

entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

The vast majority of the designated critical habitat for the Gulf sturgeon, with few exceptions, is public land involving river, stream, estuary, or marine habitat. Activities with Federal involvement that may require consultation regarding Gulf sturgeon and its critical habitat include: activities regulated under the Clean Water Act, the Rivers and Harbors Act of 1899, and/or various Coast Guard authorities. Small entity economic activities that may require Federal authorization or permits include energy-related activities such as pipelines, harbors, and platforms; residential development including docks, piers, bridges, and shoreline protection; boating-related projects of small communities; private port operation including maintenance dredging and docks; small water supply or hydropower projects; and high speed marine events.

As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation. In the draft analysis, we found that the future section 7 consultations resulting from the listing of the Gulf sturgeon and the proposed designation of critical habitat could potentially impose total economic costs for consultations and modifications to projects to range between approximately \$43.4 million to \$57.2 million over the next 10-year period. Public comment on the draft economic analysis led to a revision of third party cost estimates that would result from section 7 consultations. The changes in cost estimates are discussed and reflected in the revised final Economic Analysis of Critical Habitat Designation for the Gulf Sturgeon (Industrial Economics, Inc. 2003), where we found that the future section 7 consultations resulting from the listing of the Gulf sturgeon and the proposed critical habitat could potentially impose total economic costs for consultations and modifications to projects in the range of between \$33.1 million to \$49.5 million over the next 10-year period.

In considering whether this critical habitat designation would have a significant economic impact on a substantial number of small entities, we examined the total estimated section 7

costs calculated in earlier sections of this report, including those impacts that may be "attributable co-extensively" with the listing of the species. This results in a conservative estimate (i.e., more likely to overstate impacts than understate them), because it utilizes the upper bound impact estimate from the earlier analysis. Using this approach, the economic analysis estimated that fewer than 6 small entities per year, would experience significant economic impacts. We do not believe this constitutes a substantial number of small entities. Therefore, the Services are certifying that the designation of critical habitat for the Gulf sturgeon will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

OMB's Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. In the draft economic analysis and the final economic analysis, we determined that designation of critical habitat would not cause (a) any annual effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis (Industrial Economics, Inc., 2003) for a complete discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, which applies to "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." In order to ensure that Federal agencies "appropriately weigh and consider the effects of the Federal government's regulations on the supply, distribution, and use of energy," the President has directed agencies to prepare and submit to the OMB's Office of Information and Regulatory Affairs a "Statement of Energy Effects" for their "significant energy actions." The OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect"

when compared with the regulatory action under consideration:

- (1) Reductions in crude oil supply in excess of 10,000 barrels per day;
- (2) Reductions in fuel production in excess of 4,000 barrels per day;
- (3) Reductions in coal production in excess of 5 million tons per year;
- (4) Reductions in natural gas production in excess of 25 million mcf;
- (5) Reductions in electricity production in excess of 1 billion kilowatts per year or in excess of 500 megawatts of installed capacity;
- (6) Increases in energy use required by the regulatory action that exceed the thresholds above;
- (7) Increases in the cost of energy production in excess of one percent;
- (8) Increases in the cost of energy distribution in excess of one percent; or
- (9) Other similarly adverse outcomes.

There is one hydropower project located upstream of critical habitat Unit 6. Accordingly, we assessed the potential for a significant effect to energy supply, distribution, or use as relevant to this analysis in the final addendum to the economic analysis, reductions in electricity production in excess of 1 billion kilowatts per year or in excess of 500 megawatts of installed capacity.

The Gulf region derives a very small portion of its overall power supply from hydropower. Electricity supply and capacity data are collected and reported by the North American Reliability Council (NERC). Of its ten regional councils, the Southeastern Electrical Reliability Council (SERC) is the most contiguous with areas potentially affected by critical habitat for the Gulf sturgeon. The geographic area covered by the Southern section of SERC includes most of Alabama and Georgia, southeastern Mississippi, and the Florida panhandle. Another section of SERC, Entergy, covers southwestern Mississippi, the Gulf coast Louisiana, and portions of other States. Peninsular Florida is not covered by SERC, but by the Florida Reliability Coordinating Council (FRCC). Peak summer demand reached 43,736 megawatts for the Southern region and 25,747 megawatts for the Entergy region in 2001.

Only one dam located upstream and adjacent to the critical habitat Unit 6 supplies hydropower. Located near the Florida-Georgia border in Chattahoochee, Florida, the Jim Woodruff Dam is one of 23 hydropower sites operated by the USACE that generate power. The electric power and energy generated at Jim Woodruff Dam is marketed by the Federal Southeastern Power Administration for the wholesale energy market. Of the total installed