

capacity of 3,092 megawatts, the Jim Woodruff Dam represented 30 megawatts, or less than one percent of Southeastern Power Administration market capacity during fiscal year 1999. In terms of actual volume marketed, the facility provided 205 gigawatt hours during fiscal year 1999, or 3.6 percent of the Southeastern Power Administration total. Based on data from 1995, USACE estimated total electricity capacity in the Apalachicola-Chattahoochee-Flint (ACF) Basin to be 6,657 megawatts. Of this total, 652 megawatts represent hydropower capacity. Compared to 2001 Southern region peak summer demand, hydropower units located in the ACF Basin contribute a small percentage of total regional electricity demand.

In 2001, Florida had a summer peak demand of 38,285 megawatts out of a total summer peak capacity of 42,609 megawatts. Coal, natural gas, oil, and nuclear sources fuel most of the State's energy needs. Electricity derived from hydropower from the Jim Woodruff Dam can account for only a small fraction of Florida's statewide capacity.

The maximum installed capacity for Jim Woodruff Dam is 30 MW (30,000 KW). Therefore, even when viewed in the context of a worst-case scenario, in which implementation of section 7 of the Act results in significant operational changes, however unlikely, to this hydropower project, the total capacity is 30 MW (30,000 KW) of hydroelectricity, so the impact on these hydropower facilities could not exceed the 500 MW (500,000 KW) threshold.

Therefore, even in the worst case scenario, implementation of section 7 for the Gulf sturgeon will not result in a "reduction in electricity production in excess of 500 megawatts of installed capacity" or an "increase in the cost of energy production in excess of one percent." Consequently, this rule will not have a "significant adverse effect" on the supply, distribution, or use of energy, and no "Statement of Energy Effects" is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that Federal agencies funding, permitting, or authorizing other activities must ensure that their actions will not adversely affect the critical habitat.

(b) For the reasons described in the economic analysis and this final rule, this rule will not produce a Federal mandate on State, local, or tribal governments of \$100 million or greater in any year. The designation of critical habitat imposes no obligations on State or local governments. Therefore, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. Since the critical habitat includes only aquatic areas that are generally held in public trust, we believe that little or no private property is included in the designation. Based on current public knowledge of the species protection and the prohibition against take of the species both within and outside of the designated areas, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policies, we requested information from, and coordinated development of both the listing and the proposal to designate critical habitat with, appropriate State resource agencies in Louisiana, Mississippi, Alabama, and Florida. The designation of critical habitat for the Gulf sturgeon imposes no restrictions in addition to those currently in place, and, therefore, has little additional impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for

case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor of the Department of the Interior has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs that are essential for the conservation of the Gulf sturgeon. We have made every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burdens, and is clearly written, such that the risk of litigation is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collections associated with permits under the Act are covered by an existing OMB approval, and are assigned clearance No. 1018-0094, with an expiration date of July 31, 2004. Detailed information for Endangered Species Act documentation appears at 50 CFR 17. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The FWS has determined that it does not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted under section 4(a) of the Act. The FWS published a notice outlining its reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

The proposed rule stated that NMFS had determined that this action is categorically excluded from NEPA requirements. However, NMFS had not at that time finalized its NEPA analysis for this rule. In response to comments received on the proposed rule (see comment 16), and based on additional research and deliberation, NMFS has concluded that the FWS position is