

and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effect of the proposed designation. The draft analysis was made publicly available for review on August 8, 2002. We accepted comments on the draft analysis until October 7, 2002. Our draft economic analysis evaluated potential future effects associated with the listing of the Gulf sturgeon as a threatened species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. The categories of potential costs considered in the analysis included the costs associated with (1) conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations, reinstituted consultations, and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and perceived impacts on markets resulting from the designation of critical habitat and (4) potential offsetting beneficial costs associated with critical habitat.

The majority of consultations resulting from the critical habitat designation for Gulf sturgeon are likely to address dredging and sediment disposal activities to support navigation, shoreline stabilization, water quality standards, military actions, road and bridge construction, oil and gas leases in Federal waters and permitting of oil and gas pipelines. As described in the draft economic analysis, all areas included in the designated critical habitat are occupied, with the fish also occurring in areas not included in the critical habitat designation.

Following the close of the comment period on the draft economic analysis, a final revision was completed which incorporated public comments on the draft analysis. Based on comments, the cost of consultations was revised. Subsequently, the revised economic analysis concluded that the designation may result in approximately \$3,310,000 to \$4,953,000 per year in potential economic impact due to the total effects of critical habitat, including those effects resulting co-extensively from

listing the species. Given the uncertainty regarding the implementation of project modifications for predicted projects concerning dredging and disposal modifications, a probability of adoption ratio was used in the final economic analysis based on the rate that the Services recommended various modifications in past formal and informal consultations where the proposed action would have impacted the sturgeon as well as its habitat.

Only those areas essential to the conservation of the Gulf sturgeon have been included in the critical habitat designation; the designation does not encompass the entire area currently occupied or utilized by the species, nor does it include any currently unoccupied areas. The economic analysis documents that the costs of including any particular unit range from \$1,300 to \$380,000 annually in administrative costs of consultation over 10 years (the low value represents the lowest per unit estimate of costs attributable solely to critical habitat designation and the high value represents the highest per unit estimates of costs attributable co-extensively with listing). Total co-extensive administrative cost across all units over 10 years range between \$705,600 and \$2,348,600 per year. Project modification costs for this analysis could not be attributed to any one unit, given the nature of the projects. However, total co-extensive costs of project modifications across all units over 10 years are estimated to be \$2,604,000 annually; if the approximate one-to-one ratio of total administrative costs to total project modification costs reflects the per unit ratio of these costs, then the highest upper-bound per unit estimate of critical habitat designation would be approximately \$700,000 per year over 10 years. Sixty-five percent of the total upper-bound costs estimated to be attributable to critical habitat designation are expected to consist of federal agency costs.

Required Determinations

Regulatory Planning and Review

As required by Executive Order 12866, we have provided a copy of the rule, which describes the need for this action and how the designation meets that need, and the economic analysis, which assesses the costs and benefits of this critical habitat designation, to the Office of Management and Budget (OMB) for review. The OMB determined that this rule may raise novel legal or policy issues and found it to be a significant rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this rule designating critical habitat for the Gulf sturgeon will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale for this certification.

Small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small