

discounted to present value using a rate of 7 percent. Approximately 87 percent of these total costs are expected to result specifically from designation of critical habitat while the remainder are coextensive with the listing of these species. While a range of activities may be affected by designation of critical habitat for the species, approximately 85 percent of the total designation costs are expected to stem from private landowner Habitat Conservation Plans (HCPs) intended to mitigate impacts from development of private lands within critical habitat. HCP impacts result from administrative costs associated with the section 7 consultation process and related project modifications. Remaining costs are expected to stem from review of management plans (e.g., within Government Canyon State Natural Area and Camp Bullis), review of Clean Water Act permits, and participation in Partners for Fish and Wildlife projects on private lands.

A copy of the final economic analysis and supporting documents are included in our administrative record and may be obtained by contacting the Austin Ecological Services Office (*see ADDRESSES* section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this is a significant regulatory action because it may raise novel legal or policy issues. As required by the Executive Order, we 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 OMB for review.

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 a Federal 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). No regulatory flexibility analysis is required, however, if the head of an agency certifies that 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 final critical habitat designation for seven Bexar County invertebrates will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The economic analysis determined whether this critical habitat designation potentially affects a "substantial number" of small entities in counties supporting critical habitat areas. It also quantifies the probable number of small businesses likely to experience a "significant effect." SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, the economic analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA, including *Mid-Tex Electric Co-op., Inc. v. F.E.R.C.*, 773 F.2d 327 (D.C. Cir. 1985) and *American Trucking Associations, Inc. v. U.S. E.P.A.*, 175 F.3d 1027 (D.C. Cir. 1999).

The economic analysis examines the total estimated section 7 costs, including those impacts that may be "attributable coextensively" 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.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and 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 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. We apply the "substantial number" test individually to each industry to determine if certification is appropriate.

The economic analysis identifies land use activities within our proposed critical habitat designation for the seven invertebrate species that are expected to be affected by section 7 of the Act. The following land use activities were identified as being potentially impacted by section 7 (*i.e.*, requiring consultations or associated project modifications) under the "with section 7" scenario: Private residential and commercial development; issuance of National Pollution Discharge Elimination System permits by Texas Natural Resource Conservation Commission (TNRCC); development of Karst Management Plan for Camp Bullis; roadway expansions by Texas DOT; Campus expansion of UTSA; and Partners for Fish and Wildlife conservation projects on private lands.

Of the projects that are potentially affected by section 7 consultation for the invertebrates, Camp Bullis occurs exclusively on Federal lands and does not have third party/small entity involvement (*i.e.*, only the Federal action agency and the Service are expected to be involved). In addition, under Small Business Administration (SBA) guidelines, State governments are considered independent sovereigns, not small governments. As such, TNRCC,