon and its habitat have preceded this critical habitat designation. The action agencies have included the USACE, other DOD agencies, the U.S. Coast Guard, the National Park Service, the Federal Highway Administration, the Minerals Management Service (MMS), the Federal Energy Regulatory Commission, and others. We have also conducted intra-service section 7 consultations on our own actions.

Since listing, the FWS has conducted 320 informal and 14 formal consultations, and NMFS has conducted 70 informal and 4 formal consultations involving Gulf sturgeon. The informal consultations, all of which concluded with a finding that the Federal action would not affect or would not likely adversely affect the Gulf sturgeon, addressed a wide range of actions including navigation, beach nourishment, Gulf of Mexico fishery management planning, oil and gas leases, power plants, bridges, pipelines, breakwaters, rip-rap, levees and other flood-protection structures, piers, bulkheads, jetties, military actions, and in-stream gravel mining. The formal

consultations, which followed a finding that the Federal action may affect Gulf sturgeon, have dealt exclusively with navigation projects, oil and gas leases, pipelines, review of water quality standards, and disaster recovery activities, and have resulted in biological opinions. Also, the Gulf sturgeon was mentioned in several biological opinions that were triggered by may-affect determinations for other listed species. To date, none of our opinions have concluded that a proposed Federal action would jeopardize the continued existence of the Gulf sturgeon.

Previous biological opinions for the Gulf sturgeon have included discretionary conservation recommendations to the action agency. Conservation recommendations are activities that would avoid or minimize the adverse effects of a proposed action on a listed species or its critical habitat, help implement recovery plans, or develop information useful to the species' conservation.

Previous biological opinions for the Gulf sturgeon also have included non-discretionary reasonable and prudent measures, with implementing terms and conditions, which are designed to minimize the proposed action's incidental take of Gulf sturgeon. Section 3(18) of the Act defines the term take as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct."

The conservation recommendations and reasonable and prudent measures provided in previous Gulf sturgeon biological opinions have included enforcement of marine debris and trash regulations; avoidance of dredging and disposal in deeper portions of the channel; monitoring and reporting of "take" events during project construction; operation of equipment so as to avoid or minimize take; monitoring of post-project habitat conditions; monitoring of project-area Gulf sturgeon subpopulations; limiting of dredging to the minimum dimensions necessary; limiting of the depth of dredged material placed in disposal areas; arrangement of the sequence of areas for dredging to minimize potential harm; screening of intake structures; avoidance of riverine dredging during spawning months; limiting of tow times of trawl nets for hurricane debris cleanup; addition of specific measures for species protection to oil spill contingency plans; and funding of research useful for Gulf sturgeon conservation.

The designation of critical habitat will only impact those private landowner

activities that require Federal funding or permits. Designation of critical habitat is applicable to all activities approved, funded, or carried out by Federal agencies.

Jurisdictional Responsibilities for the Management of the Gulf Sturgeon

When the Gulf sturgeon was listed on September 30, 1991 (56 FR 49653), the Services had not resolved jurisdictional responsibilities for the management of the Gulf sturgeon. Both Services signed the listing rule in agreement that the species required protection. The final listing rule stated that until the jurisdictional issue was resolved, the FWS would be responsible for the species once the listing became effective. Although the issue has never been formally resolved, we have been operating under a verbal agreement in which the FWS maintains the lead for recovery actions. Consultation responsibilities were divided, with the FWS performing consultation review for projects impacting the Gulf sturgeon in the riverine and estuarine habitats, and NMFS performing consultation review for projects affecting the species in marine habitats.

We formalize here Gulf sturgeon jurisdictional responsibilities. In order to enhance consultation coordination efficiency for the action agencies, the following structure is adopted. The FWS will maintain primary responsibility for recovery actions in fresh water and the NMFS will assist in and continue to fund recovery actions pertaining to estuarine and marine habitats. In riverine units, the FWS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. In estuarine units, we will divide responsibility based on the action agency involved. The FWS will consult with the Department of Transportation, EPA, the U.S. Coast Guard, and the Federal Emergency Management Agency. NMFS will consult with the DOD, USACE, MMS, and any other Federal agencies not mentioned here explicitly. In marine units, NMFS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. For any Federal projects that extend into the jurisdiction of both the Services, as defined above, FWS will be the lead consulting agency, and coordinate internally with NMFS. Each agency will conduct its own intra-agency consultations as necessary.

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider