

PART 246—QUALITY ASSURANCE

2. Section 246.101 is amended by adding a definition of “Replenishment part” to read as follows:

246.101 Definitions.

* * * * *

Replenishment part, as used in this subpart, means a repairable or consumable part, purchased after provisioning of that part, for—

- (1) Replacement;
- (2) Replenishment of stock; or
- (3) Use in the maintenance, overhaul, or repair of equipment.

3. Section 246.371 is added to read as follows:

246.371 Notification of potential safety issues.

(a) Use the clause at 252.246–7XXX, Notification of Potential Safety Issues, in solicitations and contracts for the acquisition of—

- (1) Replenishment parts identified as critical safety items;
- (2) Systems and subsystems, assemblies, and subassemblies integral to a system; or
- (3) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, and subassemblies integral to a system.

(b) Follow the procedures at PGI 246.371 for the handling of notifications received under the clause at 252.246–7XXX.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.246–7XXX is added to read as follows:

252.246–7XXX Notification of Potential Safety Issues.

As prescribed in 246.371(a), use the following clause:

Notification of Potential Safety Issues (XXX 2005)

(a) *Definitions.* As used in this clause—

Critical safety item means a part, subassembly, assembly, subsystem, installation equipment, or support equipment for a system that contains a characteristic, any failure, malfunction, or absence of which could cause a catastrophic or critical failure resulting in the loss of or serious damage to the system or an unacceptable risk of personal injury or loss of life.

Safety impact means the occurrence of death, permanent total disability, permanent partial disability, or injury or occupational illness requiring hospitalization; loss of a weapon system; or property damage exceeding \$200,000.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for the Contractor or another subcontractor under this contract.

(b) The Contractor shall provide notification, in accordance with paragraph (c) of this clause, of—

(1) All technical nonconformances for replenishment parts identified as critical safety items acquired by the Government under this contract; and

(2) All nonconformances or deficiencies that may result in a safety impact for systems, or subsystems, assemblies, subassemblies, or parts integral to a system, acquired by or serviced for the Government under this contract.

(c) The Contractor shall notify the Administrative Contracting Officer (ACO) and the Procuring Contracting Officer (PCO) within 72 hours after discovering or acquiring credible information concerning nonconformances and deficiencies described in paragraph (b) of this clause.

(1) The notification shall include—

- (i) A summary of the defect or nonconformance;
- (ii) A chronology of pertinent events;
- (iii) The identification of potentially affected items to the extent known at the time of notification;
- (iv) A point of contact to coordinate problem analysis and resolution; and
- (v) Any other relevant information.

(2) The Contractor may provide the notification in writing or telephonically. However, the Contractor shall provide a confirming written notification, that includes the information required by paragraph (c)(1) of this clause, to the ACO and the PCO within 72 hours after a telephonic notification. As further information becomes available, the Contractor shall also provide that information to the ACO and the PCO.

(d) The Contractor is responsible for the notification of potential safety issues occurring with regard to an item furnished by any subcontractor. However—

(1) The subcontractor shall provide the notification required by paragraph (c) of this clause to—

- (i) The Contractor or the appropriate higher-tier subcontractor; and
- (ii) The ACO and the PCO, if the subcontractor is aware of the ACO and the PCO for the contract; and

(2) The Contractor shall facilitate direct communication between the Government and the subcontractor as necessary.

(e) Notification of safety issues under this clause shall be considered neither an admission of responsibility nor a release of liability for the defect or its consequences. This clause does not affect any right of the Government or the Contractor established elsewhere in this contract.

(f) The Contractor shall include this clause, including this paragraph (f), in all subcontracts issued under this contract.

(End of clause)

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****RIN 1018–AT84****Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Arkansas River Basin Population of the Arkansas River Shiner**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis and draft environmental assessment, and notice of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the Arkansas River Basin population of the Arkansas River shiner (*Notropis girardi*) under the Endangered Species Act of 1973 (Act), as amended. The draft economic analysis finds that, over the next 20 years, costs associated with Arkansas River shiner conservation activities are forecast to range from \$9 to \$11 million per year. In constant dollars, the draft economic analysis estimates there will be an economic impact of \$198 million over the next 20 years. The greatest economic impacts are expected to occur to concentrated animal feeding operations, oil and gas production, and water management activities, in that order. Comments previously submitted on the October 6, 2004, proposed rule (69 FR 59859) during both the initial and extended comment periods (April 28, 2005, 70 FR 21987), need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final rule. We will hold three public informational sessions and hearings (see **DATES** and **ADDRESSES** sections).

DATES: Comments must be submitted directly to the Service (see **ADDRESSES** section) on or before August 31, 2005 of this document, or at the public hearings.

We will hold public informational sessions from 4 p.m. to 5:15 p.m., followed by a public hearing from 7 p.m. to 9 p.m., on the following dates:

1. August 15, 2005: Oklahoma City, Oklahoma;
2. August 17, 2005: Amarillo, Texas;
3. August 18, 2005: Liberal, Kansas.

ADDRESSES: Meetings: The public informational sessions and hearings will be held at the following locations:

1. Oklahoma City, Oklahoma: Conservation Education Center Auditorium, Oklahoma City Zoological Park, 2101 NE 50th Street, Oklahoma City, Oklahoma, 73111;

2. Amarillo, Texas: Auditorium, Texas A&M Agricultural Experiment Station, 6500 Amarillo Boulevard West, Amarillo, Texas, 79106; and

3. Liberal, Kansas: Meeting Rooms, Seward County Activities Center, 810 Stadium Road, Liberal, Kansas, 67901.

Disabled persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Jerry Brabander, Field Supervisor, Oklahoma Ecological Services Field Office, at the phone number and address below as soon as possible. In order to allow sufficient time to process requests, please call no later than 3 days before the hearing. Information regarding this proposal is available in alternative formats upon request.

If you wish to comment on the proposed rule, draft economic analysis, or draft environmental assessment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information by mail or hand-delivery to the Oklahoma Ecological Services Office, U.S. Fish and Wildlife Service, 222 South Houston, Tulsa, Oklahoma 74127-8909.

2. Written comments may be sent by facsimile to 918-581-7467.

3. You may send your comments by electronic mail (e-mail) to r2arshinerch@fws.gov. For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section below.

You may obtain copies of the draft economic analysis and draft environmental assessment by mail or by visiting our Web site at <http://ifw2es.fws.gov/Oklahoma/shiner.htm>. You may review comments and materials received, and review supporting documentation used in preparation of this proposed rule, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry Brabander, Field Supervisor, Oklahoma Office (telephone 918-581-7458; facsimile 918-581-7467).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the

scientific community, industry, or any other interested party concerning the proposed rule, the draft economic analysis, and the draft environmental assessment. On the basis of public comment, during the development of our final determination, we may find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from designation;

(2) Specific information on the distribution of the Arkansas River shiner, the amount and distribution of the species' habitat, and which habitat is essential to the conservation of the species, and why;

(3) Land-use designations and current or planned activities in the subject area and their possible impacts on the species or proposed critical habitat;

(4) Whether our approach to listing or critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(5) Any foreseeable economic, environmental, or other impacts resulting from the proposed designation of critical habitat or coextensively from the proposed listing, and in particular, any impacts on small entities or families;

(6) Whether the economic analysis identifies all State and local costs. If not, what other costs should be included;

(7) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the listing of the species or the designation of critical habitat;

(8) Whether the economic analysis correctly assesses the effect on regional costs associated with land- and water-use controls that derive from the designation;

(9) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation or coextensively from the listing; and

(11) Any information as to possible costs associated with instream flow

requirements for the shiner downstream of Sanford Dam.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Oklahoma Ecological Services Field Office at (918) 581-7458.

Background

On October 6, 2004 (69 FR 59859), we proposed to designate as critical habitat a total of approximately 2,002 kilometers (1,244 miles) of linear distance of rivers, including 91.4 meters (300 feet) of adjacent riparian areas measured laterally from each bank. This distance includes areas that we are proposing to exclude that are discussed below. The areas that we have determined to be essential to the conservation of the Arkansas River shiner include portions of the Canadian River (often referred to as the South Canadian River) in New Mexico, Texas, and Oklahoma, the Beaver/North Canadian River of Oklahoma, the Cimarron River in Kansas and Oklahoma, and the Arkansas River in Arkansas, Kansas, and Oklahoma.

In developing this proposal, we evaluated those lands determined to be essential to the conservation of the

Arkansas River shiner to ascertain if any specific areas would be appropriate for exclusion from the final critical habitat designation pursuant to section 4(b)(2) of the Act. On the basis of our preliminary evaluation, we believe that the benefits of excluding the Beaver/North Canadian River of Oklahoma and the Arkansas River in Arkansas, Kansas, and Oklahoma from the final critical habitat for the Arkansas River Shiner outweigh the benefits of their inclusion.

On September 30, 2003, in a complaint brought by the New Mexico Cattle Growers Association and 16 other plaintiffs, the U.S. District Court of New Mexico instructed us to propose critical habitat by September 30, 2004, and publish a final rule by September 30, 2005. The proposed rule was signed on September 30, 2004, and published in the **Federal Register** on October 6, 2004 (69 FR 59859). Additional background information is available in the October 6, 2004, proposed rule.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Act will prohibit adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We are announcing the availability of a draft economic analysis and draft environmental assessment for the proposal to designate certain areas as critical habitat for the Arkansas River shiner. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Costs related to conservation activities for the proposed Arkansas River shiner critical habitat pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately \$9 to \$11 million dollars on an annualized basis. The low end of this range assumes zero impact to private agricultural activities and lower-bound estimates for all other activities;

the high-end of this range assumes upper-bound estimates for private agriculture and all other activities. The total impact in constant dollars is \$198 million over the next 20 years. The total impacts in constant dollars are the following for each of the economic sectors impacted (from Exhibit ES-4a in executive summary of the draft economic analysis): \$7.3 to 20.4 million for administrative costs; \$31.8 million for water operations; \$28.6 to 57 million for oil and gas; \$68.7 million for CAFOs; \$3.6 million for Federal farm assistance; \$5.9 million for grazing; \$0.9 million for agricultural crops; \$0.1 to \$0.5 million for transportation; and \$9.3 million for recreation.

As noted in our proposed rule, in developing critical habitat designations, we have also recognized under section 4(b)(2) partnerships and conservation programs or efforts that provide a conservation benefit to the subject species. In the case of Arkansas River shiner, it is our intent to recognize future conservation efforts. In this regard we have met with the Arkansas River Shiner Coalition (Coalition), whose mission is to ease the regulatory burdens of designated critical habitat for its members and to work with the Service toward the eventual recovery of the Arkansas River shiner. The Coalition represents several agricultural and ranching associations, water service providers, groundwater conservation districts, and other groups in Texas, Oklahoma, and New Mexico. The Coalition has developed an Arkansas River shiner management plan and intends to submit it to us during the current comment period. If we receive a plan from the Coalition, we will evaluate the conservation measures being provided to or planned for the Arkansas River shiner when making our final determination of critical habitat, and we may exclude areas pursuant to section 4(b)(2) of the Act if we find that the benefits of their exclusion outweigh the benefits of their inclusion.

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, based on our draft economic analysis, it is not anticipated that the proposed designation of critical habitat for the Arkansas River shiner will result in an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget

(OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

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 effect 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 an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. As noted above, in our proposed rule we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and 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 economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as 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 proposed designation of critical habitat for the Arkansas River shiner would affect a substantial number of small entities, we considered the number of small entities affected within particular types of

economic activities (e.g., concentrated animal feeding operations, oil and gas, agriculture, livestock grazing, and recreation). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered 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 the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our draft economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. We evaluated small business entities in five categories: Concentrated animal feeding operations, oil and gas, agriculture, livestock grazing, and recreation. The following summary of the information contained in Appendix A of the draft economic analysis provides the basis for our determination.

Concentrated Animal Feeding Operations (CAFOs)

Arkansas River shiner conservation activities have the potential to affect approximately 67 of the 4,125 small animal feeding businesses (roughly 1.6 percent) located within States that contain proposed shiner habitat and impacted CAFOs (Oklahoma, Texas, and Kansas). The watersheds with highest potential impacts to small CAFOs are the Lower Canadian (Unit 1b of proposed critical habitat) and the Lower Cimarron-Skeleton (Unit 3 of proposed critical habitat). Impacts are possible in the form of additional compliance costs related to a number of potential requirements, including increased storage capacity in wastewater retention structures and various monitoring and testing activities. These compliance costs may lead to financial stress at up to 33 facilities. Upper-bound estimates of potential impacts result from conservative assumptions (that is, assumptions that are intended to

overstate rather than understate costs) regarding the number and type of project modifications required of CAFO facilities as summarized in Section 6 of the draft economic analysis.

Oil and Gas Production Activities

Project modifications to oil and gas activities resulting from Arkansas River shiner conservation activities will have minimal effects on small oil and gas and pipeline businesses in counties that contain proposed Arkansas River shiner habitat. Impacts are expected to be limited to additional costs of compliance for oil and gas projects. Assuming that each potentially impacted well and pipeline represent individual well and pipeline businesses, annual compliance costs are roughly 0.14 percent of estimated 1997 revenues for potentially impacted small oil and gas well production businesses and 0.09 percent of estimated 1997 revenues for potentially impacted small pipeline businesses in these counties. As noted in the draft economic analysis, 1997 revenue data is the most current available data from the United States Economic Census.

Agriculture

While Arkansas River shiner conservation activities have not impacted private crop production since the listing of the species in 1998, the draft economic analysis considers that farmers may make decisions that lead to reductions in crop production within proposed critical habitat. Section 7 of the draft economic analysis presents a scenario in which farmers choose to retire agricultural land from production in order to avoid section 9 take of the species ("take" means to harass, harm, pursue, or collect, or attempt to engage in any such conduct). The screening analysis estimates that up to 14 small farms in States that contain proposed Arkansas River shiner habitat could be impacted under this scenario. This represents a small percentage (less than one percent) of total farm operations in these States.

Livestock Grazing

Limitations on livestock grazing may impact ranchers in the region. As discussed in Section 7 of the draft economic analysis, Arkansas River shiner conservation activities could result in a reduction in the level of grazing effort within proposed Arkansas River shiner habitat on non-Federal lands. On non-Federal lands, however, impacts are uncertain, because maps describing the overlap of privately grazed lands and the proposed designation are not available (i.e., that

portion of each ranch which could be impacted by the designation). If each affected ranch is small, then approximately 20 to 43 ranches annually could experience losses in cattle grazing opportunities as a result of Arkansas River shiner conservation activities on non-Federal lands. This represents a small percentage (less than one percent for the upper-bound estimate) of beef cow operations in those States where habitat is proposed for designation.

Recreation

As detailed in Section 9 of the draft economic analysis, limitations on off road vehicle (ORV) use at the Rosita ORV area within Lake Meredith National Recreation Area in Hutchinson County, Texas, during the months of July to September may result in up to 23,299 lost visitor days annually. These lost visitor days represent 2.4 percent of the three-year average of total visitor trips to Lake Meredith National Recreation Area (2002 to 2004), and roughly 25 percent of annual ORV visitor trips to Rosita from 2000 to 2004. Recreation-related sales generated by small businesses in Hutchinson County, Texas, are estimated at \$88.5 million. Thus, the total annual impact of reduced consumer expenditure (\$897,000 to \$1.3 million annually) is equivalent to 1.0 to 1.5 percent of small business revenues of affected industries in Hutchinson County. While small business impacts are likely to be minimal at the county level, some individual small businesses may experience greater impacts. However, data to identify which businesses will be affected or to estimate specific impacts to individual small businesses are not available.

Based on this data we have determined that this proposed designation would not affect a substantial number of small businesses involved in concentrated animal feeding operations, oil and gas, agriculture, livestock grazing, and recreation. Further, we have determined that this proposed designation would also not result in a significant effect to the annual sales of those small businesses impacted by this proposed designation. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of this designation for a more detailed discussion of potential economic impacts to small business entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The proposed rule is considered a significant regulatory action under E.O. 12866 due to it potentially raising novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Appendix B of the draft economic analysis provides a detailed discussion and analysis of this determination. Specifically, three criteria were determined to be relevant to this analysis: (1) Reductions in crude oil supply in excess of 10,000 barrels per day (bbls); (2) reductions in natural gas production in excess of 25 million Mcf per year; and (3) increases in the cost of energy production in excess of one percent. The draft economic analysis determines that the oil and gas industry is not likely to experience “a significant adverse effect” as a result of Arkansas River shiner conservation activities. Therefore, this action is not a significant action 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), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments,” with two exceptions. It excludes “a condition of federal

assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding” and the State, local, or tribal governments “lack authority” to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) The economic analysis discusses potential impacts of critical habitat designation for the Arkansas River shiner including administrative costs, water management activities, oil and gas activities, concentrated animal feeding operations, agriculture, and transportation. The analysis estimates that annual costs of the rule could range from \$12.7 to \$16.3 million per year. Concentrated animal feeding operations (CAFOs), oil and gas production, and water management activities are expected to experience the greatest economic impacts related to shiner conservation activities, in that order of relevant impact. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers. For example, costs to CAFOs would be expected to be passed on to consumers in the form of price changes. Consequently, for the reasons discussed above, we do not believe that the designation of critical habitat for the Arkansas River shiner will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of proposing critical habitat for the Arkansas River shiner in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for the Arkansas River shiner does not pose significant takings implications.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 21, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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