



United States
Department of
Commerce

National Oceanic
and Atmospheric
Administration

National Marine
Fisheries Service

October 2008



Impacts Analysis for Critical Habitat Designation for the Endangered U.S. Distinct Population Segment of Smalltooth Sawfish (*Pristis pectinata*)

Southeast Regional Office
Protected Resources Division
263 13th Avenue South
St. Petersburg, Florida 33701
Ph. (727) 824-5312



Photo Source: Mote Marine Laboratory

LIST OF PREPARERS

NOAA National Marine Fisheries Service

| | |
|-----------------|--|
| Shelley Norton | Project Manager and Natural Resource Specialist |
| Cheryl Scannell | Attorney Advisor, NOAA's General Counsel's Office, Southeast Region |
| Robert Hoffman | Endangered Species Branch Chief, Protected Resources Division, Southeast Regional Office |
| Denise Johnson | Economist, Southeast Regional Office |

URS Corporation

| | |
|---------------------------------------|--------------------------------|
| Jason Weiss | Resource Economist |
| Monica Grasso, PhD | Ecological Economist |
| Jagadish Prakash, AICP | Senior Planner |
| Ted Murray | Environmental Scientist |
| Ivy Porpotage | Technical Editor |
| Mark Easley | Independent Technical Reviewer |
| Jeff Reidenauer, PhD, NEPA Specialist | Independent Technical Reviewer |
| David Van Horn, AICP | Independent Technical Reviewer |
| Tom Denes, PhD | Independent Technical Reviewer |

TABLE OF CONTENTS

| | |
|--|-----------|
| EXECUTIVE SUMMARY | V |
| ACRONYMS | VI |
| 1 INTRODUCTION..... | 1 |
| 1.1 Purpose and Structure of Report..... | 1 |
| 1.2 Summary of Preliminary ESA Section 3 Determinations | 1 |
| 1.3 Section 4(b)(2) Requirements..... | 3 |
| 1.3.1 The Statutory Language and Consideration of Potential Impacts of Designation | 3 |
| 1.3.2 Key Legal Interpretations | 4 |
| 1.4 Other Laws, Executive Orders, and Policies Applicable to Economic Impact Analysis | 5 |
| 1.5 Description of the Mangrove and Shallow Euryhaline Habitats | 6 |
| 1.5.1 Mangrove Ecosystems | 6 |
| 1.5.2 Shallow Euryhaline Habitats..... | 8 |
| 2 RELEVANT BASELINE INFORMATION | 10 |
| 2.1 Economic Baseline | 10 |
| 2.1.1 Unit 1: Charlotte Harbor Estuary Unit..... | 10 |
| 2.1.2 Unit 2: Ten Thousand Islands/Everglades Unit | 14 |
| 2.2 Existing Laws and Regulations that May Protect the Proposed Critical Habitat Features | 20 |
| 2.2.1 Federal Laws..... | 21 |
| 2.2.2 State and Local Laws..... | 24 |
| 2.2.3 Protected Areas | 27 |
| 2.3 Baseline Benefits and Values of the Critical Habitat | 30 |
| 3 ECONOMIC IMPACTS | 31 |
| 3.1 Economic Impact Analysis..... | 32 |
| 3.2 Section 7 Impacts | 33 |
| 3.2.1 Overview of Section 7 Process | 33 |
| 3.2.2 Activities That May Trigger Consultations | 35 |
| 3.2.3 Review of Future Management and Development Plans..... | 37 |
| 3.2.4 Projected Type and Number of Future Consultations..... | 38 |
| 3.3 Potential Project Modifications | 38 |
| 3.4 Estimated Section 7 Costs | 43 |
| 3.4.1 Administrative Costs..... | 44 |
| 3.4.2 Project Modification Costs | 45 |
| 4 NATIONAL SECURITY IMPACTS | 45 |
| 5 OTHER RELEVANT IMPACTS | 46 |
| 5.1 Education, Awareness, and Other General Benefits of the Protected Habitat That May Result from the Designation..... | 46 |
| 5.2 Conservation Benefits..... | 47 |
| 5.2.1 Benefits of the Designation to the Smalltooth Sawfish | 47 |
| 5.2.2 Benefits of Preventing Loss of Mangroves and Shallow Euryhaline Habitats | 47 |
| 5.3 Impact on Natural Resource Agencies with Existing Management Plans..... | 52 |
| 6 SYNTHESIS: IMPACTS OF INCLUDING THE IDENTIFIED AREAS IN THE PROPOSED CRITICAL HABITAT DESIGNATION FOR SMALLTOOTH SAWFISH..... | 54 |
| 6.1 Impacts in Unit 1: Charlotte Harbor Estuary Unit..... | 55 |
| 6.1.1 Economic Impacts..... | 55 |
| 6.1.2 National Security Impacts..... | 56 |

| | |
|---|-----------|
| 6.1.3 Other Relevant Impacts | 56 |
| 6.2 Impacts in Unit 2: Ten Thousand Islands/Everglades Unit | 56 |
| 6.2.1 Economic Impacts..... | 56 |
| 6.2.2 National Security Impacts..... | 57 |
| 6.2.3 Other Relevant Impacts | 57 |
| 7 REFERENCES..... | 59 |

LIST OF FIGURES

| | |
|---|----|
| Figure 1: Location Map of Charlotte County..... | 10 |
| Figure 2: Location Map of Lee County | 12 |
| Figure 3: Location Map of Collier County | 14 |
| Figure 4: Location Map of Monroe County..... | 16 |
| Figure 5: Location Map of Miami-Dade County | 19 |
| Figure 6: Protected Areas Included in the Critical Habitat Designation..... | 28 |
| Figure 7: Recreational Trips in Florida..... | 52 |

LIST OF TABLES

| | |
|---|----|
| Table 1: Loss of Mangrove Coverage in Critical Habitat Counties (1987–2000) | 7 |
| Table 2: Employment Profile by Industry Sector in Charlotte County (2005) | 11 |
| Table 3: Commercial Landings of Mangrove-Dependent Species, Charlotte County (2005) | 12 |
| Table 4: Employment by Industry Subsector in Lee County (2005) | 13 |
| Table 5: Commercial Landings of Mangrove-Dependent Species, Lee County (2005) | 14 |
| Table 6: Employment Profile by Industry Sector in Collier County (2005) | 15 |
| Table 7: Commercial Landings of Florida Mangrove-Dependent Species, Collier County (2005) | 16 |
| Table 8: Employment Profile by Industry Sector in Monroe County (2005) | 17 |
| Table 9: Commercial Landings of Mangrove-Dependent Species, Monroe County (2005) | 18 |
| Table 10: Employment Profile by Industry Sector in Miami-Dade County (2005) | 19 |
| Table 11: Commercial Landings of Mangrove-Dependent Species, Miami-Dade County (2005) | 20 |
| Table 12: Examples of Mangrove Ecosystem Services, Functional Scale, Benefits, and Valuation Methodologies | 30 |
| Table 13: Projected Future Actions Requiring Consultation in Unit 1 – Charlotte Harbor Estuary | 39 |
| Table 14: Projected Future Actions Requiring Consultation in Unit 2 – Ten Thousand Islands/Everglades (TTI/E) | 40 |
| Table 15: Potential Project Modifications for each Category of Activity | 41 |
| Table 16: Estimated Administrative Costs of Section 7 Consultation (Per Effort) | 44 |
| Table 17: Potential Project Modification Costs | 45 |
| Table 18: Florida Mangrove Amphibian and Reptile Species | 48 |
| Table 19: Florida Mangrove Mammal Species | 48 |
| Table 20: Florida Mangrove Bird Species | 49 |
| Table 21: Florida Mangroves Fish Species | 50 |
| Table 22: Major Resource Management Areas that Overlap with the Proposed Critical Habitat Designation for Smalltooth Sawfish | 53 |

EXECUTIVE SUMMARY

This report identifies and analyzes the impacts that may result from the proposed critical habitat designation for the U.S. distinct population segment (DPS) of smalltooth sawfish (*Pristis pectinata*). Section 4(b)(2) of the Endangered Species Act (ESA) requires that the Secretary of the Department of the Interior (DOI) or the Department of Commerce (DOC) designate critical habitat for listed species based on the best scientific data available, after taking into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat. We have determined that the physical and biological features essential to the conservation of the smalltooth sawfish found within the specific areas proposed for designation (which constitute nursery areas for sawfish) consist of red mangroves and shallow euryhaline habitats. These features provide nursery area functions to sawfish, such as predator protection and abundant food resources, which will allow juvenile sawfish to recruit into the adult population. The two areas containing the essential features are comprised of a total of 840,472 acres on the southwest coast of Florida. The first area is the Charlotte Harbor Estuary Unit and the second area is the Ten Thousand Islands/Everglades (TTI/E) Unit.

Economic impacts result through implementation of Section 7 of the ESA, which requires Federal agencies to ensure that any action they fund, authorize or carry out will not result in the destruction or adverse modification of critical habitat. The two proposed critical habitat units are both projected to have limited total future section 7 impacts, but the units will have different types of impacts. In the Charlotte Harbor Estuary Unit, the majority of the 76 projected future Section 7 consultations associated with the proposed critical habitat for the smalltooth sawfish are likely to address activities permitted by the U.S. Army Corps of Engineers (USACE), for projects such as private dock, pier and boat ramp construction in wetlands and navigable waterways, including dredging and disposal. The TTI/E Unit is projected to have only eight consultations over the first ten year period of implementing the designation, for which the USACE is expected to be the primary action agency. Although this unit largely overlaps the Everglades National Park due to limitations on habitat altering activities in the park, we project one consultation with DOI over the next 10 years as a result of this designation. We have identified predicted increases in future administrative costs of consultation for each unit associated with the proposed designation. In addition, we have identified the types of modifications that might be required for future categories of activities to avoid destroying or adversely modifying critical habitat. While costs for the various types of modifications have been estimated where possible, specific information on the location and size of future consultations requiring modifications for the critical habitat features is not available.

We contacted the Department of Defense (DOD) concerning potential national security impacts of the proposed designation. Responses indicate that based on the location of the critical habitat, consultations with respect to activities on DOD facilities or training are unlikely as a result of the proposed critical habitat designation. Therefore, no national security impacts are anticipated.

Three broad categories of other relevant impacts were considered: educational and awareness benefits, conservation benefits, and impacts on natural resources agencies. The designation may expand the awareness raised by the listing of the smalltooth sawfish, therefore encouraging people to alter their activities to protect the smalltooth sawfish and increasing the attractiveness of conducting recreational activities within the boundaries of the critical habitat. Implementing project modifications would provide conservation benefits by avoiding destruction or adverse modification of the critical habitat features, which would reduce the loss of the ecosystem and economic benefits that the mangrove and shallow water habitats provide to the sawfish as well as to society. Minimal impacts on federal agencies responsible for managing designated natural resource protection areas covered by the proposed designation are projected to result from the proposed designation; as stated above, only one consultation is projected for park management activities in the Everglades National Park over the next 10 years.

ACRONYMS

| | |
|--------|--|
| CERP | Comprehensive Everglades Restoration Project |
| CFR | Code of Federal Regulations |
| CVM | Contingent Valuation Method |
| CWA | Clean Water Act |
| CZMA | Coastal Zone Management Act |
| DOD | Department of Defense |
| DPS | Distinct Population Segment |
| EFH | Essential Fish Habitat |
| EIS | Environmental Impact Statement |
| EO | Executive Order |
| EPA | U.S. Environmental Protection Agency |
| ERP | Environmental Resource Permit |
| ESA | Endangered Species Act |
| F.A.C. | Florida Administrative Code |
| FCMP | Florida Coastal Management Program |
| FDEP | Florida Department of Environmental Protection |
| FDNR | Florida Department of Natural Resources (now FDEP) |
| FR | Federal Register |
| HDD | Horizontal Directional Drilling |
| ICW | Intercoastal Waterway |
| INRMP | Integrated Natural Resources Management Plan |
| MLLW | Mean Lower Low Water |
| NAICS | North American Industry Classification System |
| NMFS | National Marine Fisheries Service |
| NOAA | National Oceanic and Atmospheric Administration |
| NPDES | National Pollutant Discharge Elimination System |
| NPS | National Park Service |
| NWP | Nationwide Permit |
| OCRM | Office of Ocean and Coastal Resource Management |
| OMB | Office of Management and Budget |
| PCE | Primary Constituent Element |

| | |
|--------|---|
| PCTS | Public Consultation Tracking System |
| RFA | Regulatory Flexibility Act |
| RHA | Rivers and Harbors Act |
| RPA | Reasonable and Prudent Alternative |
| RPM | Reasonable and Prudent Measure |
| SIC | Standard Industrial Classification |
| SFWMD | South Florida Water Management District |
| SPGP | State Programmatic General Permit |
| TCM | Travel Cost Method (of valuation) |
| TMDL | Total Maximum Daily Load |
| TTI/E | Ten Thousand Islands/Everglades |
| USACE | U.S. Army Corps of Engineers |
| U.S.C. | U.S. Code |
| USFWS | U.S. Fish and Wildlife Service |
| USCG | U.S. Coast Guard |
| WTP | Willingness to Pay |

1 INTRODUCTION

This report contains the National Marine Fisheries Service (NMFS), Southeast Region's analysis of impacts of designating critical habitat under Section 4 of the Endangered Species Act (ESA) for the U.S. distinct population segment (DPS) of smalltooth sawfish (*Pristis pectinata*), which was listed as endangered under the ESA on April 1, 2003 (Volume 68 of the Federal Register 15674 [68 FR 15674]). It describes the applicable laws, court rulings, Executive Orders (EOs), and policies, as well as methods used and processes followed for the recommended designation.

1.1 Purpose and Structure of Report

This report documents NMFS' compliance with Section 4(b)(2) of the ESA regarding the impacts of designating critical habitat for the U.S. DPS of smalltooth sawfish. Specifically, Section 4(b)(2) requires consideration of the economic impact, impact on national security, and any other relevant impact, of specifying a particular area as critical habitat. Section 4(b)(2) also provides for discretion in excluding particular areas from a designation, but only if the benefits of excluding that area outweigh the benefits of including them in the designation, and exclusion would not result in the extinction of the species.

The remainder of the report is structured as follows. *Section 1.2* describes the preliminary determination of environmental features and specific areas for the smalltooth sawfish that meet the definition of critical habitat in Section 3 of the ESA, and which form the basis for identifying impacts that may result from the designation. *Sections 1.3* and *1.4* summarize Section 4(b)(2)'s requirements, as informed by previous designations and key court rulings, and the requirements of other laws, EOs, and policies that are applicable to evaluating the impacts of Federal regulatory actions. *Section 1.5* describes the mangrove, and shallow euryhaline habitats that would be included in the critical habitat designation. *Section 2* describes the regulatory and socioeconomic baselines applicable to the impact analysis prepared in support of this designation. *Sections 3, 4,* and *5* consider the economic, national security, and other relevant impacts of the proposed critical habitat designation. *Section 6* synthesizes the impacts resulting from the proposed critical habitat designation.

1.2 Summary of Preliminary ESA Section 3 Determinations

Section 3(5)(A) of the ESA defines critical habitat as:

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 1533 of this title, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of Section 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species. (16 U.S.C. §1532(5)(A))

The application of this definition for smalltooth sawfish is described in detail in the proposed rule to designate critical habitat for the species, which is incorporated by reference and summarized herein.

Smalltooth sawfish historically ranged from Texas to New York in the United States. The best available scientific information identifies the geographical area occupied by the smalltooth sawfish, at the time of listing (68 FR 15674, April 1, 2003), as peninsular Florida. The "geographical area occupied" in the definition of critical habitat is interpreted as the range of the species at the time of listing. The range was delineated from the data provided from encounter databases (Mote Marine Laboratory, 2004 and Poulakis and Seitz, 2004) and existing literature.

Within the species' occupied range, critical habitat is defined as specific areas containing physical and biological features essential to the species' conservation, and which may require special management

considerations or protection. Conservation is defined in the ESA as meaning “to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary” (16 U.S.C. §1532(3)). Features essential to a species’ conservation are those features without which the process of conservation would fail, and the species would not achieve recovery for purposes of the ESA. Although features forming the basis of a critical habitat designation must be essential to the species’ conservation, the features do not have to be the sole factor required to bring about recovery.

Based upon the best scientific data available, a key habitat-based conservation objective for this species is facilitating juvenile recruitment into the adult population by protecting nursery areas. Two specific areas were identified from available information on the density, site fidelity, and recurrent use of areas by juvenile sawfish that indicate the location of nursery areas for the species. NMFS (2008) identified two physical and biological features within these areas that are essential to the conservation of the species because they provide nursery area functions:

1. red mangroves and
2. shallow euryhaline habitats characterized by water depths between the mean high water line (MHW) and 3 feet (0.9 meters) measured at mean lower low water (MLLW).

For the purposes of the proposed rule, euryhaline is defined as wide ranging salinities. Euryhalinity is associated with the regime of freshwater fluctuation of salinity in tidally influenced areas. As described in the Federal Register notice proposing to designate critical habitat for the sawfish, no other specific areas or environmental features were identified as appropriate or necessary to define critical habitat for the smalltooth sawfish.

Unit 1 of proposed critical habitat is located in the vicinity of Charlotte Harbor Estuary and Unit 2 is located in the vicinity of Ten Thousand Islands/Everglades (TTI/E). These areas are located within Charlotte, Lee, Collier, Monroe, and Miami-Dade Counties, FL. Refer to Appendix A for details on the boundaries of the proposed areas.

The essential physical and biological features of red mangroves and shallow euryhaline habitats may require special management considerations or protection. Along the southeastern United States, including within the areas proposed as critical habitat, these features are experiencing significant impacts from human activities, such as agricultural and urban development, commercial development, dredge and fill activities, boating, and freshwater runoff. The impacts from these activities, combined with those from natural factors (i.e., major storm events), significantly affect the features essential for the conservation of the sawfish, and could impair their ability to provide nursery area services to sawfish.

Areas outside the geographical area occupied by the species are not being proposed for designation. At the present time, no areas outside of the occupied range have been identified as being essential to the conservation of the smalltooth sawfish. Identifying areas outside this range would require speculation about possible expansion of the species beyond their historic range. Moreover, beyond juvenile use of nursery areas, NMFS has not identified any habitats, areas, or environmental features that are used by the sawfish for other biological functions or behaviors. Thus, no areas outside the geographical area occupied by the species have been identified as essential for its conservation (50 CFR §424.12(e)).

Finally, Section 4(a)(3)(B) prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP), even if it is determined that such plans provide a benefit to the smalltooth sawfish (16 U.S.C. §1533(a)(3)(B)). No areas within the areas being proposed for designation are covered by relevant INRMPs.

1.3 Section 4(b)(2) Requirements

This section describes the statutory requirements of determining the impacts of designating areas as critical habitat. The interpretation of the statute is based on previous designations and key court opinions discussed in the sections that follow.

1.3.1 The Statutory Language and Consideration of Potential Impacts of Designation

Section 4(b)(2) of the ESA states:

The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) of this section on the basis of the best scientific data available and after taking into consideration the economic impact, impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. (16 U.S.C. §1533(b)(2))

Impacts may result from a critical habitat designation primarily through Section 7 of the ESA (16 U.S.C. 1536). Section 7(a)(2) requires each Federal agency to consult with NMFS (or the U.S. Fish and Wildlife Service [USFWS], as applicable) to ensure that any action they authorized, funded, or carried out by such agency will not likely destroy or adversely modify the designated critical habitat of listed species. Federal agencies are required to enter into consultation whenever a proposed action “may affect” listed species or designated critical habitat. If a proposed Federal action will likely destroy or adversely modify critical habitat, NMFS may recommend that the Federal agency or the project permittee or grantee implement a reasonable and prudent alternative (RPA) to the proposed action that would avoid destruction or adverse modification of critical habitat. Thus, impacts that may result from Section 7 consultations include the administrative costs of performing the consultation, costs of modifications to the proposed action in order to implement an RPA, and secondary costs to local or regional economies that result from the project modification. In addition, because critical habitat is by definition “essential to the conservation” of the species, conservation benefits to the listed species would be expected to result when the consultation process avoids destruction or adverse modification of its critical habitat, or avoids lesser adverse effects to critical habitat that may not rise to the level of adverse modification. Adverse impacts to other components of the ecosystem may similarly be avoided through consultation and implementation of RPAs. Designation and protection of critical habitat could result in project modifications that avoid adverse impacts to critical habitat and other components of the ecosystem may result in continued provision of benefits to user groups and economic sectors that utilize these habitats or ecosystem components.

Commenters on previous critical habitat designations have suggested that secondary costs to regional economies can also result from project modifications prescribed through Section 7 consultations. For example, some have been concerned that proposing critical habitat in areas of residential development would lead to reduced revenues and employment in construction-related firms, potential lost tax revenue associated with decreased residential development, and even impairment of regional growth (see Elliott D. Pollack and Company, 1999). In other designations, commenters have expressed concerns that critical habitat designation may require alteration in shipping channel dredging projects or commercial fishing activities to such an extent that it would result in regional economic impacts (see IEc, 2003). The project modifications for the categories of activities projected to require Section 7 consultations due to this proposed critical habitat designation are not expected to result in impacts at the scale of regional economies. The essential features are located along the shoreline and the proposed areas are not located in close proximity to major shipping channels. No commercial fishing activities that may require

modification to avoid destroying or adversely modifying the essential features were identified. Even project modifications recommended for large U.S. Army Corps of Engineers (USACE) permitted projects, like cable or pipeline installation, are not expected to result in secondary costs to regional economies. The potential project modifications for predicted future consultations may require project relocation, horizontal directional drilling, restrictions on road/utility corridors, use of alternative shoreline stabilization methods, limitations on dock widths and size, limitations/restrictions on modifying freshwater flow, and/or sediment and turbidity control measures, and/or conditions monitoring. These requirements are not expected to have large-scale economic impacts. Thus, secondary costs to regional economies are not likely to result from the proposed designation, and these impacts are not discussed further in this report.

Aside from the protections provided through Section 7, the ESA imposes no requirements or limitations on any entities or individuals as a result of critical habitat designation. Benefits to the smalltooth sawfish and its critical habitat may nonetheless result from a designation if State or local governments voluntarily enact protective legislation or regulations to complement the ESA protections. Similarly, a designation may raise public awareness and sensitivity to the status of listed species and the importance of designated critical habitat areas for conservation. As a result, individuals or other entities may voluntarily modify their activities to avoid harm to the species or habitat, contribute to conservation efforts, or seek to view the species in the wild. These benefits are further explored in *Section 5.1* of this report.

1.3.2 Key Legal Interpretations

The ESA does not specify methods for identifying and considering the impacts of critical habitat designation, and previous designations have used a variety of approaches based on the relevant circumstances of the species and habitat involved. As described below, the legislative history of the ESA informs these analyses, and several important court opinions have evaluated the legal sufficiency of these analyses, and clarified a number of important aspects of these statutory provisions. Section 4(b)(2) consists of two steps: an initial mandatory requirement that the agency consider certain impacts of critical habitat designation, and a discretionary step wherein the agency, informed by those considerations, may propose excluding particular areas from the designation. The ESA's legislative history explains the broad latitude afforded to NMFS in its consideration of impacts:

Economics and any other relevant impact shall be considered by the Secretary in setting the limits of critical habitat for such a species. The Secretary is not required to give economics or any other "relevant impact" predominant consideration in his specification of critical habitat...The consideration and weight given to any particular impact is completely within the Secretary's discretion. (H.R. Rep. No. 95-1625, at 16-17 (1978), 1978 U.S.C.C.A.N. 9453, 9466-67)¹

NMFS may then exclude particular areas that otherwise meet the definition of critical habitat from a designation, on a determination that the benefits of exclusion outweigh the benefits of including the area(s), and exclusion will not result in the species' extinction. This step is entirely discretionary, and does not require exclusion in any circumstances.

One court recently held that an agency's decision not to exercise its discretion to exclude areas is not subject to judicial review (*Home Builders Association of No. Calif. et al., v. U.S. Fish and Wildlife Service*, 2006 U.S. Dist. LEXIS 80255 at 45-46 (E.D. Cal., Nov. 1, 2006)). The court based this conclusion on the broad latitude provided to the agency in consideration of impacts described above, the discretionary nature of the exclusion provision, and the fact that the statute provides substantive standards only for the review of actual exclusions, i.e., the Secretary must determine that the benefits of exclusion

¹ The provisions requiring consideration of impacts were originally discussed as applicable only to critical habitat designations for invertebrate species. However, Section 4(b)(2), as enacted, is not limited to invertebrates, and NMFS and FWS have applied the provision to designations for vertebrate and invertebrate species.

outweigh the benefits of inclusion for particular areas. In contrast, the statute includes no substantive standards for a court to review a decision not to exclude areas from a designation.

Regarding consideration of economic impacts in the *Home Builders* case, the court noted that the term “impacts” is not specific and can be both positive and negative (*Id.* at 54, citing *Butte Env'tl. Council v. Norton*, slip op., 04-0096, at 12 (N.D. Cal. Oct. 28, 2004)); this logic applies equally to national security impacts and other relevant impacts.

1.4 Other Laws, Executive Orders, and Policies Applicable to Economic Impact Analysis

The consideration of impacts from a critical habitat designation is subject to other laws, EOs, and policies beyond the ESA. For example, the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) establishes a regulatory philosophy that agencies shall endeavor, consistent with the objectives of a proposed rule and applicable statutes, to fit regulatory requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. The RFA does not contain decision criteria per se; rather, the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of a proposed action to ensure that the agency considers alternatives that minimize expected significant adverse impacts of the rule on a substantial number of small entities, while meeting the goals and objectives of the proposed action. An Initial Regulatory Flexibility Act (IRFA) analysis was conducted for this proposed designation (Appendix B).

EO 12866, Regulatory Planning and Review, provides guidance to Federal agencies on the development and analysis of regulatory actions. The overarching regulatory philosophy established by EO 12866 is:

Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity), unless a statute requires another regulatory approach.

The EO includes a list of twelve principles for regulatory program planning and development of individual proposed rules that agencies should adhere to, to the extent permitted by law and where applicable. These principles include identification of market failures or other problems intended to be addressed by the regulation, and whether existing regulations or laws have created or contributed to the problem. If applicable, agencies are directed to identify non-regulatory alternatives to the problem. Where regulations are necessary or required by law, agencies must design regulations in the most cost-effective manner available to achieve the regulatory objective and impose the least burden on society. All costs and benefits of proposed regulations must be assessed. If feasible, agencies should specify performance objectives rather than behavior or compliance requirements. Agencies are directed to seek the views of appropriate State, local, and Tribal officials if such would be significantly or uniquely affected by a proposed rule. Regulations must not be inconsistent, incompatible, or duplicative with other Federal regulations, and must be simply drafted and easy to understand.

Office of Management and Budget (OMB) guidance to Federal agencies on implementing EO 12866 states that good regulatory analyses include three basic elements: (1) a statement of the need for the

proposed action, (2) an examination of alternative approaches, and (3) an evaluation of benefits and costs of the proposed action and the main alternatives (OMB Circular A-4, Sept. 17, 2003). Further, OMB Circular A-4 states that proper evaluation of the benefits and costs of regulations requires:

- Explaining how the actions required by the rule are linked to the expected benefits
- Identifying an appropriate baseline
- Identifying the expected undesirable side effects and ancillary benefits of the proposed rule

These regulatory principles have been integrated into the development of this proposed rule to the extent consistent with the mandatory duty to designate critical habitat, as defined in the ESA.

1.5 Description of the Mangrove and Shallow Euryhaline Habitats

While recovery strategies outlined in a draft Recovery Plan for the smalltooth sawfish include minimizing human interaction with the species and the injury and mortality associated with human interaction, a second objective that is addressed by this critical habitat designation is the protection of smalltooth sawfish juvenile nursery area habitats (NMFS, 2006). Red mangroves and shallow euryhaline habitats have been identified as the essential features of two specific areas proposed for designation, which function as nursery areas for juvenile smalltooth sawfish. The habitat structure provided by the mangrove root system and the shallow water depths offers refuge from predation and provides food for early life stages. This section describes the mangrove ecosystem in southern Florida, including estimated mangrove coverage remaining and the type and characteristics of mangroves and mangrove ecosystems, as well as shallow euryhaline habitats.

1.5.1 Mangrove Ecosystems

Estimates of Mangrove Cover

Anecdotal evidence suggests that mangrove loss in certain locations around Florida has been significant over the last 50 years, especially in estuarine systems, such as Tampa and Sarasota Bays and the Marco Island area in Lee County. However, few specific studies have tallied the losses of mangrove wetlands in Florida over time. Ueland (2005) notes that while there have been a number of previous estimates of mangrove cover in Florida, none of these estimates was specifically developed to track long term changes in mangrove coverage and there were differences in the methodology. Two estimates conducted in 1982, one by the Florida Marine Research Institute and the other by the Florida Fish and Wildlife Conservation Commission, differed in their estimate of Florida's mangrove coverage by 199,385 acres (Ueland, 2005).

In 2007, the Food and Agriculture Organization of the United Nations (FAO) published a paper that documents mangrove loss worldwide during the period from 1980 to 2005 (FAO, 2007). The FAO states that the most recent reliable estimate of mangrove coverage for the United States, which is based on a survey of mangrove experts, is 488,398 acres (197,648 hectares). Of the mangroves that occur in the United State, approximately 96 percent occur in Florida (Mendelssohn and McKee, 2000) and of the mangroves that occur in Florida, approximately 90 percent occur in south Florida within Collier, Lee, Miami-Dade, and Monroe counties (Odum and McIvor, 1990).

The FAO reports that, between 1980 and 1990, the United States (excluding U.S. Territories in the Caribbean) lost 86,486 acres of mangroves, and between 1990 and 2005 lost another 111,000 acres of mangroves, for a total loss of approximately 197,000 acres over a 25-year period (2007). Given that Florida has 96 percent of the total U.S. mangrove acreage, Florida may have lost as many as 189,000 acres of mangroves over this period depending on the actual loss of mangroves in other States.

Ueland (2005) employed Principal Components Analysis and band ratios coupled with a Bayesian classification scheme to study aerial photography to isolate and map mangrove dominated ecosystems in 14 south Florida counties. Using this methodology, Ueland compared coverage of mangroves in south Florida from 1987 to 2000. He estimated that 563,388 acres of mangroves existed in the 14-county area

in 1987 and by 2000 there were 512,842 acres remaining, which is a 9 percent (50,546 acre) decrease in mangrove coverage for the 13-year period.

Of the five counties that contain proposed smalltooth sawfish critical habitat, Monroe County lost the most mangroves in the 13-year timeframe, approximately 37,031 acres (12.2 percent), while Charlotte County gained 1,229 acres (5.9 percent) of mangroves (Table 1) (Ueland, 2005). Overall, the five-county area lost 40,452 acres (7.8 percent) of mangroves over a 13-year period.

Table 1: Loss of Mangrove Coverage in Critical Habitat Counties (1987–2000)

| COUNTY | 1987 ESTIMATE (acres)* | 2000 ESTIMATE (acres)* | % CHANGE |
|---------------|------------------------|------------------------|----------|
| Charlotte | 20,810 | 22,039 | 5.9 |
| Lee | 44,537 | 44,235 | -0.7 |
| Collier | 84,973 | 82,251 | -3.2 |
| Miami-Dade | 68,019 | 66,393 | -2.4 |
| Monroe | 303,549 | 266,518 | -12.2 |
| Totals | 521,888 | 481,436 | -7.8 |

*Source: Ueland, 2005

The greatest area of mangrove loss, in Monroe County, is in an area that falls within the borders of the Everglades National Park. Because this area is uninhabited, the cause of the large loss is not specifically known; however, some have hypothesized that drought has caused hypersaline conditions in this area that have led to the death of mangroves (Ueland, 2005). Mangrove loss in counties that are more urbanized than Monroe can generally be attributable to urbanization of coastal areas.

Mangrove Ecosystems

Mangroves can grow in a wide range of soil types, including heavy consolidated clays, unconsolidated silts, calcareous and mineral sands, coral rubble, and organic peats. Mangrove trees are resilient to high salinity levels, with some being found in areas with salinities close to 35 parts per thousand. The ideal temperature for mangroves is 20 degrees Celsius (°C) where fluctuations do not exceed 10°C. Mangroves cannot tolerate temperatures below freezing; the ideal average minimal temperature is no lower than 15°C.

Florida has four mangrove species: red mangrove (*Rhizophora mangle*), black mangrove (*Avicennia germinans*), white mangrove (*Laguncularia racemosa*), and buttonwood (*Conocarpus erectus*), which is classified as a mangrove or mangrove associate. The red mangrove's prop root system offers support and stability by supplying air to underlying roots, and traps mud and silt to increase the deposition of sediment around them. Their tolerance for high salinities allows this species to establish closer to open waters. Red mangrove bark is characterized by a high concentration of tannins. In Florida, red mangroves grow to a height of about 20 feet (Institute of Food and Agricultural Sciences, 2007).

The black and white mangroves are restricted to high intertidal zones generally protected from high wave energy. Both species have numerous pencil-like breathing tubes, called pneumatophores, which grow vertically from the mud and provide air to the underground and underwater roots. Black mangroves grow closer to the shore than white mangroves, where they are reached only by high tides. White mangroves generally grow more landward and are located in the southern regions of the State (Law and Army, 2007).

The distribution of the mangrove species along the coastal areas depends on the hydrology and topography. There are three major types of mangrove forests (Cintron et al., 1985):

1. **Fringe mangroves:** Fringe mangroves are characterized by their growth in protected areas and along canals, rivers, and lagoons. Red mangroves usually dominate. The shoreline tides generally cause an accumulation of organic debris in the dense prop root systems (Grasso, 1998).

2. **Riverine mangroves:** Riverine mangroves are often found several miles inland along coastal rivers and creeks. While the water table may be just below the surface, riverine mangroves can tolerate periods of dryness. They are subject to the effects of freshwater runoff from adjacent land areas, as well as water, sediments, and nutrients from the adjacent river (Grasso, 1998).
3. **Basin Mangroves:** Basin mangroves are found in areas isolated from tides, including inland depressions, basins, and drainage depressions. The water in these basins is often stagnant and may remain flooded for extended periods, which contributes to high soil salinity. Black mangroves often dominate (Grasso, 1998).

Mangroves do not need the presence of salt water to grow; however, their ability to tolerate widely varying levels of salinity allows them to establish several miles inland on tidally influenced freshwater rivers and in areas where high salinity levels limits the growth of many types of salt intolerant plants. In tidally influenced riverine systems, mangroves are able to out-compete freshwater vascular plants that do not have tolerance for salinity fluctuations. In basin or fringe conditions, mangroves are able to out-compete other halophytes because of efficient salt exclusion and excretion mechanisms. Given their wide tolerance for salinities, mangroves are an especially important habitat for many euryhaline organisms, like the smalltooth sawfish.

The root systems of Florida mangroves are thought to exclude salt through a reverse osmosis process. Water is drawn into the root through a membrane system by negative pressure in the xylem that is created by transpiration at the leaves (Scholander et al., 1965; Scholander 1968). This process excludes salt at the root membrane and allows mostly fresh water into the mangroves vascular system.

In Florida, red mangroves are limited by soil salinities above 60 to 65 parts per thousand (Cintron et al., 1978). Mangroves can be negatively affected by changes in salinity regimes. In riverine systems, excess discharges of freshwater may allow freshwater vegetation to out-compete mangroves. In basin or fringing mangrove communities, the exclusion of freshwater inputs or the restriction of saltwater flushing may lead to the buildup of lethal soil salinities.

Naturally occurring salt barrens are often found interspersed in mangrove ecosystems. Salt barrens are characterized by little or no vegetation and are fringed by high salt marsh vegetation and mangroves. These areas are generally located above high tide and are irregularly flushed with salt water. A combination of low seasonal rainfall, high temperatures, and high evaporation rates creates high soil salinities that cause mangrove death (Odum and McIvor, 1990). Mangroves growing directly adjacent to these areas tend to be stunted or have a “dwarf” growth form. Dwarf mangroves are also found in areas where tidal flushing has been unnaturally restricted and high evaporation rates have led to high soil salinities.

Mangroves are important sources of detrital nutrients to coastal waters. Detrital productivity varies by mangrove species and environmental factors, such as soil, fauna, the volume of water flow, and the ebb and flow of tidal fluctuations. The exchange of materials within the mangrove-estuarine ecosystem is controlled by tides and runoff. Leaf litter provides an important source of organic matter and nutrients that flow from the mangroves to estuarine waters. Increases in hydrologic energy result in increases in litter productivity, decomposition, and export (Grasso, 1999).

1.5.2 Shallow Euryhaline Habitats

In addition to mangroves, shallow euryhaline habitats in Florida have a valuable niche in the overall coastal ecosystem. These areas provide necessary refuge and foraging habitat for juvenile smalltooth sawfish and the seagrass, hardbottom, and soft-bottom communities found in these areas provide additional necessary ecosystem functions for the smalltooth sawfish and a wide variety of other saltwater organisms.

Inshore and nearshore seagrass beds are some of the most productive marine communities found in the world's oceans. These areas provide a nursery and feeding areas for many commercially important species found in Florida's waters. Macroalgae, epibenthic, and infaunal organisms live within seagrass communities and provide a food source for grazers and predators, such as drums (*Sciaenidae*), sea bass (*Serranidae*), grunts (*Pomadasyidae*), and snappers (*Lutjanidae*) that utilize seagrass communities (Livingston, 1990). In addition, invertebrates such as queen conch (*Strombus gigas*), pink shrimp (*Penaeus duorarum*), and spiny lobster (*Panulirus argus*) inhabit seagrass beds along with small crustaceans that live on epiphytes or in the sediments (Livingston, 1990).

Vermetid reefs are hardbottom structures found in intertidal areas seaward of the Ten Thousand Islands areas in Southwest Florida. These rare structures are constructed by worm-like gastropod mollusks and are generally anchored on old oyster bars. These reefs provide habitat for stone crab (*Menippe mercenaria*) and fish that utilize the reefs during high tides (Jaap and Hallack, 1990).

Soft-bottom habitats are comprised of sand, shell, and mud and are found throughout coastal areas of Florida. They are highly productive communities that are populated by benthic and epibenthic organisms and many types of fish. Benthic organisms that inhabit these areas, such as polychaete worms, amphipods, and insect larvae, are important parts of the food chain that fuel populations of higher organisms that live in the adjoining water column (Livingston 1990).

Soft-bottom habitats are critical for commercially important invertebrates including shrimp and crabs. Pink shrimp utilize seagrass beds as nurseries but as adults utilize sand, shell, and mud bottoms. Additionally, crabs, such as the stone crab and blue crab (*Callinectes sapidus*) spend part of their life cycles utilizing nearshore soft-bottom habitats (Livingston, 1990).

In general, shallow tidally influenced habitats are important during various life stages for almost all commercially important species that are harvested off the Gulf Coast of Florida. These areas remain highly productive because shallow depths allow sunlight to penetrate to the bottom, which in turn fuels algal, microfloral, and seagrass growth. These are some of the basic building blocks of the estuarine and nearshore food chain. These areas also serve as secondary refuge and resting areas for juvenile fish.

Much of Florida's coastal area can be characterized as euryhaline waters which is ecologically more than a transition zone between marine and freshwater habitats. Euryhaline waters are typically characterized by high biological productivity and high species diversity including the smalltooth sawfish, spiny lobster, and manatee. The inland euryhaline waters on the west coast of Florida are dominated by low energy waves from the Gulf of Mexico and distinctive salinity gradients that are a function of the amount of freshwater run-off present in a particular area. These systems are found in southwest and northwest Florida and often form lagoons behind barrier islands. The southern portion of euryhaline waters is dominated by mangrove habitats that slowly turns into marshlands moving northward up the coastline (Livingston, 1990).

Euryhaline waters provide an essential functional role within water ecosystems. They provide the bridge between the freshwater sections of drainage basins to the ocean which requires balancing complex physical, chemical, and biological interactions. One of the most important characteristics of euryhaline waters is the high level of microbes and other nutrients generated in the habitat, making it ideal nursery grounds (Livingston, 1990).

The salinity gradient affects important species interactions such as predator-prey relations and competition. If the salinity is highly variable (i.e., seasonal effects), then the area will be dominated by opportunistic species that are highly adaptable and accustomed to abrupt changes in their environment. Under such conditions predator-prey relations and competition have less of an effect on community population and distribution typically resulting in low species diversity. As the salinity gradient increases and becomes more stable, population distributions are more even. Species diversity increases, dominance

decreases, with predator-prey relations and competition having a greater effect in community dynamics (Livingston, 1990).

2 RELEVANT BASELINE INFORMATION

As discussed in *Section 1.3*, the impacts of proposed critical habitat designation must be evaluated in terms of the benefits and costs of the action measured against a relevant baseline. The baseline is the best assessment of the way the study area currently looks and will look in the future in the absence of the proposed designation. For this proposed critical habitat designation, the following sections characterize: 1) the relevant economic baseline, 2) existing laws and regulations that may protect the proposed critical habitat features, and 3) baseline benefits and values provided by the essential features that form the basis for the proposed designation.

2.1 Economic Baseline

This subsection summarizes key economic information for the counties in which activities may be affected by the proposed designation. Units 1 and 2 proposed for critical habitat designation comprise geographic regions in parts of five counties: Charlotte County, Lee County, Collier County, Monroe County, and Miami-Dade County. Understanding the current types and levels of economic activity in these counties provides context for evaluating the importance of impacts resulting from the proposed action. The most current economic data available by county for the proposed areas are presented.

2.1.1 Unit 1: Charlotte Harbor Estuary Unit

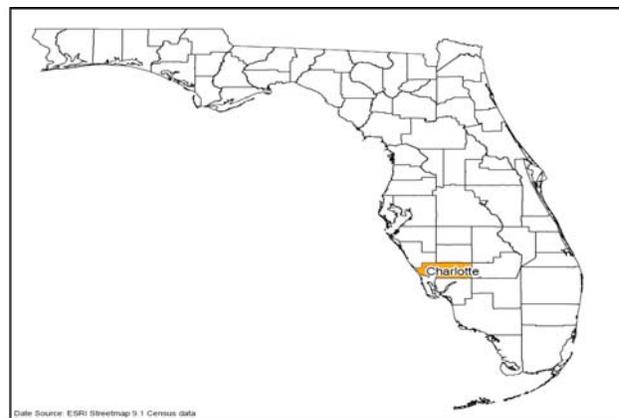
Unit 1 comprises portions of Charlotte and Lee Counties.

Charlotte County

Charlotte County is located along the southwestern portion of Florida's Gulf Coast (Figure 1). According to the U.S. Census Bureau, the county has a total area of 859 square miles (2,225 square kilometers). Nearly 81 percent (694 square miles) of the total area is land and the remaining 19 percent (166 square miles) is water. Major cities in the County include Punta Gorda, Charlotte Harbor, Englewood, Rotonda, and Solana.

Based on U.S. Census Bureau estimates, the total population of the county increased from 141,267 in July 2000 to 158,438 persons in April 2006; an increase of 16,811 persons (12.1 percent) over the 6-year period. In 2006, the total number of occupied housing units was reported to be 71,026, an increase of 11 percent over 2000 levels. The homeowner vacancy rate in 2000 was reported to be nearly 20 percent within the county.

Median household income in 2005 was reported to be \$39,031, and 10 percent of the county population lived below the poverty level, in comparison to the statewide median household income of \$42,433 and poverty rate of 13 percent.



Source: ESRI Streetmaps 9.1 Census Database

Figure 1: Location Map of Charlotte County

The southwestern seaboard of the Florida coast has historically been home to many popular tourist destinations. Some of these include the Everglades National Park, Cypress National Preserve, and the "Paradise Coast." In general, the tourism sector, which has been a popular revenue generating industry

sector within the local economy, is supported by activities in other sectors such as retail trade, construction, and real estate.

As presented in Table 2, the retail trade and the health care and social assistance sectors were the two largest employment sectors in the county in 2005. Other major employment sectors in the county include construction and the accommodation and food services sector.

Table 2: Employment Profile by Industry Sector in Charlotte County (2005)

| NAICS Code ^a | Industry Code Description | Non-Employer Establishments ^b | Non-Employer Receipts (\$1,000) ^c | Employer Establishments ^d | Number of Employees | Annual Payroll (\$1,000) ^e |
|-------------------------|---|--|--|--------------------------------------|---------------------|---------------------------------------|
| 11 | Agriculture, Forestry, Fishing and Hunting | 181 | 7,289 | 1 | 0-19 | * |
| 21 | Mining | D | D | 3 | 20-99 | * |
| 22 | Utilities | 17 | 637 | 8 | 64 | 2,546 |
| 23 | Construction | 1,633 | 151,315 | 709 | 4,316 | 149,872 |
| 31 | Manufacturing | 116 | 13,634 | 72 | 652 | 24,737 |
| 42 | Wholesale Trade | 190 | 12,876 | 119 | 615 | 22,903 |
| 44 | Retail Trade | 937 | 61,916 | 580 | 8,611 | 187,792 |
| 48 | Transportation and Warehousing | 430 | 23,336 | 73 | 286 | 9,081 |
| 51 | Information | 116 | 2,885 | 50 | 646 | 27,770 |
| 52 | Finance and Insurance | 384 | 24,314 | 238 | 1,456 | 63,614 |
| 53 | Real Estate and Rental and Leasing | 2,337 | 141,358 | 365 | 1,002 | 30,698 |
| 54 | Professional, Scientific, and Tech. Serv. | 1,253 | 51,705 | 354 | 1,888 | 81,838 |
| 56 | Admin, Support, Waste Mgt, Remediation Services | 912 | 30,892 | 254 | 1,621 | 35,859 |
| 61 | Educational Services | 126 | 1,521 | 23 | 166 | 3,676 |
| 62 | Health Care and Social Assistance | 582 | 32,818 | 455 | 7,951 | 289,394 |
| 71 | Arts, Entertainment and Recreation | 402 | 10,833 | 46 | 547 | 8,726 |
| 72 | Accommodation and Food Services | 140 | 19,909 | 225 | 4,011 | 49,593 |
| 81 | Other Services (Except Public Adm.) | 1,638 | 58,645 | 348 | 1,796 | 33,801 |
| 99 | Unclassified Establishments | * | * | 10 | 20-99 | * |
| TOTAL | | 22,790 | 1,291,841 | 3,938 | 35,792 | 1,028,591 |

* Zero in 2005 County Business Patterns

^a The U.S., Canada, and Mexico developed the North American Industry Classification System (NAICS) as the new industry classification system, which replaces the U.S. Standard Industrial Classification (SIC) system to provide comparable statistics across the three countries.

^b A "non-employer firm" is defined as one that has no paid employees, has annual business receipts of \$1,000 or more (\$1 or more in the construction industries), and is subject to Federal income taxes. Most non-employers are self-employed individuals operating very small unincorporated businesses, which may or may not be the owner's principal source of income.

^c "Receipts" (net of taxes) are defined as the revenue for goods produced, distributed, or services provided, including revenue earned from premiums, commissions and fees, rents, interest, dividends, and royalties. Receipts exclude all revenue collected for local, State, and Federal taxes.

^d "Employer establishments" consist of full- and part-time employees, including salaried officers and executives of corporations, who were on the payroll in the pay period including March 12. Included are employees on sick leave, holidays, and vacations; not included are proprietors and partners of unincorporated businesses.

^e "Total annual payroll" includes all forms of compensation, such as salaries, wages, commissions, bonuses, vacation allowances, sick-leave pay, and the value of payments in-kind (e.g., free meals and lodgings) paid during the year to all employees.

D Withheld to avoid disclosing data for individual businesses; data are included in broader industry totals.

Source: U.S. Census Bureau, 2005 County Business Patterns

Commercial and recreational fishing is a component of the economy in Charlotte County related to the ecosystem services provided by the resources in the proposed designated area. In 2005, commercial fishermen in Charlotte County landed a total of 51,946,000 pounds of fish that inhabit mangroves during their life cycle (Table 3). The estimated dockside value of the catch was \$24,064,000.

Table 3: Commercial Landings of Mangrove-Dependent Species, Charlotte County (2005)

| Group/(Species) | Pounds (1,000) | Value (\$1,000) |
|--|-------------------|--------------------|
| Jacks (<i>Caranx species</i>) | 37,090 | 21,944 |
| Spotted Seatrout (<i>Cynoscion nebulosus</i>) | 252 | 450 |
| Atlantic Sheepshead (<i>Archosargus probatocephalus</i>) | 14,242 | 986 |
| Gray Mangrove Snapper (<i>Lutjanus griseus</i>) | 362 | 684 |
| Total | 51,946 | 24,064 |

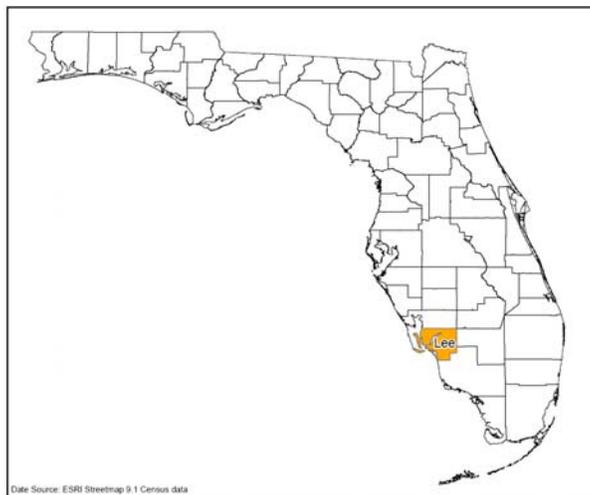
Source: NMFS SERO Logbook Data

Lee County

Lee County is located to the south of Charlotte County along the southwestern portion of Florida's Gulf Coast (Figure 2). Lee County has a total area of 1,212 square miles (3,139 square kilometers) of which 66 percent (804 square miles) is land and 34 percent (408 square miles) is water (U.S. Census Bureau). Major cities in the county include Cape Coral and Fort Myers.

As reported by the 2000 U.S. Census, the total population in the county was 440,888 persons. The population estimate for 2006 was 571,344; an increase of 29.5 percent over the 6-year period. In 2000, the total number of housing units in the county was reported to be 188,599 units; that number increased to 248,128 units in 2006. Median household income reported in 2005 was \$46,053, and 10 percent of the county population lived below the poverty level, in comparison to the statewide median household income of \$42,433 and poverty rate of 13 percent. The homeowner vacancy rate in the county in 2000 was reported to be 23 percent of the total available housing stock.

As presented in Table 4, the retail trade and construction sectors were the two largest employment sectors in the county in 2005. Other major employment sectors in the county include the accommodation and food services and health care and social assistance sectors.



Source: ESRI Streetmaps 9.1 Census Database

Figure 2: Location Map of Lee County

Table 4: Employment by Industry Subsector in Lee County (2005)

| NAICS Code | Industry Code Description | Non-Employer Establishments | Non-Employer Receipts (\$1,000) | Employer Establishments | Number of Employees | Annual Payroll (\$1,000) |
|--------------|---|-----------------------------|---------------------------------|-------------------------|---------------------|--------------------------|
| 11 | Agriculture, Forestry, Fishing and Hunting | 543 | 29,608 | 19 | 97 | 3,274 |
| 21 | Mining | 267 | 15,343 | 9 | 273 | 12,241 |
| 22 | Utilities | 42 | 1,833 | 26 | 847 | 53,885 |
| 23 | Construction | 5,925 | 479,388 | 2,589 | 27,697 | 1,082,658 |
| 31 | Manufacturing | 412 | 24,637 | 407 | 7,190 | 284,978 |
| 42 | Wholesale Trade | 752 | 65,428 | 666 | 5,915 | 262,490 |
| 44 | Retail Trade | 3,300 | 194,052 | 2,336 | 34,047 | 850,441 |
| 48 | Transportation and Warehousing | 2,780 | 152,236 | 370 | 3,447 | 106,708 |
| 51 | Information | 458 | 2,885 | 221 | 3,985 | 184,638 |
| 52 | Finance and Insurance | 1,995 | 137,972 | 1,019 | 6,745 | 344,057 |
| 53 | Real Estate and Rental and Leasing | 9,989 | 732,581 | 1,498 | 6,265 | 237,077 |
| 54 | Professional, Scientific, and Tech. Serv. | 5,395 | 272,891 | 1,710 | 9,404 | 435,253 |
| 56 | Admin, Support, Waste Mgt, Remediation Services | 3,746 | 115,723 | 1,152 | 14,845 | 545,934 |
| 61 | Educational Services | 626 | 11,252 | 102 | 1,459 | 51,023 |
| 62 | Health Care and Social Assistance | 2,191 | 93,589 | 1,282 | 24,406 | 939,521 |
| 71 | Arts, Entertainment and Recreation | 1,668 | 55,298 | 259 | 4,790 | 98,941 |
| 72 | Accommodation and Food Services | 610 | 115,174 | 1,004 | 21,661 | 313,259 |
| 81 | Other Services (Except Public Adm.) | 7,068 | 263,405 | 1,403 | 8,451 | 196,744 |
| 99 | Unclassified Establishments | * | * | 18 | 29 | 620 |
| TOTAL | | 47,767 | 2,780,974 | 16,090 | 181,553 | 6,003,742 |

* Zero in 2005 County Business Patterns

Source: U.S Census Bureau, 2005 County Business Patterns

The composition of the construction industry by subsector indicates that a majority of the employer establishments (68 percent) and non-employer firms (80 percent) are “Specialty Trade Contractors.” “Construction of Buildings” was the second largest construction industry subsector, followed by “Heavy and Civil Engineering Construction” and “Other Heavy and Civil Engineering Construction” (NAICS Code 2379). The “Other Heavy and Civil Engineering Construction” subsector includes marine construction projects such as breakwater, dock, pier, jetty, seawall and harbor construction, and dredging.

Commercial and recreational fishing is a component of the economy in Lee County related to the ecosystem services provided by the resources in the proposed designated area. In 2005, commercial fishermen in Lee County landed a total of 92 million pounds of fish that inhabit mangroves during their life cycle. The estimated dockside value of the catch was \$83,886,000 (Table 5).

Table 5: Commercial Landings of Mangrove-Dependent Species, Lee County (2005)

| Group/(Species) | Pounds (1,000) | Value (\$1,000) |
|---|-------------------|--------------------|
| Jacks (<i>Caranx species</i>) | 39,269 | 21,583 |
| Grunts (<i>Haemulon species</i>) | 323 | 273 |
| Spotted Seatrout (<i>Cynoscion nebulosus</i>) | 12,168 | 24,249 |
| Atlantic Sheepshead (<i>Archosargus probatocephala</i>) | 33,010 | 21,771 |
| Gray Mangrove Snapper (<i>Lutjanus griseus</i>) | 7,336 | 16,010 |
| Total | 92,106 | 83,886 |

Source: NMFS SERO Logbook Data

2.1.2 Unit 2: Ten Thousand Islands/Everglades Unit

Unit 2 comprises portions of Collier, Monroe and Miami-Dade Counties.

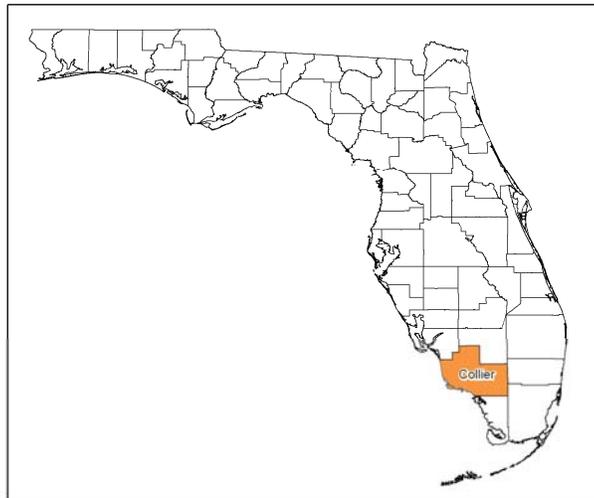
Collier County

Collier County is located at the southern end of Florida's Gulf Coast (Figure 3). According to the U.S. Census Bureau, the county has a total area of 2,305 square miles (5,970 square kilometers). Nearly 88 percent (2,025 square miles) of the area is covered by land and the remaining 12 percent (280 square miles) is water. Major cities in the county include Everglades City, Marco Island, and Naples.

Collier County is the sixth most populous county in the State. Based on U.S. Census Bureau estimates, the total population of the county increased from 251,154 persons in July 2000 to 314,649 persons in April 2006, representing an increase of 25.3 percent over the 6-year period. An increase in population has led to a corresponding increase in the number of housing units within the county. In 2006, the total number of occupied housing units was reported to be 120,963: a 17.5 percent increase over 2000 levels. The homeowner vacancy rate in 2000 was reported to be 4.8 percent.

Median household income in 2005 was reported to be \$52,179, and 9.6 percent of the county population lived below the poverty level, in comparison to the statewide median household income of \$42,433 and poverty rate of 13 percent.

As presented in Table 6, the retail trade and the accommodation and food services sectors were the two largest employment sectors in the county in 2005. Other major employment sectors in the county include the construction and the health care and social assistance sectors.



Source: ESRI Streetmaps 9.1 Census Database

Figure 3: Location Map of Collier County

Table 6: Employment Profile by Industry Sector in Collier County (2005)

| NAICS Code | Industry Code Description | Non-Employer Establishments | Non-Employer Receipts (\$1,000) | Employer Establishments | Number of Employees | Annual Payroll (\$1,000) |
|--------------|--|-----------------------------|---------------------------------|-------------------------|---------------------|--------------------------|
| 11 | Agriculture, Forestry, Fishing, and Hunting | 629 | 28,215 | 15 | 2,365 | 47,919 |
| 21 | Mining | 245 | 16,739 | 7 | 20-99 | 0 |
| 22 | Utilities | 23 | 1,779 | 11 | 100-249 | 0 |
| 23 | Construction | 3,085 | 281,655 | 1,560 | 16,455 | 686,260 |
| 31 | Manufacturing | 274 | 19,640 | 237 | 2,732 | 106,258 |
| 42 | Wholesale Trade | 452 | 51,267 | 393 | 2,998 | 128,410 |
| 44 | Retail Trade | 1,675 | 116,580 | 1,492 | 20,544 | 544,697 |
| 48 | Transportation and Warehousing | 1,506 | 92,456 | 229 | 1,662 | 55,158 |
| 51 | Information | 324 | 10,406 | 118 | 1,515 | 65,724 |
| 52 | Finance and Insurance | 1,386 | 156,412 | 644 | 4,266 | 308,332 |
| 53 | Real Estate and Rental and Leasing | 6,536 | 554,148 | 1,064 | 3,376 | 156,732 |
| 54 | Professional, Scientific, and Technical Services | 4,049 | 272,424 | 1,253 | 5,138 | 282,038 |
| 55 | Management of Companies and Enterprises | 0 | 0 | 26 | 418 | 42,148 |
| 56 | Admin, Support, Waste Management, Remediation Services | 2,170 | 87,122 | 765 | 6,536 | 171,405 |
| 61 | Educational Services | 408 | 7,178 | 76 | 1,651 | 81,882 |
| 62 | Health Care and Social Assistance | 1,351 | 71,590 | 816 | 13,406 | 557,880 |
| 71 | Arts, Entertainment, and Recreation | 1,134 | 38,102 | 176 | 5,972 | 180,783 |
| 72 | Accommodation and Food Services | 344 | 49,297 | 677 | 16,638 | 279,205 |
| 81 | Other Services (Except Public Administration) | 3,973 | 152,269 | 917 | 5,620 | 129,945 |
| 99 | Unclassified Establishments | 0 | 0 | 28 | 57 | 1,115 |
| TOTAL | | 29,564 | 2,007,279 | 10,504 | 111,524 | 3,825,911 |

* Zero in 2005 County Business Patterns

Source: U.S Census Bureau, 2005 County Business Patterns

The retail trade and accommodation and food services sectors are considered components of the tourism sector. Popularly known as the “Paradise Coast,” Collier County is home to several tourist destinations and includes attractions for all age groups year round. Based on information reported by the County Tourism Department, more than 1.4 million persons visited the county in 2005. The visitors spent over \$713 million in the county, resulting in total economic impacts (direct and indirect) of over \$1.06 billion (Collier County, 2007). Tourist revenues have resulted in an estimated tax savings of \$518 per resident and financial benefits to the county of nearly \$60 million in sales tax revenue (Tourism Development Council, 2007).

Commercial and recreational fishing is a component of the economy in Collier County related to the ecosystem services provided by the resources in the proposed designated area. In 2005, there were 191 non-employer firms with annual receipts of \$7.5 million in the fishing industry subsector (NAICS 1141), which represent nearly 1 percent of all non-employer firms and 0.4 percent of annual receipts for all non-employer firms in the county. As presented in Table 7, in 2005 commercial fishermen in Collier County landed a total of 4,826,000 pounds of fish that inhabit mangroves during their life cycle. The estimated dockside value of the catch was \$4,154,000.

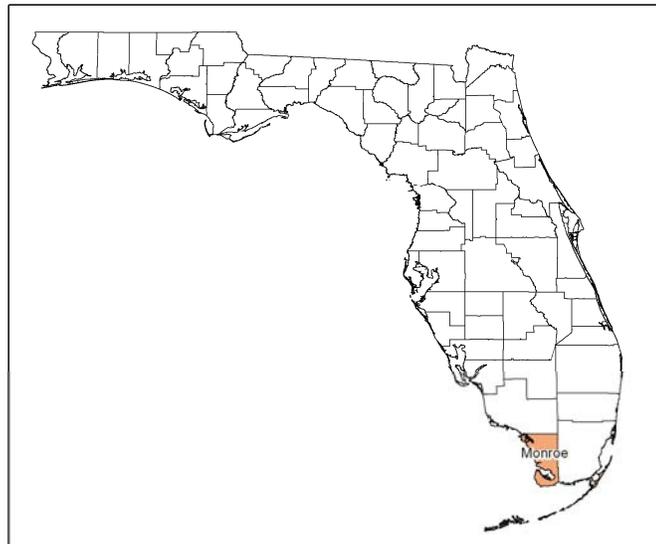
Table 7: Commercial Landings of Florida Mangrove-Dependent Species, Collier County (2005)

| Group (Species) | Pounds (1,000) | Value (\$1,000) |
|--|----------------|-----------------|
| Jacks (<i>Caranx</i> spp.) | 3,243 | 2,031 |
| Grunts (<i>Haemulon</i> spp.) | - | - |
| Spotted seatrout (<i>Cynoscion nebulosus</i>) | - | - |
| Atlantic sheepshead (<i>Archosargus probatocephalus</i>) | 810 | 454 |
| Gray mangrove snapper (<i>Lutjanus griseus</i>) | 773 | 1,669 |
| Schoolmaster snapper (<i>Lutjanus apodus</i>) | - | - |
| Total | 4,826 | 4,154 |

Source: NMFS Southeast Regional Office Logbook Data

Monroe County

Monroe County is the southernmost county in Florida and the United States (Figure 4). It has a total area of 3,737 square miles (9,679 square kilometers), with approximately 27 percent land and the remaining 73 percent water (U.S. Census Bureau). The county includes the Florida Keys and portions of Big Cypress National Preserve and Everglades National Park. The Florida Keys are a series of islands that extend over 220 miles in length and make up the third largest barrier reef ecosystem in the world, and the only one of its kind in the country. The State of Florida has designated the Florida Keys as an Area of Critical State Concern to protect the area's ecological richness, cultural significance, and environmentally sensitive nature (Florida Statute 1986; Florida Administrative Code [F.A.C.] §28-29, 1975). The county has only one highway, U.S. Highway 1. Commercial activities and residential development are mostly concentrated along that route (National Research Council, 2002). Among the county's cities are Key West, Key Largo, Big Pine Key, Marathon, and Plantation Key.



Source: ESRI Streetmaps 9.1 Census Database

Figure 4: Location Map of Monroe County

More than 99.9 percent of the county's population lives on the Florida Keys. According to U.S. Census Bureau estimates, the population of the county decreased from 79,589 in 2000 to 74,737 in July 2006; a decrease of nearly 6.5 percent over the 6-year period. During that period, there was a natural increase in population of 195 (4,642 births less 4,447 deaths) coupled with a net out-migration of 4,668 persons

leaving the county (2,612 net international migration less 7,280 net internal out-migration). The number of housing units increased from 51,617 in 2000 to 52,911 in 2005, an increase of 2.5 percent. Median household income in 2005 was \$49,040 and 9.8 percent of the county population lived below the poverty level, in comparison to the statewide median household income of \$42,433 and poverty rate of 13 percent.

As presented in Table 8, the accommodation and food services and the retail trade sectors were the two largest employment sectors in the county in 2005. Other major employment sectors in the county include the health care and social assistance and the construction sectors.

Table 8: Employment Profile by Industry Sector in Monroe County (2005)

| NAICS Code | Industry Code Description | Non-Employer Establishments | Non-Employer Receipts (\$1,000) | Employer Establishments | Number of Employees | Annual Payroll (\$1,000) |
|--------------|---|-----------------------------|---------------------------------|-------------------------|---------------------|--------------------------|
| 11 | Agriculture, Forestry, Fishing, and Hunting | 992 | 34,476 | 16 | 20-99 | * |
| 21 | Mining | 5 | 160 | 1 | 0-19 | * |
| 22 | Utilities | 9 | 1,254 | 2 | 100-249 | * |
| 23 | Construction | 1,177 | 82,123 | 359 | 1,693 | 55,733 |
| 31 | Manufacturing | 107 | 5,337 | 80 | 338 | 9,652 |
| 42 | Wholesale Trade | 136 | 15,495 | 112 | 480 | 18,964 |
| 44 | Retail Trade | 601 | 44,847 | 723 | 6,422 | 145,298 |
| 48 | Transportation and Warehousing | 393 | 19,220 | 141 | 942 | 25,076 |
| 51 | Information | 91 | 3,781 | 53 | 504 | 21,220 |
| 52 | Finance and Insurance | 301 | 28,942 | 152 | 953 | 38,252 |
| 53 | Real Estate and Rental and Leasing | 1,766 | 154,010 | 355 | 1,031 | 30,557 |
| 54 | Professional, Scientific, and Technical Services | 1,219 | 68,691 | 334 | 1,320 | 51,592 |
| 55 | Management of Companies and Enterprises | 0 | 0 | 6 | 91 | 5,136 |
| 56 | Admin, Support, Waste Mgt, and Remediation Services | 895 | 33,503 | 192 | 796 | 21,627 |
| 61 | Educational Services | 104 | 2,520 | 33 | 222 | 6,860 |
| 62 | Health Care and Social Assistance | 421 | 21,970 | 214 | 2,373 | 97,625 |
| 71 | Arts, Entertainment, and Recreation | 866 | 41,944 | 135 | 1,103 | 24,086 |
| 72 | Accommodation and Food Services | 255 | 41,226 | 523 | 10,852 | 210,466 |
| 81 | Other Services (Except Public Adm.) | 1,362 | 43,583 | 308 | 1,331 | 29,204 |
| 99 | Unclassified Establishments | 0 | 0 | 7 | 0 - 19 | * |
| TOTAL | | 10,700 | 643,082 | 3,746 | 30,631 | 791,348 |

* Zero in 2005 County Business Patterns

Source: 2005 County Business Patterns, U.S. Census Bureau

The retail trade and the accommodation and food services sectors are principle components of tourism, and tourism is the major industry of Monroe County. Tourism, directly and indirectly, contributed \$2.2

billion to Monroe County's economy in 2005 (Bennett, 2006). Tourism directly and indirectly created 23,616 jobs, or 54 percent of Monroe County's employment in the same year.

The Monroe County Tourist Development Council estimates more than 3.49 million people visited the county in 2003, and 3.2 million visited the Florida Keys in 2006. Of visitors surveyed from March 2005 through February 2006, 80 percent were in the Florida Keys for recreation or vacation purposes. Of those surveyed, about 84 percent reported beach activities, 75 percent reported viewing wildlife, 57 percent reported diving and snorkeling, and 30 percent reported fishing as activities they participated in during their visit (Monroe County Tourist Development Council, Visitor Profile Survey).

The Port of Key West is a small port; it serves cruise ships with itineraries in the Eastern and Western Caribbean and the Bahamas. The Key West Chamber of Commerce estimates 888,183 cruise passenger arrivals in the Port of Key West in 2006, up from 656,866 in 2000 (Key West Chamber of Commerce). In 2006, imports with a value of \$36,283 and exports with a value of \$11.7 million transited through the Port of Key West. There are two commercial airports in the Florida Keys: Key West International Airport and Florida Keys Marathon Airport. Key West International Airport had 276,154 person arrivals in 2006, up from 275,386 in 2000, and remains the Keys' primary airport for commercial activity.

Commercial and recreational fishing is a component of the economy in Monroe County related to the ecosystem services provided by the resources in the proposed designated area. In 2005, commercial fishermen in Monroe County landed a total of 159,883,000 pounds of fish that inhabit mangroves during their life cycle with a dockside value of \$233,261,000 (Table 9). In 2002, the charter fishing and party fishing boats industry subsector (NAICS 4872102) included 42 business establishments, with total annual revenue of about \$5.5 million and 73 employees (U.S. Census, 2002 Transportation and Warehousing Subject Series). That same year the excursion and sightseeing boats industry subsector (NAICS 4872101) included 23 business establishments, with total annual revenue of \$17.3 million and 224 employees.

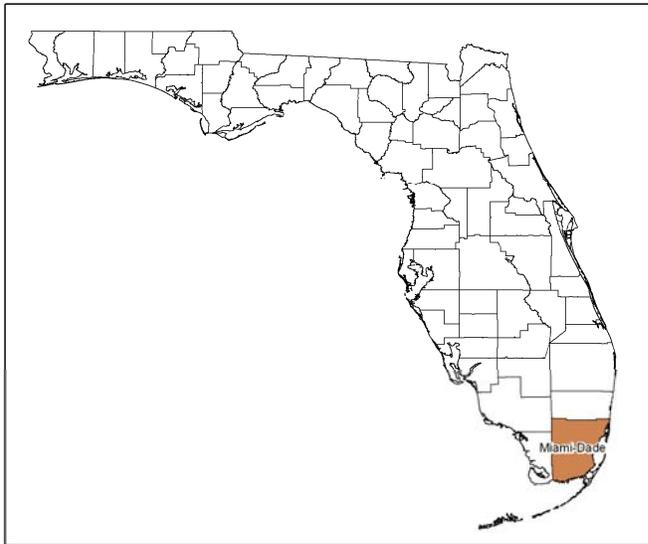
Table 9: Commercial Landings of Mangrove-Dependent Species, Monroe County (2005)

| Group (Species) | Pounds (1,000) | Value (\$1,000) |
|--|----------------|-----------------|
| Jacks (<i>Caranx</i> spp.) | 40,179 | 26,754 |
| Grunts (<i>Haemulon</i> spp.) | 937 | 759 |
| Spotted seatrout (<i>Cynoscion nebulosus</i>) | 13 | 22 |
| Atlantic sheepshead (<i>Archosargus probatocephalus</i>) | 138 | 166 |
| Gray mangrove snapper (<i>Lutjanus griseus</i>) | 118,613 | 205,556 |
| Schoolmaster snapper (<i>Lutjanus apodus</i>) | 3 | 4 |
| Total | 159,883 | 233,261 |

Source: NMFS Southeast Regional Office Logbook Data

Miami-Dade County

Miami-Dade County (Figure 5) has a total area of 2,431 square miles (6,297 square kilometers), with approximately 80 percent lands and the remaining 20 percent water (U.S. Census Bureau). Most of the area of water is Biscayne Bay, and another significant portion is the adjacent waters of the Atlantic Ocean. Among the county's major cities are Miami, Miami Beach, Coral Gables, and Key Biscayne.



Source: ESRI Streetmaps 9.1 Census Database

Figure 5: Location Map of Miami-Dade County

Miami-Dade County is the most populous county in Florida and the eighth most populous county in the Nation. According to U.S. Census Bureau estimates, the population of the county grew 6.6 percent from 2,253,362 persons in 2000 to 2,402,208 persons in 2006, an addition of nearly 148,846 persons during the 6-year period. The number of housing units also increased from 852,414 in 2000 to 928,715 in 2005, which represents an increase of about 9 percent. The median household income in 2005 was \$37,418 and 18 percent of the county population lived below the poverty level, in comparison to the statewide median household income of \$42,433 and poverty rate of 13 percent.

As presented in Table 10, the retail trade and the health care and social assistance sectors were the two largest employment sectors in the county in 2005. Other major employment sectors in the county include retail trade and construction sectors.

Table 10: Employment Profile by Industry Sector in Miami-Dade County (2005)

| NAICS Code | Industry Code Description | Non-Employer Establishments | Non-Employer Receipts (\$1,000) | Employer Establishments | Number of Employees | Annual Payroll (\$1,000) |
|------------|---|-----------------------------|---------------------------------|-------------------------|---------------------|--------------------------|
| 11 | Agriculture, Forestry, Fishing and Hunting | 1,015 | 38,961 | 35 | 500 - 999 | * |
| 21 | Mining | 38 | 2,187 | 29 | 1,073 | 62,003 |
| 22 | Utilities | 274 | 3,944 | 29 | 2,500 - 4,999 | * |
| 23 | Construction | 30,690 | 1,165,256 | 4,618 | 38,417 | 1,482,470 |
| 31 | Manufacturing | 3,669 | 212,073 | 2,378 | 46,621 | 1,561,117 |
| 42 | Wholesale Trade | 7,658 | 814,973 | 8,514 | 67,342 | 2,884,026 |
| 44 | Retail Trade | 16,420 | 765,506 | 10,335 | 118,182 | 2,870,980 |
| 48 | Transportation and Warehousing | 23,596 | 1,000,767 | 2,725 | 51,193 | 1,936,735 |
| 51 | Information | 3,457 | 152,330 | 1,444 | 21,956 | 1,283,285 |
| 52 | Finance and Insurance | 9,005 | 561,580 | 4,728 | 47,057 | 2,889,919 |
| 53 | Real Estate and Rental and Leasing | 33,897 | 2,666,341 | 4,950 | 23,462 | 1,055,582 |
| 54 | Professional, Scientific, and Tech. Serv. | 31,153 | 1,381,648 | 11,047 | 60,355 | 3,488,485 |
| 55 | Management of Companies and Enterprises | * | * | 291 | 17,005 | 1,311,656 |
| 56 | Admin, Support, Waste Mgt, Remediation Services | 29,597 | 550,415 | 3,489 | 76,326 | 2,301,355 |
| 61 | Educational Services | 3,719 | 63,432 | 727 | 28,162 | 1,019,920 |
| 62 | Health Care and Social | 26,415 | 905,533 | 7,715 | 114,198 | 4,439,517 |

| NAICS Code | Industry Code Description | Non-Employer Establishments | Non-Employer Receipts (\$1,000) | Employer Establishments | Number of Employees | Annual Payroll (\$1,000) |
|--------------|-------------------------------------|-----------------------------|---------------------------------|-------------------------|---------------------|--------------------------|
| | Assistance | | | | | |
| 71 | Arts, Entertainment and Recreation | 8,962 | 280,307 | 971 | 12,553 | 378,867 |
| 72 | Accommodation and Food Services | 3,906 | 208,302 | 4,188 | 89,680 | 1,506,700 |
| 81 | Other Services (Except Public Adm.) | 62,985 | 1,270,636 | 5,895 | 38,989 | 884,694 |
| 99 | Unclassified Establishments | * | * | 158 | 100 - 249 | * |
| TOTAL | | 296,456 | 12,044,191 | 74,266 | 858,080 | 31,357,311 |

* Zero in 2005 County Business Patterns

Source: 2005 County Business Patterns, U.S. Census Bureau

Commercial and recreational fishing is a component of the economy in Miami-Dade County related to the ecosystem services provided by the resources in the proposed designated area. In 2005, commercial fishermen in Miami-Dade County landed a total of 39,517,000 pounds of fish that inhabit mangroves during their life cycle, with a dockside value of \$57,747,000 (see Table 11). In 2005, the fishing industry subsector (NAICS Code 1141) included 405 non-employer firms with annual receipts of \$13 million, which represented 0.14 percent of all non-employer firms and 0.11 percent of annual receipts for all non-employer firms in the county (2005 County Business Patterns, U.S. Census Bureau).

Table 11: Commercial Landings of Mangrove-Dependent Species, Miami-Dade County (2005)

| Group/(Species) | Pounds (1,000) | Value (\$1,000) |
|--|----------------|-----------------|
| Jacks (<i>Caranx</i> spp.) | 26,390 | 30,813 |
| Grunts (<i>Haemulon</i> spp.) | 13 | 13 |
| Atlantic sheepshead (<i>Archosargus probatocephalus</i>) | 10 | 20 |
| Gray mangrove snapper (<i>Lutjanus griseus</i>) | 13,103 | 26,899 |
| Schoolmaster snapper (<i>Lutjanus apodus</i>) | 1 | 2 |
| Total | 39,517 | 57,747 |

Source: NMFS SERO Logbook Data

2.2 Existing Laws and Regulations that May Protect the Proposed Critical Habitat Features

The physical and biological features that form the basis of the proposed critical habitat designation are red mangroves and shallow euryhaline habitats characterized by water depths between the Mean High Water (MHW) line and 3 ft (0.9 m) measured at MLLW. Several Federal laws provide some level of direct protection from adverse human impacts to the essential features: the ESA, Essential Fish Habitat (EFH) provisions of the Magnuson Stevens Fishery Conservation and Management Act, Section 404 of the Clean Water Act (CWA), Section 10 of the Rivers and Harbors Act, and the National Park Service Organic Act. State and local laws also directly and indirectly provide protections to mangroves and their habitats. In addition, protected areas, such as Federal and State parks, provide additional protection within their borders. These laws and regulations were evaluated to determine the existing level of protection offered to the essential features. Existing legal requirements are evaluated to assist in determining the incremental impact of critical habitat designation; the more overlap between the requirements of existing laws and the protections provided to the essential features, the less the incremental cost of the designation.

The essential features that form the basis for the proposed critical habitat designation are red mangroves, and shallow euryhaline habitats characterized by water depths between the MHW line and 3 ft (0.9 m) measured at MLLW. Human activities could adversely affect these features and their ability to support conservation of the listed smalltooth sawfish by causing:

- Loss of foraging opportunities
- Loss of protection from predation
- Loss of euryhaline conditions

These effects may result from a change in water depth associated with dredging or filling, the removal of red mangroves, and modification of euryhaline waters by a change in the salinity regime to a non-euryhaline condition.

Because the critical habitat provisions of the ESA focus on species recovery, critical habitat designation and the resulting avoidance of destruction or adverse modification will function to protect the essential features to increase the abundance of the smalltooth sawfish. This will provide protection beyond other laws described below, which focus on the protection of the sawfish itself or on the protection of mangroves and coastal ecosystems generally.

2.2.1 Federal Laws

Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.)

Currently, mangrove habitats that support smalltooth sawfish receive some level of protection through the Section 7 consultation process for the listed smalltooth sawfish. Under the Section 7 consultation process, habitat impacts are evaluated to determine if the proposed impacts may result in harm or take of the species by “impairing essential behavioral patterns,” such as feeding or sheltering (50 CFR §222.102). In the absence of a critical habitat designation, habitat impacts that constitute take could only be addressed through Section 7 if the impacts would jeopardize the continued existence of the U.S. DPS of smalltooth sawfish, by appreciably reducing their likelihood of both survival and recovery (50 CFR §402.02). Lesser impacts to habitat that constitute incidental take of the species could be minimized through reasonable and prudent measures identified in biological opinions. In contrast, habitat features identified through the critical habitat designation are protected from destruction or adverse modification through the Section 7 consultation, based on the effects on the habitat’s ability to conserve the listed species and not on impacts to both the survival and recovery of the species itself.

Currently, critical habitats for other listed species under NMFS’ jurisdiction do not overlap with the proposed critical habitat for the smalltooth sawfish. Additionally, no other listed species under NMFS’ jurisdiction heavily utilize or rely on the mangrove ecosystem or shallow tidally influenced euryhaline water. However, critical habitat for the American crocodile, a species under USFWS jurisdiction, does overlap the proposed critical habitat for the smalltooth sawfish within the boundaries of the Everglades National Park from U.S. Highway 1 west to Cape Sable. The American Crocodile utilizes mangrove swamps and tidal creeks for nesting and foraging habitat, therefore the critical habitat designation for the American crocodile does provide protection for the smalltooth sawfish habitat within the overlapping areas. The American Crocodile critical habitat designation, however, is based on geographic considerations and does not specific physical or biological features. Because crocodiles have a preference for mangrove swamps and brackish waters, the smalltooth sawfish essential features have some protection where they overlap crocodile critical habitat.

Because the critical habitat provisions of the ESA focus on the species recovery, the critical habitat designation and the resulting avoidance of destruction or adverse modification will function to protect the essential features to increase the abundance of smalltooth sawfish. This will provide protection beyond the other laws described below, which focus generally on natural resource or coastal wetlands protection.

Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act): Essential Fish Habitat (EFH) (16 U.S.C. 1801 et seq.)

Fishery management plans developed under the Magnuson-Stevens Act are required to describe and identify EFH for covered fisheries, and are required to provide for the protection of the habitat by minimizing, to the extent practical, the adverse effects on the habitat caused by fishing (16 U.S.C. §1853(a)(7)). The Magnuson-Stevens Act defines EFH as “those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity” (16 U.S.C. §1802(10)). The proposed areas of critical habitat for smalltooth sawfish fall under the jurisdiction of the Gulf of Mexico Fishery Management Council (Council). NMFS has designated mangrove and estuarine habitats as EFH, as recommended by the Council. Both essential features are critical components of areas designated as EFH and receive a basic level of protection under the Magnuson-Stevens Act to the extent that the act requires minimization of impact to EFH resources.

The Magnuson-Stevens Act requires all Federal agencies to consult with NMFS regarding actions they undertake or authorize that may adversely affect EFH. NMFS will recommend measures to protect or conserve EFH, and Federal agencies must respond in writing on measures proposed to avoid or offset impacts to EFH; or explain its reasons for proposing to proceed inconsistently with NMFS’ recommendations (16 U.S.C. §1855 (b)). Although the individual essential features are not specifically addressed in the Magnuson-Stevens Act, it does offer some level of protection is provided by NMFS’ ability to comment and request project changes to protect EFH.

Clean Water Act (CWA) – 33 U.S.C. 1251 et seq.

The CWA establishes a comprehensive Federal framework for improving and maintaining surface water quality by regulating discharges of pollutants into the waters of the United States, including the territorial sea. The CWA includes several provisions that provide protection to both essential features.

Section 303 of the Act requires States and tribes to develop and adopt water quality standards that meet the broad goals of the CWA for individual water bodies. The Environmental Protection Agency (EPA) must approve State or tribal water quality standards, or promulgate substitute standards. Water quality standards protect designated uses of water bodies, such as drinking water supply, recreational use, or aquatic life. Water quality criteria may also be established, which are pollutant-specific limits, or descriptions of conditions of a water body, necessary to achieve or maintain designated uses. EPA publishes recommended water quality criteria for specific designated uses; States and tribes must adopt corresponding criteria that are at least as protective as EPA’s recommendations. States and tribes are required to monitor and report on the conditions of their water bodies. Those water bodies not meeting established water quality standards due to pollutants are termed “impaired waters.”

Sediments, including clean sediments, and nutrients are considered “pollutants” under the CWA, and according to EPA are the most common causes of impaired waters. States are required to develop strategies to meet established water quality standards for their impaired waters by, among other things, developing Total Maximum Daily Loads (TMDLs) for pollutants that EPA must approve or substitute. Florida has identified recreation, propagation, and maintenance of a healthy, well-balanced population of fish and wildlife in marine waters as the designated use of Florida Keys waters. Florida Keys waters are listed as an impaired waterbody due, in part, to excessive nutrients. EPA has developed a comprehensive framework to address nutrient water quality standards and has published guidance for States and tribes for development of nutrient TMDLs, and Ecoregional Nutrient Criteria to help address eutrophication.

Section 404 of the CWA regulates the discharge of dredged and fill material into U.S. waters, which include mangrove and nearshore euryhaline habitats inhabited by juvenile smalltooth sawfish. Specific guidelines for issuance for permits under Section 404 were developed jointly by EPA and USACE and are known as the 404(b)(1) Guidelines. These guidelines, codified at 40 CFR Part 230, include specific parameters that must be met for the USACE to issue a permit for the discharge of dredged or fill material

into U.S. waters. In addition, the guidelines require that all practicable alternatives be considered that would avoid and minimize adverse impacts to aquatic resources, in particular wetlands, from discharge of dredge or fill materials into waters of the United States. The guidelines and associated regulations allow for compensatory mitigation of impacts that cannot be avoided. In April 2008, the USACE and EPA published final amendments to regulations governing compensatory mitigation that are applicable to permits issued by the USACE under both the Clean Water Act and the Rivers and Harbors Act (73 Fed. Reg. 19594, April 10, 2008). In part, the regulations issue new performance standards for permittee-responsible mitigation, mitigation banks, and in-lieu fee mitigation programs. The agencies intend for the rule to retain a flexible preference for in-kind mitigation, but replaces the on-site preference with a hierarchy that prefers use of mitigation bank credits. The materials also state that the new rule's allowed consideration of watershed-scale factors in selection of mitigation sites may increase the incidence of off-site and out-of-kind mitigation.

More significantly, 40 CFR 230.10(b) provides that no discharge of dredged or fill material shall be permitted if the activity will jeopardize the continued existence of a species listed as threatened or endangered under the ESA or result in the likelihood of destruction or adverse modification of designated critical habitat identified under the ESA.

National Pollutant Discharge Elimination System (NPDES) permits issued under Section 402 of the CWA are required for all discharges to surface waters of the United States from point sources such as industrial facilities or municipal wastewater plants. NPDES permits contain numeric limits on specific pollutants and are an integral part of States' strategies to achieving water quality standards for waterbodies. EPA authorizes States to implement NPDES permitting programs based on specific criteria. EPA retains oversight of State permitting activities, including the ability to object to issuance of particular permits and issuance of substitute permits. EPA acts as the NPDES permitting authority for point sources in States that do not have approved programs. Florida has a fully-approved NPDES permitting program.

The CWA does not establish direct Federal regulatory authority over nonpoint sources of pollution, though nonpoint source discharges are the most significant sources of pollution overall in the United States. Nonpoint sources can include atmospheric deposition of pollutants into water bodies, and commonly includes sediments and nutrients. Under Section 319 of the Act, EPA can provide Federal grants to States with EPA-approved nonpoint source pollution management programs.

Finally, Section 401 of the Act requires that Federal agencies issuing permits or licenses under certain provisions of the Act obtain State certification that the activity will not cause or contribute to violation of the relevant State water quality standards for the water body at issue. Section 401 applies to NPDES permits issued by EPA and to Section 404 permits issued by the USACE.

Rivers and Harbors Act – Section 10 (33 U.S.C. 401 *et. seq.*)

Section 10 of the Rivers and Harbors Act (33 CFR 322) gives the USACE authority to issue permits for activities occurring in navigable waters of the United States. Activities may include the construction of dams, over-water structures, channels, and docks, and/or dredging. The Act provides some protection against physical destruction of natural resources; however, individual essential features for smalltooth sawfish critical habitat are not specifically protected. Limited protection is afforded under this Act to the essential features because as part of a public interest test, the USACE must consider the adverse impacts to listed species and their critical habitats.

Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*)

The Coastal Zone Management Act (CZMA) (15 CFR 923) encourages coastal States to develop comprehensive programs to manage and balance competing uses of coastal resources. The Act emphasizes State participation in decision making regarding coastal zone issues and provides monetary incentives for States to develop coastal zone management programs.

States, such as Florida, that have developed federally approved coastal management programs perform Federal consistency reviews on Federal actions that may impact coastal resources. On the Federal level, the National Oceanic and Atmospheric Administration's (NOAA's) Office of Ocean and Coastal Resource Management (OCRM) is responsible for coordination of the CZMA with the State partner programs.

Federal license or permit activities and/or Federal funding assistance activities that may affect coastal resources must be consistent with State coastal management programs. Red Mangroves, shallow waters within 500 meters of the shoreline, and euryhaline waters are protected by Florida's coastal zone management plan. Moreover, consistent with the provisions of Section 307(c)(3) of the CZMA, the USACE may not issue any permits or authorizations under Section 404 of the CWA (33 U.S.C. §1344), or Section 10 of the Rivers and Harbors Act (RHA) (33 U.S.C. §403) that do not have a State CZMA consistency determination. Impacts to resources, including the essential features, receive a review under the CZMA; however, they are approved if the impacts meet permit issuance guidelines of State permitting agencies.

National Park Service Organic Act (16 U.S.C. 1 et seq.)

Passed in 1916, the National Park Service Organic Act created the National Park Service (NPS) and charged the Service with the creation of national parks and monuments and "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." The Act also gave the Secretary of the Interior the ability to make rules and regulations for the protection, use, and management of National Park lands. Since a large area of smalltooth critical habitat occurs within the Everglades National Park, protection to individual essential features may be afforded through the National Park Service's mission to conserve the scenery, natural objects, and wildlife "by such means as will leave them unimpaired for the enjoyment of future generations."

2.2.2 State and Local Laws

STATE

Environmental Resource Permit Program

The Environmental Resource Permit (ERP) program (Part IV, Chapter 373 Florida Statutes) regulates dredge and fill activities in the State's wetlands. The ERP program is intended to ensure that construction activities do not degrade water quality, cause flooding, cause a net functional loss of wetland values or functions, or degrade habitat for aquatic or wetland dependent wildlife, such as the smalltooth sawfish. Structures or activities in wetlands or other surface waters requiring an ERP that may affect smalltooth sawfish habitat include: dock facilities, seawalls, boat ramps, and dredging and filling for residential or commercial development. Within Charlotte County the ERP applications are processed by either the FDEP or the Southwest Florida Water Management District. The ERP application is a joint permit application with the USACE for convenience of permit applicants. The FDEP forwards a copy of the application to the USACE upon receipt; however, the USACE issues a separate permit from the FDEP except in the case of the State Programmatic General Permit (SPGP) program.

ERP rule criteria require that, "design modifications to reduce or eliminate adverse impacts must be explored." In addition ERP rules require that, "an applicant must provide reasonable assurance that a regulated activity will not impact the values of wetlands, other surface waters and other water related resources, so as to cause adverse impacts to the habitat of fish, wildlife and listed species." Proposed projects are also subject to a public interest test which requires that projects be evaluated as to, "Whether the regulated activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats." Because state ERP rules do not specifically protect individual essential features, impacts to these habitats are allowable under the ERP program if State rules for conditions of issuance are met and a project "does not cause a net adverse impact on wetland functions

and other surface water functions which is not offset by mitigation.” However, through the project review process, impacts to resources which may include the essential features can be reduced, minimized, or eliminated to the extent practicable as allowed by the ERP rules.

The Florida Aquatic Preserve Act

Pursuant to Chapter 18–21.001 of the F.A.C., Aquatic Preserves “shall be managed primarily for the maintenance of essentially natural conditions, the propagation of fish and wildlife, and public recreation.” Additionally, the rule provides that Aquatic Preserves “were established for the purpose of being preserved in an essentially natural or existing condition so that their aesthetic, biological and scientific values may endure for the enjoyment of future generations.” The Florida Aquatic Preserve Act gives extended protection to wetland resources in designated Aquatic Preserves, which include seven areas in Monroe, Collier, Charlotte, and Lee Counties. Rules have been established in aquatic preserves to limit sizes of docking facilities to reduce impacts on mangroves and submerged aquatic vegetation. Agencies issuing ERP permits are allowed to apply an added public interest test in these areas that may provide additional protection to the essential features. Projects proposed in aquatic preserves must be “clearly in the public interest” as opposed to “not contrary to the public interest” in non-aquatic preserve areas.

Sovereign Submerged Lands Management Rule

The Sovereign Submerged Lands Management rule (Chapter 253, Florida Statutes) states that authorization is required from the Board of Trustees of the Internal Improvement Trust Fund (Board) for any activities in, on, or over State-owned, sovereign submerged lands. Sovereign submerged lands are defined as “those lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated.” The Florida Department of Environmental Protection (FDEP) and the water management districts have been delegated by the Board (Governor and Cabinet) to manage the use of sovereign submerged lands for the good of the public, to maintain traditional uses such as navigation and fishing, to provide maximum protection of all sovereign submerged lands, and to ensure that all private uses of sovereign submerged lands will generate revenue as just compensation for that privilege. The types of authorizations required for the use of sovereign submerged lands are provided in Chapter 18–21 of the F.A.C. and depend on the complexity of the project, the size of the requested easement, the potential impacts to sovereign submerged lands, and the potential for preempting the use of those sovereign submerged lands from the public.

Any activity proposed in, on, or over sovereign submerged lands, including those lands with smalltooth sawfish habitat, requires review and approval from FDEP or the proper water management district. The rule provides a basic level of protection for resources that occur on sovereign submerged lands, which may include the essential features, if impacts to resources are found to be inconsistent with the public interest. For approval the proposed activity must be consistent with the Sovereign Submerged Lands Management rule and not be contrary to the public interest. If the proposed activity is within an Aquatic Preserve, the project must be clearly in the public interest. In addition, project modifications may be required to avoid or minimize impacts, and mitigation will be required for unavoidable impacts to aquatic and emergent resources.

Mangrove Trimming and Preservation Act

The Mangrove Trimming and Preservation Act (Act) (403.9321–403.9333, Florida Statutes) was established in 1996 to protect and preserve Florida’s three species of mangroves, which provide habitat for the smalltooth sawfish, from unregulated removal, defoliation, and destruction. This Act allows riparian homeowners to trim and/or alter shoreline mangrove fringes for a view and reasonable ingress and egress to adjacent waters. However, no mangroves located on uninhabited islands are allowed to be trimmed under this Act. In addition, this Act does not authorize any dredge and fill activities within wetlands and other surface waters. The main purpose of this act is to protect mangroves from trimming

that may lead to the death of mangroves or from trimming that may render mangroves ecologically non-functional. This Act does not provide protection to shallow euryhaline waters.

The primary forms of authorization established in this act include Trimming and Alteration Permits and General Permits to be issued by the FDEP. The form of authorization required is determined by the amount and location of the proposed trimming. A General Permit is required for riparian homeowners when the proposed trimming is conducted by a professional mangrove trimmer as defined in 403.9329 of the Florida Statutes; the trimming is within mangrove fringes that are less than 500 feet wide from the edge of open water to the shoreline; the trimming will affect no more than 65 percent of the mangroves along the shoreline; the trimming will not reduce the height of any mangrove below 6 feet; and no chemicals or herbicides will be used to complete the trimming. A General Permit is also available for the limited trimming of mangroves within existing navigation channels to provide clearance for watercraft. To qualify for this General Permit, the proposed trimming must be completed by a professional mangrove trimmer or the riparian homeowner requesting the trimming, or be conducted on sovereign submerged lands; remove only branches and foliage waterward of the mangrove prop roots; and not involve the use of chemicals or herbicides. Once mangroves are trimmed using a General Permit, they may be maintained at the authorized height in perpetuity. General Permits do not require mitigation for the authorized actions.

If a proposed trimming activity does not meet the requirements for a General Permit, a Trimming and Alteration Permit will be required. When a Trimming and Alteration permit is needed, modifications to the project may be required to avoid or minimize mangrove impacts. After the proposed mangrove impacts have been minimized to the greatest extent practicable, mitigation is required to offset the loss of mangrove function and value to wetland-dependent wildlife species, including the smalltooth sawfish. In addition, the proposed mangrove trimming must not be contrary to the public interest. If the proposed activity is in a water body classified as Outstanding Florida Waters, the proposed trimming must be clearly in the public interest.

Local Laws

In addition to Federal and State rules, local jurisdictions in the study area have rules that protect the essential features. The existing rules and regulations for the five counties in the study area were reviewed to determine the level of protection offered to the essential features.

Section 14-455 of the Lee County Land Development Code provides that provides that “No person, or any agent or representative thereof, directly or indirectly, shall alter any mangrove tree located in the unincorporated areas of the county, without first obtaining a permit, where applicable, from the state department of environmental protection in accordance with the requirements of chapter 17-321, Florida Administrative Code.” Additionally, the law requires residents to comply with State mangrove laws or face county sanctions. Additionally, Section 26-77 of the Land Development Code further prohibits the removal of mangroves for the construction of shoreline protection structures and limits mangrove removal during dock construction. Lee County permit requirements for mangrove removal supplement Federal and State requirements. Lee County does not have rules or ordinances that protect shallow waters or euryhaline waters and defers to State and Federal agencies for regulation.

In Monroe County, filling of mangroves and near shore shallow water habitats is prohibited except in the case of construction of shoreline stabilization structures. In addition, new dredging is prohibited except for boat ramp construction and maintenance of existing navigational channels. However, because the designated critical habitat lies entirely within the boundaries of Everglades National Park, Monroe County laws and regulations are outside the jurisdiction of the county.

In Miami-Dade County, any impacts to mangroves or shallow near shore waters require a county permit. Proposed impacts are evaluated through a biological assessment performed by county staff; and mitigation is required for unavoidable impacts. However, because the designated critical habitat lies

entirely within the boundaries of Everglades National Park, Miami-Dade County laws and regulations are outside the jurisdiction of the county.

Neither Charlotte County nor Collier County have regulatory protection for mangroves or adjacent shallow tidal waters.

2.2.3 Protected Areas

The areas proposed for critical habitat designation includes a total of 16 national and State parks. Activities within these facilities are regulated by Federal and State laws that serve as an added layer of protection for the elements of the critical habitat. These rules and regulations help preserve and protect the diverse and rich natural ecosystems prevalent within these parklands. These jurisdictions are shown in Figure 6 and described below.

Everglades National Park

Managed by the U.S. Department of Interior's NPS, the Everglades National Park was originally established in 1947. Established as a national park for the benefit of the people, the purpose of the park is to serve as a "permanent wilderness preserving essential primitive conditions including the natural abundance, diversity, behavior, and ecological integrity of its flora and fauna" (NPS, 2001). The park qualifies as a world heritage site and supports the largest mangrove ecosystem in the western hemisphere. Designated to protect the area's unique biology, the park measured approximately 460,000 acres when it was first established. The park now comprises approximately 1,500,000 acres. Considered an integral part of the South Florida ecosystem, the park contains mangroves, pinelands, wetlands, coastal islands, and coral reefs (NPS, 2001; USACE, 2000).

Collier Seminole State Park

The Collier Seminole State Park, currently operated by the FDEP, is designated for public outdoor use and conservation. The goals of the facility can be broadly categorized: 1) to maintain the natural and cultural resources prevalent in the area and 2) to "continue to provide quality resource based outdoor recreational and interpretive programs and facilities at the state park" (FDEP, 2004). Although there are no legislative or executive directives that govern the use of the park, certain uses that might affect the natural ecosystems, such as water resource development projects, water supply projects, stormwater management projects, and sustainable agriculture and forestry are discouraged within the boundaries of the property.

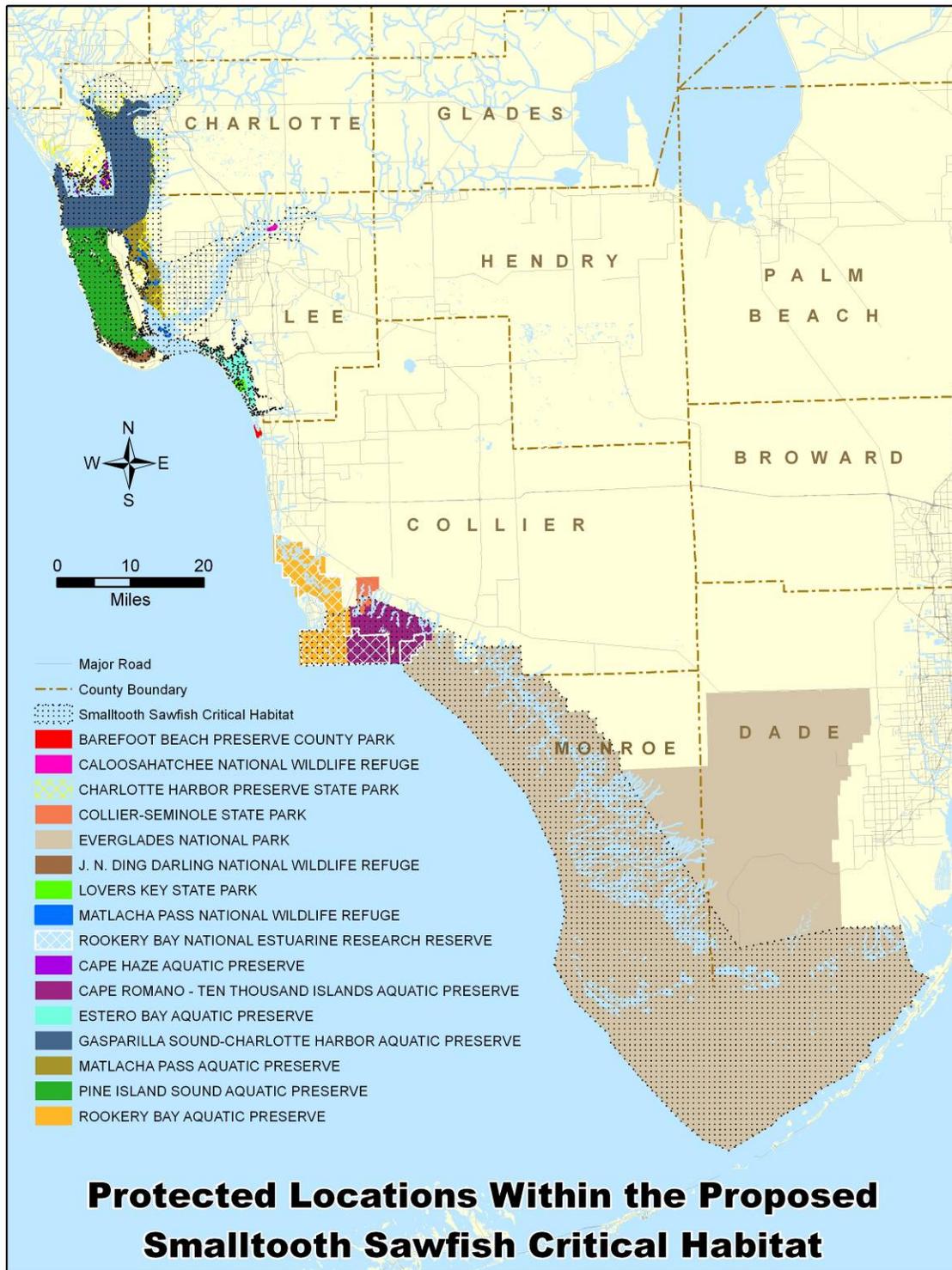


Figure 6: Protected Areas Included in the Critical Habitat Designation

Rookery Bay National Estuarine Reserve and Rookery Bay Aquatic Preserve

The Rookery Bay National Estuarine Reserve was originally designated in 1978 and expanded in 2000 to include the rest of the Rookery Bay Aquatic Preserve and Cape Romano-Ten Thousand Islands Aquatic Preserve. Nearly 110,000 acres of mangrove forests, seagrass beds, saltwater marshes, and other coastal and upland habitats that form the critical habitat for the smalltooth sawfish are contained within the boundaries of the Preserve. The mission of the National Estuarine Research Reserve Program is the establishment and management of national estuarine research reserves to permit and provide opportunities for research and education on a host of coastal management issues and protection of coastal resources (FDEP, 2000). Activities within the Rookery Bay National Estuarine Reserve and the Cape Romano-Ten Thousand Islands Aquatic Preserve are governed by regulations stipulated in the National Estuarine Research Reserve Program Regulations (15 CFR 921). Designation of a National Estuarine Research Reserve is a Federal activity, and in cases where the activities of the preserve affect the State's coastal zone, the activities of the Reserve must be in accordance with the approved coastal management program as provided by Section 1456(c) (1) of the CZMA of 1972, as amended, 16 U.S.C 1451 et seq., Chapters 18-20 and 18-21, F.A.C. One of the goals towards preserving the habitat is to "limit the trimming and/or removal of saltmarsh vegetation and other shoreline vegetation within aquatic preserves, except for legally authorized projects" (FDNR, June 1988).

Estero Bay Aquatic Preserve

Located within Lee County, the Estero Bay Aquatic Preserve encompasses a total surface water area of 15 square miles. Mangrove trees are the most dominant vegetation in the estuarine complex. Designated and maintained as a wilderness preserve, activities within the Preserve are governed by the Florida Aquatic Preserve Act, 1975 (FDNR, September 1983). As previously mentioned, the Act prohibits the trimming and removal of mangroves except when necessitated for the execution of legally authorized projects.

J.N. "Ding" Darling National Wildlife Refuge

Established in December 1945, the J.N. "Ding" Darling National Wildlife Refuge is located entirely within Lee County. Considered an integral portion of the greater Everglades region, the refuge was created to maintain the natural habitat of Sanibel Island and to protect the threatened and endangered species that live within its boundaries. The refuge is managed by the USFWS and contains over 6,400 acres of mangrove forest, submerged seagrass beds, cordgrass marshes, and West Indian hardwood hammocks. About 2,800 acres of the refuge is designated by Congress as a Wilderness Area (USFWS, 2008a). Although the goals of the refuge are to safeguard and enhance the existing habitat, no specific regulations were identified that protect the mangroves prevalent in the area.

Charlotte Harbor Aquatic Preserve System

The Charlotte Harbor Aquatic Preserve System consists of five preserves: Pine Island Sound Aquatic Preserve; Charlotte Harbor Preserve; Gasparilla Sound-Charlotte Harbor; Matlacha Pass Aquatic Preserve; and Cape Haze Aquatic Preserve. The Charlotte Harbor Aquatic Preserves Management Plan serves as a policy document directing activities within the park (FDNR, 1983). These areas are designated and managed as wilderness preserves with an overall mission to maintain the existing wilderness condition. As indicated in the management plan, activities within the Preserve are governed by the Florida Aquatic Preserve Act, 1975, which specifically offers protection to the designated critical habitat by prohibiting the "trimming and/or removal of mangroves and other natural shoreline vegetation within the aquatic preserves, except when necessitated by the pursuit of legally authorized projects."

Caloosahatchee National Wildlife Refuge

The Caloosahatchee National Wildlife Refuge administered as part of the J.N. “Ding” Darling National Wildlife Refuge Complex was established in 1920 and measures approximately 40 acres. Consisting of several mangrove islands, the refuge area is covered by a variety of fresh and brackish water vegetation. Although one of the objectives of the refuge is “to protect and provide the suitable habitat for endangered and threatened species including the West Indian manatee, wood stork, eastern indigo snake, American crocodile, and bald eagle,” no specific regulations were identified that offer a layer of protection for the mangroves present on-site (USFWS, 2008b).

Barefoot Beach State Preserve

The Barefoot Beach State Preserve is operated by the Collier County Department of Parks and Recreation. The State preserve is approximately 340 acres and contains beaches, mangrove forests and tropical hammock as the dominant habitat types. The preserve is governed by State rules that permit conservation activities; however, no specific rules or regulations were identified that protect the mangroves present.

Lovers Key Recreation Area

Located between Fort Myers Beach and Bonita Beach in Lee County, Lovers Key Recreation Area was originally accessible only by boat. Today, it is connected by road and its waters contain West Indian manatees, bottlenose dolphins, roseate spoonbills, marsh rabbits, and bald eagles. The State park is popular for activities such as swimming, picnicking, and sunbathing. Consisting of four barrier islands, the park totals nearly 1,600 acres and is designated a protected area and included as part of long-term conservation project. The State of Florida is in the process of restoring the islands with native plant communities and conserving the natural ecosystem. No specific rules or regulations were identified that explicitly protect the mangrove species present on the parks properties.

2.3 Baseline Benefits and Values of the Critical Habitat

The baseline benefits and values of the essential features are important given the focus of critical habitat designation on the avoidance of destruction or adverse modification of the habitat to promote recovery of the endangered smalltooth sawfish. The prohibition on the destruction or adverse modification of mangroves and shallow euryhaline habitats can have direct and indirect benefits to human society. These benefits derive from the services provided by the ecosystem, and the current benefits provided by these features are appropriately considered as part of the baseline. These services are normally classified as public goods and not fully captured in commercial markets, but they can be a valuable resource for local communities and adjacent ecosystems.

The value of mangrove ecosystems has been assessed in other studies based on its capacity to provide nursery grounds to aquatic species, raw material for consumption and construction, shoreline protection, and water treatment, among other things. Depending on the type of function, mangrove ecological functions can have an impact on a local, regional, and/or global scale. Table 12 presents information on ecosystem services, scales, benefits, and typical valuation methods.

Table 12: Examples of Mangrove Ecosystem Services, Functional Scale, Benefits, and Valuation Methodologies

| Ecosystem Service | Scale | Benefits | Valuation Methodology |
|----------------------------|--------------|---|--|
| Atmospheric Gas Regulation | Global | CO ₂ /O ₂ balance | CO ₂ international prices |
| Disturbance Regulation | Local | Storm/hurricane protection | Reduced damage value or preventive costs |
| Water Regulation | Regional | Flood damage reduction | Replacement costs |
| Erosion Control | Local | Prevention of soil loss from wind, | Preventive expenditures |

| Ecosystem Service | Scale | Benefits | Valuation Methodology |
|--|----------|---|-----------------------------------|
| | | runoff, and other processes | |
| Waste Treatment (and Nutrient Cycling) | Regional | Recovery and breakdown of excess or xenic nutrients and compounds | Replacement costs |
| Refuge from Predators | Regional | Nursery and habitat for migrant species | Market price of the species |
| Raw Materials (Forest Resources) | Regional | Timber, charcoal, and tannins | Market price household production |
| Recreation | Local | Sport fishing, eco-tourism, boating, and other outdoor activities | Travel costs contingent valuation |

No current published research on the quantitative economic value of Florida's mangroves is available at this time. Milon (2002) estimated the total economic value of human uses of the Indian River Lagoon, Florida in 1995 as being between \$717.4 and \$730.9 million. In that study the author considered the following ecosystem use categories: recreational and commercial fishing, shell fishing, swimming, boating, nature observation, water sports, hunting, and riverfront residential land. Other literature focusing at least in part on Florida's mangrove forests discusses qualitative benefits only. The Florida Marine Research Institute notes the important role mangrove habitat plays in the health of both the recreational and commercial fishing industries (2008). The Institute emphasizes that both industries will significantly decline if healthy mangrove forests are not present to provide necessary and suitable fish nurseries. As with other mangrove reports, this study also discusses the important storm protection function offered to the Florida coast by mangroves; however, this protection is not quantified. However, most mangrove valuation case studies focus on developing countries where the communities' subsistence is strongly related to the ecosystem. As expected, the range of values varies considerably according to the location, benefit valued, and methodology used.

Because current literature is not available for the Southern Florida region, this analysis does not estimate a monetary value for the mangroves but discusses the benefits qualitatively. See *Section 5.2* for a more detailed discussion of potential benefits of conservation of mangroves that may result from this proposed designation.

3 ECONOMIC IMPACTS

The following section identifies economic impacts that may result from the proposed critical habitat designation. As discussed above, economic impacts result through the implementation of Section 7 of the ESA, in consultations with Federal agencies to ensure that their proposed actions are not likely to destroy or adversely modify designated critical habitats, as well as any project modifications resulting from these consultations.

The analysis of impacts below begins with a comprehensive approach to the first, mandatory step of Section 4(b)(2), by identifying and considering economic (*Section 3*), national security (*Section 4*), and other relevant impacts (*Section 5*) that may result from including each of the proposed units in the critical habitat designation. Both positive and negative impacts are identified (these terms are used interchangeably with benefits and costs, respectively). Impacts are evaluated in quantitative terms where feasible, but qualitative appraisals are used where they are more appropriate to particular impacts.

The ESA does not define what "particular areas" means in the context of Section 4(b)(2), or the relationship of particular areas to "specific areas" that meet the statute's definition of critical habitat.

Because we found no biological basis to subdivide the two critical habitat units into smaller units, these “specific areas” are treated as “particular areas” for the initial consideration of impacts of designation.

The following is a brief overview of important court rulings and other important guidance regarding methods for economic impact analyses.

3.1 Economic Impact Analysis

Co-Extensive and Incremental (Baseline) Methods

Several courts have reviewed analyses of economic impacts of critical habitat designations, and most of these cases have addressed whether the traditional economic methodology of baseline or incremental impacts analysis may be used. In *New Mexico Cattle Growers Assoc. et al. v. USFWS*, 248 F.3d 1277 (10th Cir. 2001), the court ruled that given USFWS’ underlying assumption that critical habitat did not add any protection beyond what listing of the species already provided, the baseline economic impacts analysis was not consistent with the ESA. The court required USFWS to analyze the total economic impacts of critical habitat designation, even if those impacts are attributable co-extensively to other causes, such as listing of the species (*Id.* at 1285). In *Cape Hatteras Access Preservation Alliance et al. v. U.S. Dept. of the Interior*, 344 F. Supp. 2d 108 (D.D.C. 2004), the district court agreed with previous courts and found that the basis of USFWS’ belief that impacts of critical habitat designation were wholly co-extensive with impacts of listing was based on conflating the regulatory definitions of “destruction or adverse modification” and “to jeopardize” a listed species (*Id.* at 128-29). However, given the distinction between adverse modification of critical habitat and jeopardy, the *Cape Hatteras* court disagreed with the Tenth Circuit and ruled that the baseline approach is a reasonable method for assessing the actual costs of a particular critical habitat designation (*Id.* at 130). In *Center for Biological Diversity v. Bureau of Land Management*, 422 F. Supp. 2d 1155, 1153 (N.D. Cal. 2006), the court reviewed the *Cape Hatteras* and *New Mexico Cattle Growers* cases and ruled that co-extensive costs could not be the basis for excluding areas from a designation.

NMFS has followed the Tenth Circuit’s “total costs” approach, including identification of co-extensive costs and benefits, in circumstances where data have not allowed making a credible distinction between the impacts of consultations that would result from critical habitat designation, in addition or compared to the impacts that would result from species listing alone. (See e.g., Proposed Rule Designating Critical Habitat for Southern Resident Killer Whales, 71 FR 34571 at 34577, June 15, 2006). At least one court has ruled that continued use of the total impacts approach and inclusion of co-extensive impacts can be appropriate so long as the impacts of designating critical habitat are not presumed to be wholly co-extensive with the impacts of listing the species (*Home Builders Association of Northern California et al. v. USFWS*, 2007 U.S. Dist. LEXIS 5208 [E.D. Cal. Jan. 24, 2007]). This opinion indicates that a valid total impacts analysis, one that meaningfully analyzes impacts above and beyond listing, must at minimum give proper consideration to the recovery benefits resulting from a critical habitat designation (*Id.* at 19-21).

As discussed below, the nature of the sawfish and the proposed essential features, and the type of projects predicted to occur in the future in the areas proposed for designation, allowed us to identify incremental impacts of the proposed designation. Thus, this report identifies incremental cost and benefits that may result from the designation.

Additional Guidance

Other cases and Federal government guidance are relevant to the analysis of economic impacts resulting from critical habitat designations. For example, as discussed more fully above, the Statement of Regulatory Philosophy and Principles in EO 12866, Regulatory Planning and Review, states in part:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and

benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider.

OMB Circular A-4 (2003) provides additional explanation:

Benefit-cost analysis is a primary tool used for regulatory analysis. Where all benefits and costs can be quantified and expressed in monetary units, benefit-cost analysis provides decision makers with a clear indication of the most efficient alternative, that is, the alternative that generates the largest net benefits to society...

It will not always be possible to express in monetary units all of the important benefits and costs. When it is not, the most efficient alternative will not necessarily be the one with the largest quantified and monetized net-benefit estimate. In such cases, you should exercise professional judgment in determining how important the non-quantified benefits or costs may be in the context of the overall analysis.

A complete regulatory analysis includes a discussion of non-quantified as well as quantified benefits and costs.... When there are important non-monetary values at stake, you should also identify them in your analysis so policymakers can compare them with the monetary benefits and costs.

Cases reviewing critical habitat impacts analyses have applied principles similar to those of the OMB guidance, for example: all important costs and benefits should be included in an impacts analysis (e.g., *Center for Biological Diversity v. Bureau of Land Management*, 422 F. Supp. 2d 1155, 1153 [N.D. Cal. 2006], in which the court found that USFWS' impacts analysis was unbalanced in ignoring available data in the record regarding the economic benefits of designation) and important impacts that can only be evaluated if non-monetary metrics can be included in the analysis (e.g., *Home Builders Association of Northern California*, 2006 U.S. Dist. LEXIS 80255 [E.D. Cal., Nov. 1, 2006], which found that the USFWS properly determined that monetizing the benefits of designation was infeasible, and that benefits were best expressed in biological terms).

3.2 Section 7 Impacts

Designating an area as critical habitat requires Federal agencies to consult with NMFS on proposed actions that may affect designated critical habitat, and modify their actions as necessary to avoid destroying or adversely modifying critical habitat. As discussed above, consultations may result in economic impacts on Federal agencies and proponents of proposed actions. These impacts and costs may not constitute incremental impacts of critical habitat designation if a proposed project would trigger consultation/project modification due to its effects on listed species. If a consultation is required due to the expected effects of a proposed action on both the listed species and on the designated critical habitat, and the same project modification would address both types of adverse effects, the impacts would be co-extensive.

3.2.1 Overview of Section 7 Process

Section 7(a)(2) of the ESA requires Federal agencies (action agencies) to consult with NMFS whenever activities they fund, authorize, or carry out may affect a listed species or critical habitat. In some cases, consultations will only involve NMFS and another Federal agency, such as the USACE. Often, consultations will include a third party involved in projects with a Federal nexus, such as private applicants conducting activities that require a Federal permit, or public or private entities receiving Federal funding.

During a consultation, NMFS, the action agency, and, if applicable, the private permittee or grantee communicate in an effort to minimize potential adverse effects on the species and/or critical habitat. The duration and complexity of these interactions depends on the number of variables, including the species at

issue, the activity of concern, the potential effects to the species and critical habitat associated with the proposed activity, and the parties involved. *Informal consultation* is designed to identify and avoid potential adverse impacts at an early stage in the planning process. If, during informal consultation, the Federal agency determines, with the written concurrence of NMFS, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary (50 CFR §402.13). By contrast, a *formal consultation* is required if the action agency determines that the proposed action may adversely affect a listed species or critical habitat in ways that cannot be resolved through informal consultation. Regardless of the type of consultation or proposed project, Section 7 consultations can require substantial administrative effort on the part of all participants. The administrative costs of these efforts are an important component of the impacts assessment.

The Section 7 consultation process may result in modifications to a proposed project. Projects may be modified in response to conservation measures suggested by NMFS during the informal consultation process in order to avoid adverse impacts on a species or its designated critical habitat (harm avoidance), thereby removing the need for formal consultation. Alternatively, formal consultations may involve modifications that are agreed upon by the action agency and the applicant, and included in the project descriptions as harm avoidance measures, or the modifications may be included in NMFS' biological opinion on the proposed action as reasonable and prudent measures (RPMs) to reduce the impact of take of the species. NMFS' consultation regulations specify that RPMs, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, and timing of the action, and may only involve minor changes (50 CFR §402.14(i)(2)).

In some cases, NMFS may determine that a project is likely to jeopardize the continued existence of the species or destroy or adversely modify its designated critical habitat. In these cases, NMFS will include RPAs to the proposed project that must avoid jeopardy or destruction or adverse modification. By definition, RPAs must be consistent with the intended purpose of the action and capable of being implemented consistent with the action agency's legal authority and jurisdiction, and be economically and technologically feasible (50 CFR §402.02). Project modifications have the potential to represent some direct cost to the action agency or the applicant.

Consultation Impacts for the Smalltooth Sawfish and the Physical and Biological Features of Proposed Critical Habitat

Precisely estimating future Section 7 impacts can be difficult in part due to the rarity of the smalltooth sawfish, the distribution of the essential features, the uncertain scope and location of projected future Federal actions, and the uncertain nature of potential project modifications that could be required to avoid adverse effects to the smalltooth sawfish or the essential features. Therefore, pre-consultation surveys may be necessary to determine the amount of essential features within a proposed project area and the potential presence of the sawfish, to assist in determining whether consultation is required and whether potential project modifications may be necessary.

As discussed below, all broad categories of future actions projected to occur in the proposed critical habitat areas have the potential to adversely affect one or both of the essential features of the proposed critical habitat, and the smalltooth sawfish, if present in the footprint of the action area. However, our database indicates that all past consultations based on potential for adverse effects to the sawfish were concluded informally (no biological opinion), with no requirement for project modifications to avoid impacts to the fish. To be conservative in estimating the potential incremental impacts of this proposed designation, we assume that though all future consultations may be triggered by both the fish and its critical habitat, any project modifications would be required due to the designation and the requirement to avoid destroying or adversely modifying the critical habitat. We estimate the incremental administrative costs of consultation of this designation as the additional costs associated with a formal consultation in comparison to the costs of consultations that would have been concluded informally based on effects to the fish alone.

In addition, to be conservative in estimating impacts, we assumed project modifications would always be required to address adverse effects on the essential features predicted from the expected future agency actions triggering consultation.

3.2.2 Activities That May Trigger Consultations

A query of NMFS' Public Consultation Tracking System (PCTS) was conducted to identify past activities that required ESA Section 7 consultations that, if proposed in the future, would trigger consultation because they "may affect" either both the smalltooth sawfish and its proposed critical habitat, or solely the critical habitat. This technique has been used consistently in evaluating the Section 7 impacts of critical habitat designations to produce a reasonable estimation of future Federal actions that may require consultation. The PCTS database contains information dating from 1997, providing a consultation history spanning 10 years.

Consultation data for the smalltooth sawfish began when it was listed in 2003, and available information indicates that the number of consultations increased as federal agencies recognize those projects that might affect the species and thus require consultation. Based on our outreach efforts to federal agencies about the need to consult for the sawfish, we believe that our data from 2005 to the present best represent the level of project activity in the two areas included in the proposed designation from which to estimate the number of future actions that may trigger consultation. Thus, we extrapolated the number of consultations that occurred over a three-year period between 2005 and the present that required consultation due to the presence of the sawfish into the number of future consultations. Similar to previous designations, predictions of impacts were limited to a 10-year time horizon due to the difficulty in estimating activities and costs beyond that timeframe. We recognize that there may be a growth or decline in a particular type of action, so the past PCTS activity may overestimate or underestimate the number of future actions undergoing consultation and the aggregate impacts. Therefore, we asked the U.S. Army Corps of Engineers (USACE) district office that issues permits in the areas covered by the proposed designation to evaluate our projections, because the USACE was the federal action agency for the vast majority of past consultations involving sawfish in these areas. The USACE suggested that our estimates may be low and provided us with total numbers of permits they issued in the two Florida counties that contain proposed Unit 1 of critical habitat over the past 10 years. However, the USACE data do not indicate the type of activity involved, whether ESA section 7 consultation was required or requested, or whether the projects were located within the areas proposed for critical habitat designation or elsewhere in Charlotte and Lee counties. Thus, we believe our database of actual consultations requested by the USACE for the last three years, limited to the actual boundaries of the proposed critical habitat units, is the best available information for estimating future numbers of projects that may require consultation.

The first step of the analysis described above provided us with a list of federal activities that would trigger future consultations, and the number of projects within each category that may occur over the next 10 years, based on the consultation history, in each of the two proposed critical habitat units.

We next reviewed the actual past consultations in these two areas to determine the relative proportion of projects that included actual effects on one or both of the essential features, for instance dredging projects that would have changed water depth or dock construction projects that would have removed mangroves. We projected that the same proportions of future projects would affect the critical habitat features. Thus, for example, Table 13 demonstrates that 179 future consultations may affect the sawfish in Unit 1, but only 76 future consultations may affect both the sawfish and one or both of the critical habitat essential features. Not every future category of actions, nor every future project within a category, is projected to affect both essential features.

The following sections describe those categories of future activities that are projected to trigger future consultations because they may affect one or both of the critical habitat essential features, and how they may impact the features.

U.S. Army Corps of Engineers (USACE)

The USACE is responsible for carrying out and permitting the majority of actions with the potential to affect the areas in which the smalltooth sawfish and its proposed critical habitat occur. The USACE is projected to be the action agency for all 84 future consultations in the areas covered by the proposed critical habitat designation. The USACE regulates activities in navigable waterways of the United States under Section 404 of the CWA and Section 10 of the RHA. Project types that have been permitted by the USACE are listed below.

Construction/Repairs – docks, piers, boat ramps, shoreline stabilization, cables

Generally, the USACE permits any construction in waters of the United States. This category can include single-family home docks, large vessel mooring locations, and private marinas. Piles driven into the substrate support framework and decking. Shoreline vegetation, including mangroves, may be removed to allow construction of docks and associated structures such as walkways, and completed structures may inhibit recolonization of vegetation due to shading. Similarly, shoreline stabilization projects such as construction of seawalls may involve removal of vegetation including mangroves. Dredging may be involved for some dock, marina, boat ramp, or stabilization projects. Sub-aqueous utility cables may involve mangrove removal, dredging, or directional drilling.

Dredging and Disposal (filling)

Dredging is the removal of material from the bottom of water bodies, and is most commonly done to create, deepen, widen, or maintain navigation channels, anchorages, or berthing areas. Dredging may also involve the disposal of dredged material into a marine environment.

Dredging has the potential to damage the proposed critical habitat in several ways. First, dredging is most often used to deepen water bodies. Since the essential features include habitat areas with water depths no greater than 3 feet MLLW, deepening waters within the critical habitat may render these areas unsuitable to sawfish as protection from larger predators. Additionally, if marine sediments from a dredging project were dumped into the shallow water areas of the critical habitat accessing these habitat areas would be difficult for the juvenile smalltooth sawfish because of the decreased water depth.

Dredging through red mangrove habitat would lead to the direct destruction of this essential feature. Additionally, disposal of dredged material on mangroves would lead to their death as mangroves are sensitive to the placement of fill material around their bases and roots.

Filling

Filling of wetlands can take many forms, from the placement of fill to construct single family homes, multi-residential buildings, or large subdivisions, to the construction of docks and shoreline stabilization structures. Filling projects can also be part of the construction of roads, pipelines, electric lines, or bridges, dams, or water control structures in, on, under, or over wetlands or waterways.

These types of activities have direct and indirect impacts on the critical habitat. Direct impacts include filling of the mangrove and shallow water habitats for the construction of homes or roads, which results in destruction and loss of the habitat.

Indirect or secondary impacts to the essential features are not as easily discernable. Improperly controlled sediments from upland construction sites can change elevations within the critical habitat leading to the death of mangroves or filling in of shallow channels used by juvenile smalltooth sawfish as a haven from predators. Construction of docks over mangroves can reduce mangrove productivity and lead to the death of the trees. Propeller dredging by marine construction vessels operating in shallow water can deepen the water depths to the point of rendering the area unsuitable for sawfish for predator avoidance.

Water Control Structures

Construction of water control structures can modify downstream salinity regimes to the point that mangrove ecosystems are stunted by hypersaline conditions or allow too much water into mangrove basins resulting in shifts in mangrove species or in the deaths of mangroves and/or alteration of the euryhaline conditions.

General Permits

The USACE has authority to issue general permits covering one or more categories of actions in specific locations. When a general permit is proposed, consultation occurs only when the general permit for the specific activity/location is established or renewed and all subsequent activities meeting the conditions for the general permit do not need to undergo Section 7 consultation. Applicants whose projects will conform to the prescribed descriptions and limitations for that action in the general permit do not have to apply for individual permits. These permits involved the same types of projects included in the construction/repairs category above. Our records indicate we completed consultation on one consultation specific to the Charlotte Harbor Unit, one consultation specific to the TTI/ENP unit, and 9 Florida-wide general permits. To be conservative, we included these as individual consultations in our number of consultation for the Charlotte Harbor unit only. Both of the single unit permits are expressly inapplicable to projects that would impact mangroves; in other words, if a project would involve adverse effects to mangroves, an individual permit would be required. The nine state-wide general permits do not specifically prohibit project impacts on mangroves but cannot be used for projects in Essential Fish Habitat, which includes mangroves. All eleven permits may require reinitiation of consultation to determine whether the general permit allows adverse impacts to the shallow euryhaline habitats essential feature, and inclusion of a condition requiring consultations on individual permits where a proposed project may affect the feature.

U.S. Coast Guard (USCG)/Federal Highways Administration (FHA)

One of both of these agencies, as well as the USACE, can be involved in implementing or permitting road or bridge replacement or expansion projects that may affect coastal ecosystems when the bridge structures are constructed in or over aquatic habitats. Such projects may involve both removal of vegetation, including mangroves, or dredging, and thus could affect both essential features.

3.2.3 Review of Future Management and Development Plans

In addition to reviewing historical patterns of consultations, proposed development plans of State and other agencies within the two areas (comprising five counties) were reviewed to identify future projects that may require consultations. Documents reviewed include development plans of Charlotte, Lee, Collier, Monroe, and Miami-Dade counties. Where necessary, the review was followed up by telephone calls with local planning staff to seek clarification on the nature of approved and proposed projects. No impacts to the proposed critical habitat area from actions requiring Section 7 consultation were identified from State or local agencies at this time.

Planning related documents for protected areas (e.g., national and State parks and preserves) within the proposed critical habitat area were examined to evaluate the nature of any future development projects. Any action potentially impacting the smalltooth sawfish critical habitat would most likely require a permit issued by the USACE, who in turn would consult with the NMFS.

Based on discussions with authorities at the Everglades National Park, three to four minor projects are proposed within the park during the next 2–3 year timeframe (NPS, 2007); these types of actions may also require a USACE permit. Additionally, the Everglades National Park is currently preparing an Environmental Assessment for the Cape Sable Canals Dam Restoration Project that could affect both

essential features. We believe this project will require a USACE permit and consultation may be initiated for sawfish critical habitat.

The USACE is also coordinating the Comprehensive Everglades Restoration Project (CERP). The CERP project involves the restoration of water flows in the Everglades. The CERP will eventually restore water flows into south Florida by removing water control structures, creating new water storage areas, and by restoring habitats to their historic conditions. These projects may trigger consultations with the NMFS, particularly if the euryhaline conditions are expected to be altered. Given the uncertain nature, location or timing of such projects, we have not projected future consultations for these activities.

3.2.4 Projected Type and Number of Future Consultations

Tables 13 and 14 summarize the categories of future Federal activities that may affect smalltooth sawfish and the proposed critical habitat for the two areas. The first column is the category of activity, the second column is the Federal action agency, and the third column indicates the estimated number of consultations over the planning period. The fourth column indicates whether the party likely to implement the action is a Federal agency or a third party (non-Federal) either authorized or funded by a Federal agency, or both. The next column indicate whether the consultation would be triggered by potential impacts to the sawfish itself ("listing"). The next three columns indicate whether projects are projected to have impacts on each of the essential features of the proposed critical habitat units; since there are two specific important qualities of the shallow euryhaline habitats feature (areas of water depths between the MHW line and 3 ft. measured at MLLW, and fluctuating salinity regimes), we evaluated potential impacts to both qualities based on the effects of past projects.

No categories of future activities will require consultation solely due to the proposed designation – all categories of activities have the potential to affect both sawfish and one or both of the essential features. As discussed above, we assume that adverse effects to the sawfish will be avoidable without project modifications, but that formal consultation will be required due to predicted adverse effects to the essential features.

As presented in the Table 13, all the projected consultations within Unit 1 (Charlotte Harbor Estuary Unit) that may adversely affect critical habitat involve the USACE, and three consultations may also involve the USCG and the FHA. The total number of consultations resulting from the proposed designation in Unit 1 is estimated to be 76 over the 10-year planning period. Based on past consultation data, 43 projects are projected to adversely impact mangroves, 39 projects will adversely impact water depth, and 13 projects will affect the salinity regime.

Within Unit 2, the TTI/E Unit, the total number of consultations that will result from the proposed designation is estimated to be eight over the 10-year planning period (Table 14). The projected consultations within Unit 2 will involve the USACE, and three may also involve the USCG and FHA.

Overall, a total of 84 consultations are projected to result from the proposed critical habitat designation over the next 10 years, which is approximately 8 consultations per year.

3.3 Potential Project Modifications

This section provides a description of the project modifications that NMFS may recommend to avoid destruction or adverse modification of the critical habitat through Section 7 consultation. Although the assumption has been made that all future projects will require modifications (i.e., RPAs), not all of the project modifications identified for a specific category of activity would be necessary for an individual project within that category. For example, if a shoreline stabilization project were altered to include alternative stabilization methods, relocating the project would not be necessary; however, conducting conditions monitoring to ensure the project does not have adverse effects may be necessary.

Table 13: Projected Future Actions Requiring Consultation in Unit 1 – Charlotte Harbor Estuary

| Category of Activity | Agency | Total Number of Projected Future Consultations | Federal/ Non-Federal | Actions that May Impact Species | Actions that May Impact Mangroves | Actions that May Impact Water Depth | Actions that May Impact Salinity Regime | Future Actions Due to Both Listing and Designation |
|---|------------------------|--|----------------------|---------------------------------|-----------------------------------|-------------------------------------|---|--|
| Construction/Repairs/Dredging (docks, piers, private dredging, private disposal, shoreline stabilization, sub-aqueous utility cables, and boat ramps) | USACE | 160 | Non-Federal | 160 | 37 | 23 | | 60 |
| General permits authorizing construction activities listed above | USACE | 10 | Non-Federal | 10 | | 10 | 10 | 10 |
| Water Control Structure Repair and Replacement | USACE | 3 | Non-Federal | 3 | 3 | 3 | 3 | 3 |
| Road/Bridge Expansions, Repairs and Removals | USACE/ USCG/ FHA | 3 | Federal | 3 | 3 | 3 | | 3 |
| Research Permits | NMFS | 3 | Both | 3 | | | | |
| TOTAL | | 179 | | 179 | 43 | 39 | 13 | 76 ^a |

Source: Extrapolation from PCTS Database, NOAA, April 2008 and discussions with Federal/State Entities.

^a Some projects affected more than one feature and were only counted once in the overall total of future actions.

Table 14: Projected Future Actions Requiring Consultation in Unit 2 – Ten Thousand Islands/Everglades (TTI/E)

| Category of Activity | Agency | Total Number of Projected Future Consultations | Federal/ Non-Federal | Actions that May Impact Species | Actions that May Impact Mangroves | Actions that May Impact Water Depth | Actions that May Impact Salinity Regime | Future Actions Due to Both Listing and Designation |
|---|------------------------|--|----------------------|---------------------------------|-----------------------------------|-------------------------------------|---|--|
| Construction/Repairs/Dredging (docks, piers, private dredging, private disposal, shoreline stabilization, sub-aqueous utility cables, and boat ramps) | USACE | 3 | Non-Federal | 3 | 3 | 3 | | 3 |
| General Permits authorizing construction activities listed above | USACE | 1 | Non-Federal | 1 | | 1 | 1 | 1 |
| Road/Bridge Expansions, Repairs and Removals | USACE/ USCG/ FHA | 3 | Federal | 3 | 3 | 3 | | 3 |
| Research Permits | NMFS | 10 | Both | 10 | | | | |
| Seagrass Restoration/Over-Water Structure Repairs | NPS | 7 | Federal | 7 | | | | |
| Water Control Structure Repair and Replacement | USACE/ DOI | 1 | Federal | 1 | 1 | 1 | 1 | 1 |
| TOTAL | | 25 | | 25 | 7 | 8 | 2 | 8 ^a |

Source: Extrapolation from PCTS Database, NOAA, April 2008 and discussions with Federal/State Entities.

^a Some projects affected more than one feature and were only counted once in the overall total of future actions.

Conversely, it is also possible that multiple modifications could be necessary for individual projects that may adversely affect both of the essential features, if a single project modification cannot avoid impacts to both. Table 15 illustrates the relationship between activities that could be conducted in Areas 1 and 2 and potential project modifications.

There are two possible characterizations of project modification costs stemming from the proposed designation: co-extensive or incremental. As stated above, we assume that project modifications will not be required to avoid adverse impacts to the sawfish, based on our consultation history. Thus, project modification costs resulting from this designation are not projected to be co-extensive with the listing of the species. The costs of project modifications could also be characterized as co-extensive if such modifications are required under an existing statutory or regulatory authority. Based on the nature of existing authorities that are applicable to impacts to mangroves or shallow euryhaline habitats discussed above, we assume that project modifications required to avoid destruction or adverse modification of critical habitat will be incremental costs of the proposed designation. Many of the existing authorities provide very general protection to natural resources and balancing of interests in determining whether impacts are permissible. None of the existing authorities provides protection to the essential features for the purpose of protecting sawfish habitat and facilitating its recovery. Thus, to be conservative and avoid understating the impacts, we assume that the proposed designation will always require greater protection of the essential features than would be provided by existing authorities.

Table 15: Potential Project Modifications for each Category of Activity

| Project Type | Project Modification | | | | | | | | | |
|---|------------------------|--------------------|---------------------------------|---|--|-------------------------------------|---|---|-----------------------|--|
| | Action Agency | Project Relocation | Horizontal Directional Drilling | Restriction of Road/Utility Corridor Widths | Use of Alternative Shoreline Stabilization Methods | Limitations on Dock Widths and Size | Limitations/Restrictions on Modifying Freshwater Flow | Sediment and Turbidity Control Measures | Conditions Monitoring | |
| Construction/Repairs/Dredging (docks, piers, private dredging, private disposal, shoreline stabilization, sub-aqueous utility cables, and boat ramps) | USACE | X | X | X | X | X | X | X | X | |
| General Permits authorizing construction activities listed above | | X | X | N/A | X | X | N/A | X | X | |
| Water Control Structures | | X | | | | | X | X | X | |
| Road/Bridge Expansions, Repairs and Removals | USACE/ USCG/ FHA | X | | X | | | X | X | X | |

The following discussion provides descriptions of project modifications that may be recommended by NMFS (i.e., RPAs) to avoid destruction or adverse modification of critical habitat. We have indicated whether each modification would be capable of addressing adverse impacts to both of the essential features.

Project Relocation

The categories of potential future projects all have the potential to directly affect the proposed critical habitat. The first goal of a project relocation strategy is to avoid or minimize adverse impacts by relocating the project out of the critical habitat. NMFS would first ask the Federal agency or applicant to

explore relocating the project so that impacts to the smalltooth sawfish habitat would be entirely avoided. If this is not feasible, an incremental process of seeking to move portions of the projects out of the sawfish critical habitat would likely take place.

For example, if new dredging was proposed in shallow water, less than 3 feet deep, NMFS would ask the applicant to seek a location with deeper water, so that the water depth utilized by juvenile sawfish could be maintained at or below 3 feet at MLLW. Additionally, NMFS may ask an applicant to relocate residential or commercial facilities to avoid mangrove impacts. The costs associated with project relocations are difficult to estimate because they are site and project-specific. This modification could be used to avoid adverse impacts to both essential features.

Horizontal Directional Drilling (HDD)

The use of HDD is becoming more prevalent for the installation of pipelines and communication cables under bodies of water. This method allows pipes and cables to be installed below the bottoms of water bodies without open-trench methods. Generally, a tunnel is bored from uplands on one side of the water body under the floor of the waterbody, and exits on uplands on the other side of the water body.

Use of HDD in mangrove ecosystems is especially useful as it eliminates the need to create an open-trench corridor through the mangroves or shallow water habitats. The use of this method is encouraged by the FDEP, water management districts, and USACE when impacts to mangroves and marsh habitats are anticipated. NMFS could recommend HDD to avoid adverse impacts to mangroves or the water depth aspect of the shallow euryhaline habitats feature.

Restriction of Utility/Road Corridor Widths

Another project modification that could be recommended is the restriction of utility and road corridor widths through mangrove habitats. Utilities prefer to have the widest corridor width possible for ease of maintenance; however, regulatory agencies in Florida have restricted utility corridor widths through wetlands to reduce wetland impacts. If HDD was not feasible in a particular situation, NMFS could recommend that the construction and permanent corridor be the minimum necessary to install and maintain the utility line. Methods to reduce the corridor width include requiring stem walls instead of side slopes on fill sections and putting road sections on structures. This modification could be required to avoid adverse impacts to mangroves or the water depth aspect of the shallow euryhaline habitats feature.

Use of Alternative Shoreline Stabilization Methods

Many shorelines in Florida's urban areas have been hardened by artificial methods. This has resulted in the loss of thousands of acres of mangrove habitat, and has significantly reduced the shorelines ability to support mangroves. Currently the most popular stabilization methods include the use of riprap and bulkheads (seawalls). These stabilization methods are often utilized where mangroves already exist, and the installation either directly or indirectly leads to the death or decline of the existing mangroves.

In situations where mangroves already exist on the site, NMFS could require "soft" shoreline stabilization methods to preserve the existing mangroves. Soft stabilization techniques include small offshore rock sills supplemented by native plantings (including mangroves) installed along the shoreline to stabilize the shoreline, or cutting the shoreline back into the bank, making the bank gentler, and then using native plantings to prevent erosion. Using these techniques would allow for stabilization while preserving the existing mangrove fringe. Use of soft shoreline stabilization methods is generally less expensive than construction of bulkheads or riprap revetments. This modification could also be used to prevent adverse impacts to the water depth aspect of the shallow euryhaline habitats feature, since dredging is often associated with hard shoreline stabilization techniques.

Limitations on Dock Widths and Size

Currently, the State of Florida and USACE have developed rules and guidance concerning the width of docks that traverse submerged resources, including mangroves. The current State rules only address

single- and multi-family docks in State Aquatic Preserves, while USACE rules address single- and multi-family docks in all navigable waters. These rules are not applicable to commercial or public docks, such as docks at marinas or public boat ramps.

To reduce the impacts of all dock construction projects (commercial or private) on the mangrove and shallow euryhaline habitats features, NMFS may require limitations on dock widths and sizes. Limiting width and total size reduces the footprint of impacts and reduces the amount of ancillary mangrove trimming that is required to keep walkways clear. In general, limiting the width and size of docks decreases construction costs over larger-sized alternatives. Smaller docks may also alleviate the need for dredging that often accompanies installation of large docks and thus could be used to avoid impacts to the water depth aspect of the shallow euryhaline habitats feature.

Restrictions and Limitations on Modifying Freshwater Flow

The shallow euryhaline habitats feature must have a naturally controlled range of salinity. In certain locations, such as the fringing mangroves of the Everglades and riverine mangrove habitat, the input of freshwater to the system is an important component of maintaining a balanced healthy ecosystem. Blocking or limiting freshwater flow to these mangrove systems can lead to increasing salinities that can limit mangrove growth or lead to mangrove death.

If an impoundment or structure is proposed that would reduce freshwater flows to downstream critical habitat, NMFS could require modifications to the structure or operating limitations that would require outflows from the impoundment or structure to maintain euryhaline conditions within the downstream critical habitats. This modification could be required to address adverse impacts to mangroves as well as the salinity aspect of the shallow euryhaline habitats feature.

Sediment and Turbidity Control Measures

Use of sediment and turbidity control measures is a requirement of NMFS, the State of Florida, and USACE for all marine construction projects, and NMFS has recommended use of such measures in previous consultations. Typically, these measures consist of using silt screen and floating turbidity barriers to keep sediment from being transported into wetlands, or in the case of dredging, suspended sediment (turbidity) from leaving the disturbance area. If these measures are not used, sediment from adjoining construction could fill-in shallow areas and bury mangroves and kill them.

Conditions Monitoring

Projects often have an indirect effect on adjacent critical habitat. For example, during the construction of a waterfront residential subdivision, 0.5 acre of mangrove fringe may be inadvertently filled by a construction crew. Habitat loss due to construction errors is usually minimal; however, the loss can be substantial over time. Monitoring of projects that are constructed in or adjacent to critical habitat is important to ensure that unintended negative impacts do not occur. The type and scope of monitoring is variable because it is project-specific. This modification could be required to prevent adverse impacts to both the mangrove and shallow euryhaline essential features.

3.4 Estimated Section 7 Costs

As discussed above, the costs associated with ESA Section 7 include two main components, administration and project modification. Administrative costs arise due to consultations between agencies from the proposed rule. Project modification costs include potential material and labor costs borne by agencies or third parties to modify certain physical structures or processes within the designated critical habitat area. *Section 3.4.1* evaluates the administrative costs associated with consultations, while *Section 3.4.2* evaluates the project modification costs resulting from the consultations and in relation to other existing laws and regulations. Potential benefits of the critical habitat designation are discussed in *Section 5*.

The assumptions made in considering the economic impact of section 7 consultation and project modification implementation are summarized in the table below.

| Key Assumptions Applied to the Section 7 Impacts Consideration | |
|---|----------------|
| Key Assumption | Effect on Cost |
| The presence of other listed species or designated critical habitat has no influence on consultation. | + |
| Past 10 year consultation history is indicative of next 10 year consultation projection. | - |
| All future consultations are expected to be formal. | + |
| All project modifications are required. | + |
| All modifications will be incremental impact of the designation | + |
| -: This assumption may result in underestimate of real costs. | |
| +: This assumption may result in an overestimate of real costs. | |

3.4.1 Administrative Costs

Estimates of the cost of an individual consultation were developed from a review and analysis of the PCTS database, as discussed above, and from the estimated Section 7 costs identified in the *Economic Analysis of Critical Habitat Designation for the Gulf Sturgeon* (IEc 2003) inflated to 2008 (March) dollars (Table 16). Cost figures are based on an average level of effort for consultations of low or high complexity (based on NMFS and other Federal agency information), multiplied by the appropriate labor rates for NMFS and other Federal agency staff. Additionally, the costs to conduct surveys of the project area to determine the presence and amount of the essential features are included in the estimates.

Table 16: Estimated Administrative Costs of Section 7 Consultation (Per Effort)

| | NMFS | Action Agency | Third Party | Total Cost |
|-----------------------|---------|---------------|-------------|------------|
| Informal Consultation | | | | |
| Low Complexity | \$1,200 | \$2,400 | \$1,400 | \$5,000 |
| High Complexity | \$3,700 | \$11,400 | \$3,400 | \$18,500 |
| Formal Consultation | | | | |
| Low Complexity | \$3,700 | \$11,400 | \$3,400 | \$18,500 |
| High Complexity | \$7,200 | \$24,500 | \$5,000 | \$36,500 |

Source: IEc, (2003) 2002 dollars inflated to 2008 (March) dollars using CPI index and then rounded

As discussed above, no categories of future actions will require consultation due solely to the proposed designation; thus, the total number of future consultations is not expected to increase relative to the number of consultations that will be required due to the presence of the species in project areas. However, we predict that incremental administrative costs of consultation will result from the proposed designation. No formal consultations were required for past consultations due to potential impacts to the species, and we project that no future formal consultations will be required for the species. However, in this analysis we assume that all future projects will require formal consultation due to potential adverse effects to one or both of the essential features. Thus, we assume that the difference in cost associated with a formal consultation relative to an informal consultation is an impact of the proposed designation. The incremental administrative cost for each consultation would be the difference between the cost of an informal consultation and a formal consultation (\$13,500 for low complexity and \$18,000 for high complexity). The total impact on administrative costs would be the incremental cost of the formal

consultation multiplied by the number of consultations. For example, if three informal consultations (low complexity) become formal consultations (low complexity) per year, the estimated annual administrative costs would be \$40,500 (3* (\$18,500 – \$5,000)).

The total incremental administrative costs for Unit 1 are estimated to range from \$1,026,000 to \$1,368,000 (depending on complexity of the consultation) over the 10-year planning period. The total incremental administrative costs for Unit 2 are estimated to range from \$108,000 to \$144,000 (depending on complexity of the consultation) over the 10-year planning period.

3.4.2 Project Modification Costs

Potential project modification costs were developed based on Florida Department of Transportation Historic Unit Prices database for similar types of projects in southern Florida. Table 17 summarizes the project modifications and potential costs that would likely result.

Table 17: Potential Project Modification Costs

| Project Modification | Cost | Unit | Range | Approx. Totals |
|--|---|-------------|----------------|---------------------------------|
| Project Relocation | Undeterminable | N/A | N/A | N/A |
| HDD | \$1.39–2.44 million | per mile | 0.2–31.5 Miles | \$278,000–\$76,900,000 |
| Restriction of Utility/Road Corridor Widths | Roadway Retained Sides, 2 Lane = \$1,875 Roadway Retained Sides, 4 Lane = \$2,150 Roadway Bridge, 2 Lane = \$3,370 Roadway Bridge 4 Lane = \$5,050 | linear foot | N/A | \$1,875–\$5,050 per linear foot |
| Alternative Shoreline Stabilization Methods | Undeterminable | N/A | N/A | N/A |
| Limitations on Dock Size | Undeterminable | N/A | N/A | N/A |
| Limitation/Restrictions on Modifying Freshwater Flow | Undeterminable | N/A | N/A | N/A |
| Sediment Controls | Staked Silt Fence = \$2 Floating Turbidity Barrier = \$12 | linear foot | N/A | \$2–\$12 per linear foot |
| Conditions Monitoring | Undeterminable | N/A | N/A | N/A |

Note: Where information was available, the estimated ranges (extents) of the impacts are included.

Given the uncertainties in predicting the precise scope and location of future Federal actions or actions with a Federal nexus requiring consultation, and the resultant uncertainty in predicting future project modifications, estimating the total Section 7 costs of the proposed critical habitat designation with certainty is not possible.

4 NATIONAL SECURITY IMPACTS

Previous critical habitat designations have recognized that impacts to national security result if a designation would trigger future Section 7 consultations because a proposed military activity may affect the physical or biological features essential to the listed species' conservation, and which form the basis for including areas in a critical habitat designation. Potential project modifications may also affect national security. Anticipated interference with mission-essential training, testing, or unit readiness, either through delays caused by the consultation process or through expected requirements to modify the action to prevent adverse modification of critical habitat, has been identified as a negative impact of critical habitat designations (See, e.g., *Proposed Designation of Critical Habitat for the Pacific Coast Population of the Western Snowy Plover*, 71 FR 34571 at 34583, June 15, 2006, and *Proposed Designation of Critical Habitat for Southern Resident Killer Whales*, 69 FR 75608 at 75633, Dec. 17,

2004). These past designations also recognized that national security impacts resulting from the designation depend on whether future consultations would be required under the jeopardy standard, regardless of the critical habitat designation, and whether the designation would add new burdens beyond those related to the jeopardy consultation.

On April 11, 2008, NMFS sent a letter to DOD requesting information on national security impacts of the proposed designation. Responses were received from the Departments of the Army, Navy, and Air Force indicating that they did not have facilities or managed areas located within the proposed critical habitat. Based on the location of the critical habitat, it is unlikely that consultations with respect to activities on DOD facilities or training would be required as a result of the proposed critical habitat designation. Therefore, no national security impacts are anticipated as a result of this proposed critical habitat designation.

5 OTHER RELEVANT IMPACTS

In addition to the impacts described in Sections 3 and 4, this analysis has identified three broad categories of other relevant impacts: educational and awareness benefits; conservation benefits, both to the smalltooth sawfish and to society; and impacts on natural resources agencies that implement management plans in the areas covered by the proposed designation.

As discussed below, mangroves and shallow euryhaline habitats provide a range of important uses and services to society. As these benefits currently exist, we do not interpret them as resulting from the critical habitat designation per se. However, protection of the critical habitat from destruction or adverse modification may at a minimum prevent loss of the benefits provided by these resources, and would contribute to any benefits associated with increased future abundance of the smalltooth sawfish as it recovers. We determined that there are unique benefits that will result from this designation because of the focus on the essential features and the recovery of the smalltooth sawfish. Because the project modifications discussed above are considered incremental impacts of this designation, the benefits of avoiding such destruction or adverse modification of this habitat are also incremental impacts of the proposed rule.

The economic values presented in this section are derived from a number of studies and databases. Where possible, the impacts of critical habitat designation should be described on an area-by-area basis. As noted below, data are not currently available to quantify or monetize some of the expected benefits of the designation on an area-by-area basis; these data are presented by county.

We discuss potential conservation benefits resulting from the designation in this section because they flow from the requirement to base the designation on features essential to the conservation of the sawfish. As indicated above, the economic values presented in the remainder of this section are measures of *existing* benefits in the areas covered by the proposed designation. We present these data as context for our conclusion that non-negligible economic benefits will result from the proposed designation, because protection of the proposed critical habitat from destruction or adverse modification is expected at minimum to prevent loss of existing benefits the habitat provides to society.

5.1 Education, Awareness, and Other General Benefits of the Protected Habitat That May Result from the Designation

Education and awareness benefits could potentially arise from the proposed critical habitat designation. This potential stems from two sources: (1) entities that engage in Section 7 consultation and (2) members of the general public interested in smalltooth sawfish. The potential exists for the former to alter their activities to benefit the species or essential features because they are made aware of the critical habitat designation. The latter may engage in similar efforts because they learn of the critical habitat designation through outreach materials. The voluntary reporting of sawfish encounters or observations by members

of the public, and reporting of data such as environmental features associated with the encounters, is evidence of benefits resulting from increased awareness of the status of the sawfish.

NOAA has observed an increase in the public's awareness that there are special considerations to be taken for areas with a critical habitat designation. Voluntary efforts of the general public could include altering their activities to reduce the impact to the environment (e.g., mangrove trimming) or engaging in non-consumptive recreational activities to view the habitat. Similarly, State and local governments may be prompted to enact laws or rules to compliment the proposed critical habitat designation and benefit the listed species and critical habitat essential features. However, quantifying the beneficial effects of the awareness gained through or the secondary impacts from State and local regulations resulting from the proposed critical habitat designation is impossible with available data.

5.2 Conservation Benefits

The primary goal of the critical habitat provisions of the ESA is to protect critical habitat from destruction or adverse modification by Federal activities and, therefore, enhance the potential for species recovery. This is accomplished through the designation of areas that contain the identified essential features. Hence, implementation of ESA Section 7 is expected to increase the probability of recovery for listed species. In addition to contributing to sawfish recovery, benefits associated with project modifications required through section 7 consultation would include avoiding the destruction or adverse modification of the essential features and the ecosystem services that they provide.

5.2.1 Benefits of the Designation to the Smalltooth Sawfish

By definition, the proposed critical habitat features are "essential to the conservation" of the smalltooth sawfish; in other words, conservation of the species as defined in the ESA is not possible without the presence and protection of the features. As discussed above, we have determined that the two specific areas proposed for designation as critical habitat are juvenile nursery areas where young sawfish spend the first few years of their lives. The essential features found on these areas, red mangroves (with their prop root systems), and shallow euryhaline habitats, provide protection from predators and abundant and diverse prey resources, and thus provide key nursery area functions for the sawfish.

5.2.2 Benefits of Preventing Loss of Mangroves and Shallow Euryhaline Habitats

5.2.2.1 Benefits to Biodiversity

Because the smalltooth sawfish has limited commercial or recreational value, and because the species recovery is expected to take decades, we can predict no direct or indirect monetary value that may result from the proposed designation because of its contribution to the recovery of the smalltooth sawfish. However, other benefits are expected accrue to society in the course of protecting the essential features of the sawfish's critical habitat from destruction or adverse modification.

While the shallow water euryhaline habitats offer important ecosystem services to various juvenile fish, invertebrates, and benthic and epibenthic organisms as described in *Section 1.5.2*, their conservation benefits are related to the benefits offered by conservation of red mangroves. Consequently, this discussion focuses on the conservation benefits of mangroves.

The mangrove forest, as a primary producer, is the basic source of energy to sustaining the faunal diversity of south Florida's estuaries and offshore areas. Organic carbon from decomposing mangrove litter is utilized by the microbial community (Benner et al., 1986) and crustaceans, such as copepods, shrimp, and crabs (Camilleri and Ribí, 1986). These species in turn are utilized by a diverse collection of higher consumers.

The mangrove ecosystem provides habitat and breeding areas for numerous species of birds, mammals, reptiles, and invertebrates. Florida mangrove systems are utilized by 24 species of reptiles and

amphibians, 18 species of mammals, and 181 bird species (Odum and McIvor, 1990). Tables 18–20 list common amphibian and reptile, mammal, and bird species found in the Florida mangroves.

Table 18: Florida Mangrove Amphibian and Reptile Species

| Species | Common Name | Characteristics | Endangered Species Status |
|---|---------------------------------|--|---------------------------|
| <i>Alligator mississippiensis</i> | American Alligator | Mangrove resident, found in low salinity areas. Ranges throughout the southeastern United States. | Not Listed |
| <i>Crocodylus acutus</i> | American Crocodile | Mangrove resident, quite rare, rely heavily on mangrove habitats for survival. Occurs in the north Florida Bay and nearby swamps, as well as the north end of Key Largo. | Threatened |
| <i>Nerodia clarkia compressicauda</i> | Mangrove Water Snake | Mangrove resident. | Not Listed |
| <i>Nerodia floridana</i> | Florida Green Water Snake | Mangrove resident. | Not Listed |
| <i>Drymarchon corais couperi</i> | Eastern Indigo Snake | Mangrove resident. | Threatened |
| <i>Elaphe guttata rosacea</i> | Rosy Rat Snake | Mangrove resident. | Not Listed |
| <i>Opheodrys aestivus carinatus</i> | Florida Rough Green Snake | Mangrove resident. | Not Listed |
| <i>Nerodia fasciata pictiventris</i> | Florida Banded Watersnake | Mangrove resident. | Not Listed |
| <i>Lampropeltis getula floridiana</i> | Florida King Snake | Mangrove resident. | Not Listed |
| <i>Agkistrodon piscivorus</i> | Eastern Cottonmouth | Mangrove resident. | Not Listed |
| <i>Crotalus adamanteus</i> | Eastern Diamondback Rattlesnake | Mangrove resident. | Not Listed |
| <i>Nerodia clarkia taeniata</i> | Atlantic Saltmarsh Snake | Mangrove resident. | Threatened |
| <i>Anolis carolinensis</i> | Green Anole | Mangrove resident, resides in the trees feeding on insects. | Not Listed |
| <i>Anolis sagrei</i> | Brown Anole | Mangrove resident, resides in trees. | Not Listed |
| <i>Anolis distichus</i> | Bark Anole | Mangrove resident, resides in trees. | Not Listed |
| <i>Malaclemys terrapin macrospilota and M. t. rhizophorarum</i> | Ornate Diamondback Terrapin | Mangrove resident. | Not Listed |

Source: U.S. Fish and Wildlife Service, 2007

Table 19: Florida Mangrove Mammal Species

| Species | Common Name | Characteristics | Endangered Species Status |
|-----------------------|-----------------|--|---------------------------|
| <i>Felis concolor</i> | Florida panther | Carnivores residing in the mangroves of South Florida. Rarely observed, most of the recent sightings have been within the Everglades mangrove systems. | Endangered |
| <i>Procyon lotor</i> | Raccoon | Carnivores residing in the mangroves of South Florida. | Not Listed |
| <i>Mustela vison</i> | Mink | Carnivores residing in the mangroves of South Florida. | Threatened |

| Species | Common Name | Characteristics | Endangered Species Status |
|---------------------------------------|-------------------|--|---------------------------|
| <i>Lutra canadensis</i> | River Otter | Carnivores residing in the mangroves of South Florida. | Not Listed |
| <i>Odocoileus virginianus</i> | White-Tailed Deer | Mangrove resident. | Not Listed |
| <i>Odocoileus virginianus clavium</i> | Key Deer | Mangrove resident. | Endangered |
| <i>Didelphis virginiana</i> | Opossum | Mangrove resident. | Not Listed |
| <i>Sylvilagus palustris</i> | Marsh Rabbits | Mangrove resident. | Endangered |
| <i>Sigmodon hispidus</i> | Cotton Rats | Mangrove resident. | Not Listed |
| <i>Pryzomys palustris</i> | Marsh Rice Rat | Mangrove resident. | Not Listed |
| <i>Oryzomys argentatus</i> | Silver Rice Rat | Mangrove resident. | Endangered |

Source: U.S. Fish and Wildlife Service, 2007

Table 20: Florida Mangrove Bird Species

| Species | Common Name | Characteristics | Endangered Species Status |
|---------------------------------|-----------------------------|---|---------------------------|
| <i>Eudocimus albus</i> | White Ibis | Feed on mangrove crabs. | Not Listed |
| <i>Ajaja ajaja</i> | Roseate Spoonbill | Prey on mangrove mollusks and other invertebrates living within the sediments. | Not Listed |
| <i>Nyctanassa violacea</i> | Yellow-Crowned Night Herons | Feed on a variety of prey including mangrove crabs, crayfish, and small fishes. | Not Listed |
| <i>Botaurus lentiginosus</i> | American Bitterns | Feed on a variety of prey including mangrove crabs, crayfish, and small fishes. | Not Listed |
| <i>Pelecanus occidentalis</i> | Brown Pelican | Mangrove resident. | Endangered |
| <i>Anhinga anhinga</i> | Anhinga | Mangrove resident. | Not Listed |
| <i>Anas platyrhynchos</i> | Mallard | Mangrove resident. | Not Listed |
| <i>Anas acuta</i> | Pintail | Mangrove resident. | Not Listed |
| <i>Aythya affinis</i> | Lesser Scaup | Mangrove resident. | Not Listed |
| <i>Aythya valisineria</i> | Canvasback | Mangrove resident. | Not Listed |
| <i>Gallinule chloropus</i> | Common Gallinule | Mangrove resident. | Not Listed |
| <i>Haliaeetus leucocephalus</i> | Southern Bald Eagle | Feed on fishes in the mangroves. | Not Listed |
| <i>Padion haliaetus</i> | Osprey | Feed on fishes in the mangroves. | Not Listed |
| <i>Falco columbarius</i> | Merlin Falcon | Feed on fishes in the mangroves. | Not Listed |
| <i>Cathartes aura</i> | Turkey Vulture | Frequent on mangroves. | Not Listed |
| <i>Coragyps atratus</i> | Black Vulture | Frequent on mangroves. | Not Listed |
| <i>Accipiter cooperii</i> | Cooper's Hawk | Frequent on mangroves. | Not Listed |
| <i>Buteo jamaicensis</i> | Red-Tailed Hawk | Frequent on mangroves. | Not Listed |
| <i>Buteo lineatus</i> | Red-Shouldered Hawk | Frequent on mangroves. | Not Listed |
| <i>Circus cyaneus</i> | Marsh Hawk | Frequent on mangroves. | Not Listed |
| <i>Falco sparverius</i> | American Kestrel | Frequent on mangroves. | Not Listed |
| <i>Tyto alba</i> | Great Horned Owl | Frequent on mangroves. | Not Listed |
| <i>Strix varia</i> | Barred Owl | Frequent on mangroves. | Not Listed |

Source: U.S. Fish and Wildlife Service, 2007

5.2.2.2 Benefits to Fisheries

Due to their physical structural complexity, mangroves provide habitat and nursery grounds to many aquatic species by decreasing the efficiency of predatory fish when feeding. Fish species composition and richness in any mangrove system depends primarily upon: (a) the size and diversity of habitats, together with flood and tidal regimes; (b) the proximity to mangrove and other systems (such as coral reefs); and (c) the nature of the offshore environment, particularly water depth and current patterns (Bell 1989).

An estimated 75 percent of the game fish and 90 percent of the commercial fish in south Florida depend on the mangrove system (Law and Arny, 2007). Table 21 lists common fish species found in the Florida mangroves. Section 3.2.6 discusses the recreational benefits of mangroves and Tables 3, 5, 7, 9, and 11 specify the value of commercial fish landings in each of the five counties comprising Areas 1 and 2.

Table 21: Florida Mangroves Fish Species

| Species | Common Name | Characteristics | Endangered Species List |
|------------------------------------|-----------------------|---|-------------------------|
| <i>Centropomus undecimalis</i> | Snook | Found in mangrove areas during entire year. | Not Listed |
| <i>Caranx</i> spp. | Jacks | Utilize mangrove roots as habitat. | Not Listed |
| <i>Archosargus probatocephalus</i> | Sheepshead | Utilize mangrove roots as habitat. | Not Listed |
| <i>Haemulon</i> spp. | Grunts | Utilize mangrove roots as habitat. | Not Listed |
| <i>Gobiosoma</i> spp. | Gobies | Utilize mangrove roots as habitat. | Not Listed |
| <i>Lutjanus apodus</i> | Schoolmasters | Utilize mangrove roots as habitat. | Not Listed |
| <i>Lutjanus griseus</i> | Gray Snappers | Utilize mangrove roots as habitat. | Not Listed |
| <i>Epinephelus itajara</i> | Small Goliath Grouper | Utilize mangrove roots as habitat. | Not Listed |
| <i>Megalops atlanticus</i> | Tarpon | Found in waters adjacent to mangroves. | Not Listed |
| <i>Cynoscion nebulosus</i> | Spotted Seatrout | Thrive in mangroves habitats taking advantage of feeder fish in the mangrove and seagrass beds. | Not Listed |
| <i>Lepisosteus platyrhincus</i> | Florida Gar | Top level carnivore, feeding on a variety of smaller fishes in mangrove areas. | Not Listed |
| <i>Lutjanus griseus</i> | Gray Snapper | Utilize the mangrove roots primarily as nursery areas. | Not Listed |
| <i>Sciaenops ocellatus</i> | Red Drum | Utilize the mangrove roots primarily as nursery areas. | Not Listed |
| <i>Pristis pectinata</i> | Smalltooth Sawfish | Utilize mangrove roots as nursery area and juvenile habitat. | Endangered |

Source: U.S. Fish and Wildlife Service, 2007

5.2.2.3 Benefits to Air Quality Protection

Mangroves fix carbon dioxide from the air through photosynthesis, store the carbon as biomass, and return organic material to the sediment when they decompose. Mangroves play a major role in regulating greenhouse gas concentrations in the atmosphere by pumping atmospheric carbon into the ocean. Because mangrove roots and the sediment around them are regularly washed by tides, much of this organic carbon leaches into the ocean (Ditmar et al. 2006). Worldwide, mangroves are estimated to contribute nearly 10 percent to the ocean's dissolved organic carbon. Much of the carbon produced by mangroves is in the form of molecules that are highly resistant to decomposition, so they are likely to remain in the ocean for decades instead of being returned to the atmosphere as carbon dioxide.

5.2.2.4 Benefits to Water Quality Protection

Tides and runoff control the exchange of materials across the boundaries of the mangrove-estuarine ecosystem and are the major processes associated with the exchange of material with this system. Mangroves can remove some of the nutrients in the water, which, improves water quality and helps to prevent eutrophication. This function is particularly valuable in the disposal of nitrate pollutants that can be converted to gaseous nitrogen and circulated back to the atmosphere as the result of denitrification.

5.2.2.5 Benefits to Shoreline Protection

Erosion Control

Mangroves stabilize shorelines by reducing the energy of waves, currents, or other erosive forces, while simultaneously binding the bottom sediment in place with plant roots. This prevents the erosion of valuable agricultural and residential land. In addition, capturing and retaining sediment in headwater wetlands lengthens the lifespan of downstream reservoirs and channels, and reduces the need for costly removal of accumulated sediment.

In some cases, mangroves may actually help to build up land. Sediment is often the major water pollutant in many estuarine systems. In riverine systems, mangroves commonly serve as pools where sediment generated upstream can settle. Although the build-up of too much sediment in a wetland may alter its biological functions, floodwater storage, and ground water exchange, the quality of downstream estuaries is maintained if suspended sediment is retained in the upstream mangrove systems.

Flood Regulation

Through their capacity for storing precipitation and releasing runoff evenly, mangroves can diminish the destructive onslaught of flood crests. Preservation of natural stormwater storage can prevent the costly construction of dams and reservoirs.

Storm and Wave Impact Reduction

Hurricanes and other coastal storms cause wind damage and flooding, resulting in great financial and human life lost. Mangroves help dissipate the force and lessen the damage of coastal storms. The capacity of mangroves to protect adjacent areas from storms can be measured by the difference between the wind intensity and wave action in the open area of the forest and in the protected area, and the estimated value of the possible damages if the houses close to the area did not have the mangroves to protect them.

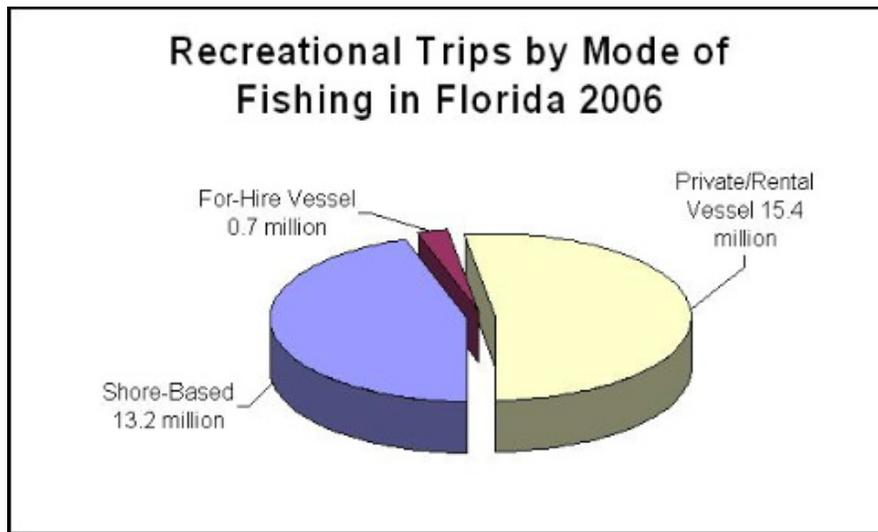
Recent studies on the impacts of the Indian Ocean Tsunami in 2004 have shown that areas covered by mangrove and shelterbelt vegetation were significantly less damaged than other areas (Danielson et al., 2005 and Hiraishi and Harada, 2003). Hiraishi and Harada have compared the area of the tsunami damage within 3,281 feet (1,000 meters) of the shore between tree vegetation cover categories and observed a significant damage reduction in areas covered by coastal vegetation (e.g., mangroves) (2003). Through an analytical model, the authors show that 30 trees per 1,080 square feet (100 square meters) in a 328-foot (100-meter) wide belt may reduce the maximum tsunami flow pressure by more than 90 percent.

5.2.2.6 Benefits to Recreation and Tourism

Recreation and tourism are principal components of the economies of the counties in the proposed designated area and the State of Florida. Recreation and tourism within the proposed designated area include both consumptive (e.g., recreational fishing) and non-consumptive (e.g., wildlife viewing) activities. Although the discussion below is not specific to the smalltooth sawfish or the proposed designation, mangroves and the ecological services they provide are a critical component of the benefits discussed.

According to the Florida Fish and Wildlife Conservation Commission, Florida's recreational fishery is among the largest in the country, and is an important component of the State's tourism economy. Close

to half the estimated recreational fishing trips in Florida are made by visitors to the State. The Marine Recreational Fisheries Statistics Survey estimates more than 6.6 million recreational anglers took more than 29.3 million saltwater fishing trips statewide in Florida during 2006. These trips were primarily conducted using private or rental vessels (Figure 7) (Florida Fish and Wildlife Conservation Commission, 2007).



Source: Florida Fish and Wildlife Conservation Commission, 2007

Figure 7: Recreational Trips in Florida

In a report funded by the Florida Fish and Wildlife Conservation Commission, in 2006 the total economic impact of wildlife viewing in Florida was an estimated \$5.248 billion (Southwick Associates, 2008). The report estimates that approximately 1,289,500 persons or 82 percent of the people who participated in wildlife viewing in Florida specifically sought to view shorebirds or birds (herons), which depend on mangrove ecosystems during part of their lifecycle. Of the people who participated in wildlife viewing activities, almost half were not Florida residents. The report also estimates that wildlife viewing supported a minimum of 34,523 full- and part-time jobs in 2006.

5.3 Impact on Natural Resource Agencies with Existing Management Plans

Many previous critical habitat impact analyses have evaluated the impacts of the designation on relationships with, or the efforts of, private and public entities that are involved in management or conservation efforts benefiting listed species. These analyses found that the additional regulatory layer of a designation would negatively impact the conservation benefits provided to the listed species by existing or proposed management or conservation plans. For example, NMFS previously considered the impacts of designation on Indian Tribal sovereignty and participation in conservation activities (69 FR 74572, 74622, December 14, 2004, Proposed Designation of Critical Habitat for 13 Evolutionarily Significant Units of Pacific Salmon (*Oncorhynchus* spp.) and Steelhead (*O. mykiss*) in Washington, Oregon, and Idaho). USFWS considered the impacts of designation on private entities that have entered into Habitat Conservation Plan agreements under the ESA, and Federal, State, or local conservation plans implemented under a variety of legal authorities (e.g., 72 FR 33808, June 19, 2007, Proposed Revised Critical Habitat for the San Bernardino Kangaroo Rat [*Dipodomys merriami parvus*]; 72 FR 30279, May 31, 2008, Clarification of the Economic and Non-Economic Exclusions for the Final Designation of Critical Habitat for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon). One court held that this type of impact is a permissible interpretation of "other relevant impacts" under Section 4(b)(2) (*Center for Biological Diversity et al., v. Dept of the Interior*, 240

F. Supp. 2d 1090, 1105 [D. Ariz. 2003]): “It is certainly reasonable to consider a positive working relationship relevant, particularly when that relationship results in the implementation of beneficial natural resource programs, including species preservation.”

Similar to national security impacts, impacts on entities responsible for natural resource management or conservation plans that benefit listed species, or on the functioning of those plans, depend on the type and number of section 7 consultations that may result from the proposed critical habitat designation in the areas covered by the plans, as well as any potential project modifications recommended by these consultations. Thus, there must be a federal nexus for an action proposed by the managing entity of a protected area or section 7 impacts would not be associated with that action. For management actions on federal lands or conducted by a federal agency, the management action itself provides the federal nexus. There are several federal, state and local resource management areas that overlap with the proposed designation, and these are summarized in Table 22 below.

Table 22: Major Resource Management Areas that Overlap with the Proposed Critical Habitat Designation for Smalltooth Sawfish

| Management Area | Notes |
|---|--|
| Everglades National Park, NPS | Preserve essential primitive conditions including the natural abundance, diversity, behavior, and ecological integrity of its flora and fauna |
| Collier Seminole State Park | Prohibits water resource development projects, water supply projects, stormwater management projects that alter the existing habitat within the park |
| Rookery Bay National Estuarine Research Reserve, NOAA | Prohibits extractive activities from the reserve and other activities that might harm or damage existing mangroves or fish species |
| Cape Romano-Ten Thousand Islands Aquatic Preserve | Limit trimming and/or removal of saltmarsh vegetation and other shoreline vegetation |
| Gasparilla Sound-Charlotte Harbor Aquatic Preserve | Limit trimming and/or removal of saltmarsh vegetation and other shoreline vegetation |
| Charlotte Harbor Preserve State Park | Limit trimming and/or removal of saltmarsh vegetation and other shoreline vegetation |
| Estero Bay Aquatic Preserve | Limit trimming and/or removal of saltmarsh vegetation and other shoreline vegetation |
| J.N. “Ding” Darling Wildlife Refuge, USFWS | Preserve natural vegetation within the preserve |
| Pine Island Sound Aquatic Preserve | Limit trimming and/or removal of saltmarsh vegetation and other shoreline vegetation |
| Barefoot Beach Preserve | Preserve natural vegetation within the preserve |
| Lovers Key Recreation Area | Preserve natural vegetation within the preserve |
| Matlacha Pass National Wildlife Refuge - USFWS/Matlacha Pass Aquatic Preserve | Limit trimming and/or removal of saltmarsh vegetation and other shoreline vegetation |
| Cape Haze Aquatic Preserve | Limit trimming and/or removal of saltmarsh vegetation and other shoreline vegetation |
| Caloosahatchee National Wildlife Refuge, USFWS | Protect and preserve the suitable habitat for endangered and threatened species |

We conclude that any section 7 impacts that would result from state or local resource management agencies’ actions would be included in predicted future permitting actions by the USACE. As discussed in section 3.2 above, based on our database of past consultations and our discussions with area managers about future actions, we have projected that one joint consultation with the USACE and DOI, for the Everglades National Park’s Cape Sable Canal Dam Restoration Project, will result from the proposed

designation. We are not projecting consultation for activities related to CERP, given the uncertain nature, location, and timing of such projects.

Negative impacts to the Everglades National Park (ENP) could result if the expected future consultation would interfere with DOI's ability to provide for the conservation of listed species that benefit from their management actions in ENP, or otherwise hampers management of these areas, or negatively affects NMFS' working relationship with DOI. As described above, we have assumed that the single consultation projected with DOI over the next 10 years will be required based on both the presence of the sawfish and the designation of critical habitat, so the designation is not expected to increase the number of consultations that DOI would otherwise be required to conduct with NMFS. However, we have assumed that the critical habitat designation will require a formal consultation whereas the consultation would be informal based on the presence of the species alone. We have also assumed that the consultation will result in required modifications to the project to avoid destroying or adversely modifying the critical habitat, and that these modifications will be an incremental impact of this designation. Thus, DOI may experience increased administrative costs of consultation (\$9,000-\$13,100, depending on complexity of the consultation), and the costs of project modifications to prevent the destruction or adverse modifications of either or both essential features. We have identified sediment and turbidity controls during construction, environmental conditions monitoring, and modifications to prevent alteration of the downstream salinity regime within designated critical habitat as modifications that we may request for a project like the one identified by DOI (i.e., repairing existing water control structure(s)), but we have not been able to project the costs of such modifications. However, in the case of DOI's project, the water control structures have been in place for many years, and their purpose is to protect freshwater marshes in the inland reaches of the Park from saltwater intrusion. The purpose of the proposed project is to repair damage to the structures to maintain the salinity regime in the relevant channels. Thus, we would expect project modifications and associated costs to be more modest than they would be for construction of new water control structures, or for water control structures that regulate residential or commercial human use of water above and below the structure. Therefore, we do not expect the costs associated with the single projected future consultation in ENP to interfere with DOI's management of the Park or its ability to protect park resources, and we do not foresee any negative impacts on our relationship with DOI as a result of the consultation that will result from the proposed designation.

6 SYNTHESIS: IMPACTS OF INCLUDING THE IDENTIFIED AREAS IN THE PROPOSED CRITICAL HABITAT DESIGNATION FOR SMALLTOOTH SAWFISH

As discussed above, the ESA requires that the economic, national security, and other relevant impacts be taken into consideration when proposing to designate critical habitat. Because the ESA does not specify methods or criteria for the consideration of impacts, the proposing agency has considerable discretion in evaluating the various impacts and determining how the impacts will be used in deciding whether to propose any particular area for exclusion.

As discussed above, no categories of Federal actions in either proposed critical habitat unit would require consultation in the future solely due to the critical habitat designation; all projected categories of future actions have the potential to adversely affect both the essential features and the listed smalltooth sawfish. We have assumed that all future projects that may affect one or both of the features will require formal consultation and that all of these consultations will require mandatory modifications to prevent destruction or adverse modification of critical habitat. However, based on our past consultation database, we project that none of these formal consultations and project modifications will be required due to the listing and impacts to the sawfish. Further, we have assumed that the protections to the essential features provided by the proposed designation will not be co-extensive with the requirements of existing laws and

regulations that protect resources more generally. Thus, we have projected that incremental administrative costs of consultation and incremental project modification costs will be associated with the proposed designation.

In the following subsections, the impacts of designation identified above, including the limitations of available information and the assumptions used, are summarized and discussed.

6.1 Impacts in Unit 1: Charlotte Harbor Estuary Unit

6.1.1 Economic Impacts

The economic impacts of the proposed designation were categorized as administrative and project modification costs. As presented in *Section 3.2.4*, the proposed designation is projected to result in a total of 67 consultations over the next 10 years in Unit 1, or between 6 and 7 consultations per year. Table 13 summarizes the number of consultations projected over the next 10 years for Unit 1, the Federal action agency, and whether the entity conducting the activity will be a Federal agency or third party. All projected consultations will involve the USACE as the action agency, and three consultations may also involve the USCG and the FHA. USACE-permitted construction activities comprise 60 of the projected 76 future consultations in Unit 1. These consultations are projected to occur throughout the proposed unit.

We have projected there will not be an increase in the number of future consultations required solely due to the designation, however we are projecting incremental administrative costs of consultation will result, due to the assumption that formal consultations will be required to avoid adverse impacts to the essential features. The incremental administrative costs for Unit 1 are estimated to range from \$1,026,000 to \$1,368,000 (depending on complexity of the consultation) over the 10-year planning period. These costs may be an overestimate of administrative costs resulting from the designation, due to the assumption that all future projects will require formal consultation to avoid destroying or adversely modifying critical habitat.

A range of project modifications, described in Table 17, would be applicable to preventing the destruction or adverse modification of the essential features for the actions projected to require consultation in Unit 1. Due to the lack of specific information on future projects, and our inability to accurately forecast the exact type and number of modifications required, the total project modification costs of the critical habitat designation cannot be estimated. Nevertheless, the analysis indicates that consultations in Unit 1 would be required due to adverse impacts on the essential features, and project modifications would be implemented to avoid destruction or adverse modification of the features. We may have overestimated the impacts of the proposed designation in our assumption that all costs of required project modifications will be incremental impacts of the designation, and not imposed by state, local or other federal entities to avoid adverse impacts to resources under their jurisdictions that might include mangroves or shallow coastal ecosystems.

Avoiding the destruction or adverse modification of mangroves and shallow euryhaline habitats through designation of critical habitat is expected to result in positive impacts. As discussed above, these features provide crucial nursery area functions to sawfish in Unit 1, and we have determined these features in this area are essential to the conservation of the sawfish. Preventing the destruction or adverse modification of these features would therefore contribute to the retention of existing economic and other benefits that they provide to society.

Based on the above consideration of the positive and negative economic impacts of including Unit 1 in the proposed critical habitat designation, we do not exercise our discretion to propose for exclusion all or any part of Unit 1 from the designation on the basis of these impacts.

6.1.2 National Security Impacts

Correspondence between the NMFS and the Departments of the Army, Navy, and Air Force indicated that no DOD facilities or managed areas are located within the proposed critical habitat. Based on the location of the critical habitat, consultations with respect to activities on DOD facilities or training are unlikely to be required as a result of the proposed critical habitat designation. Therefore, no national security impacts are anticipated as a result of this proposed critical habitat designation and no exclusions are proposed on the basis of such impacts.

6.1.3 Other Relevant Impacts

In addition to the economic benefits addressed above, the designation offers potential education benefits as discussed in *Section 5.1*. Specifically, the designation may expand the awareness raised by the listing of the smalltooth sawfish. Mangroves are often used for recreational activities, such as kayaking and bird watching. The designation may increase the attractiveness of conducting recreational activities within the boundaries of the critical habitat. Additionally, Federal and State protected areas may benefit from that added awareness of the endangered smalltooth sawfish within their boundaries, as well as support their conservation goals with the protection critical habitat designation affords.

The benefits associated with project modifications described previously would be the avoidance of destruction or adverse modification of the mangrove and shallow euryhaline habitats and the ecosystem services that they provide. The conservation of mangroves and shallow waters offers many benefits, including shoreline protection, fisheries sustainability, biodiversity, and water quality regulation. The conservation benefits would be realized from every acre protected as a result of the critical habitat designation (incremental to the listing of the smalltooth sawfish and other laws and regulations). Because current literature is not available for the South Florida region, this analysis does not estimate a monetary value for the protected habitats but discusses the benefits qualitatively. However, studies have been conducted on mangroves for other parts of the world. These studies have shown a direct link between the health of the mangrove forests and the economic and resource benefits that are provided to the local communities. Based on the above consideration of positive and negative other relevant impacts of including Unit 1 in the proposed critical habitat designation, we do not exercise our discretion to propose for exclusion all or any part of Unit 1 from the designation on the basis of these impacts.

6.2 Impacts in Unit 2: Ten Thousand Islands/Everglades Unit

6.2.1 Economic Impacts

The economic impacts of the proposed designation were categorized as administrative and project modification costs. As presented in *Section 3.2.4*, the proposed designation is projected to result in a total of eight consultations over the next 10 years in Unit 2, which is less than one consultation per year on average. Table 14 summarizes the consultations projected over the next 10 years for Unit 2, the Federal action agency, and whether the entity conducting the activity will be a Federal agency or third party. All eight consultations are projected to involve the USACE as the action agency, three of these consultations may also involve the USCG and the FHA, and one will involve DOI.

We have projected that these eight consultations will not represent an increase in the number of future consultations required solely due to the designation; i.e., these consultations would be required based on the listing and the presence of the sawfish in this area. However we are projecting incremental administrative costs of consultation will result, due to the assumption that formal consultations will be required to avoid adverse impacts to the essential features. The incremental administrative costs for Unit 2 are estimated to range from \$108,000 to \$144,000 (depending on complexity of the consultation) over the 10-year planning period. These costs may be an overestimate of administrative costs resulting from the designation, due to the assumption that all future projects will require formal consultation to avoid destroying or adversely modifying critical habitat.

A range of project modifications, described in Table 17, would be applicable to preventing adverse impacts to the essential features for the actions projected to require consultation in Unit 2. Due to the lack of specific information on future projects, and our inability to accurately forecast the exact type and number of modifications required, the total project modification costs of the critical habitat designation cannot be estimated. Nevertheless, the analysis indicates that consultations in Unit 2 would be required due to adverse impacts on the essential features, and project modifications would be implemented to avoid destruction or adverse modification of the features. We may have overestimated the impacts of the proposed designation in our assumption that all costs of required project modifications will be incremental impacts of the designation, and not imposed by state, local or other federal entities to avoid adverse impacts to resources under their jurisdictions that might include mangroves or shallow coastal ecosystems.

Avoiding the destruction or adverse modification of mangroves and shallow euryhaline habitats through designation of critical habitat is expected to result in positive impacts. As discussed above, these features provide crucial nursery area functions to sawfish in Unit 2, and we have determined these features in this Unit are essential to the conservation of the sawfish. Preventing the destruction or adverse modification of these features would contribute to the retention of existing economic and other benefits that they provide to society.

Based on the above consideration of the positive and negative economic impacts of including Unit 2 in the proposed critical habitat designation, we do not exercise our discretion to propose for exclusion all or any part of Unit 2 from the designation on the basis of these impacts.

6.2.2 National Security Impacts

Correspondence between the NMFS and the Departments of the Army, Navy, and Air Force indicated that no DOD facilities or managed areas are located within the proposed critical habitat. Based on the location of the critical habitat, consultations with respect to activities on DOD facilities or training are unlikely to be required as a result of the proposed critical habitat designation. Therefore, no national security impacts are anticipated as a result of this proposed critical habitat designation and no exclusions will be proposed on the basis of such impacts.

6.2.3 Other Relevant Impacts

In addition to the economic benefits addressed above, the designation offers potential education benefits as discussed in *Section 5.1*. Specifically, the designation may expand the awareness raised by the listing of the smalltooth sawfish. Mangroves are often used for recreational activities, such as kayaking and bird watching. The designation may increase the attractiveness of conducting recreational activities within the boundaries of the critical habitat. Additionally, Federal and State protected areas may benefit from that added awareness of the endangered smalltooth sawfish within their boundaries, as well as support their conservation goals with the protection critical habitat designation affords.

The benefits associated with project modifications described previously would be the avoidance of destruction or adverse modification of the mangrove and shallow euryhaline habitats and the ecosystem services that they provide. The conservation of mangroves and shallow euryhaline habitats offers many benefits, including shoreline protection, fisheries sustainability, biodiversity, and water quality regulation. The conservation benefits would be realized from every acre protected as a result of the critical habitat designation (incremental to the listing of the smalltooth sawfish and other laws and regulations). Because current literature is not available for the Southern Florida region, this analysis does not estimate a monetary value for the protected habitats but discusses the benefits qualitatively. However, studies have been conducted on mangroves for other parts of the world. These studies have shown a direct link between the health of the mangrove forests and the economic and resource benefits that are provided to the local communities.

Based on the above consideration of positive and negative other relevant impacts of including Unit 2 in the proposed critical habitat designation, we do not exercise our discretion to propose for exclusion all or any part of Unit 2 from the designation on the basis of these impacts.

7 REFERENCES

- Bann, Camille. 1997. *The Economic Valuation of Mangroves: A Manual for Researchers*. Special Papers: International Development Research Center, Ottawa, Canada.
- Bell, F.W. 1989. Application of wetland valuation theory to Florida fisheries. Florida Sea Grant Program, Report # 95, Florida Sea Grant College, Florida, USA, 118p.
- Benner, R., Peele, E.R., and Hodson, R.E. 1986. Microbial utilization of dissolved organic matter from leaves of the red mangrove, *Rhizophora mangle*, in the fresh creek estuary, Bahamas. *Estuarine Coastal Shelf Sci.* 23, 607-619.
- Bennett J. 2006. Study of the Monroe County Tourism Workforce. Prepared for the Monroe County Tourist Development Council.
http://monroecofl.virtualltownhall.net/Pages/MonroeCoFL_TDC/Research/TDCTourismWorkforceStudy.pdf
- Boyer, T. and S. Polasky. 2004. Valuing urban wetlands: a review of non-market valuation studies. Department of Applied Economics, University of Minnesota.
- Camilleri, J.C., and Ribí, G. 1986. Leaching of dissolved organic carbon (DOC) from dead leaves, formation of flakes from DOC, and feeding on flakes by crustaceans in mangroves. *Mar Biol. (Berlin)* 91, 337-344.
- Christensen, Bo. 1983. Mangroves: What are they worth? *Unasylva*. Vol 35. Food and Agricultural Organization of the United Nations.
- Cintron, G., A.E.Lugo, and R. Martinez. 1985. Structural and functional properties of mangrove forests, in *Botany and Natural History of Panama, IV Series: Monographs in Systematic Botany*, vol. 10: 53-66.
- Collier County. <http://www.colliergov.net/Index.aspx?page=1396>. Accessed October 2007.
- Costanza, R., R. D'Arge, R. De Groot, S. Farber, M. Grasso, B. Hannon, K. Limburg, S. Naeem, R.V. O'Neil, J. Paruelo, R.G. Raskin, P. Sutton, and M. Van den Belt. 1997. The value of the World's ecosystem services and natural capital. *Nature* 387: 253-60.
- Danielson, F., M.K. Sorensen, M.F. Olwig, V. Selvam, F. Parish, N.D. Burgess, T. Hiraishi, V.M. Karunakaran, M.S. Rasmussen, L.B. Hansen, A. Quarto, and N. Suryadiputra. 2005. The Asian Tsunami: a protective role for coastal vegetation. *Sience* 310: 643.
- De Groot, R. 1992. *Functions of nature: evaluation of nature in environmental planning, management and decision making*. Wolters-Noorhoff, Amsterdam.
- Elliott D. Pollack and Company. 1999. *The Economic and Fiscal Impact of Designation of 60.060 Acres of Privately Owned Land in Pima County, Arizona as Critical Habitat for the Cactus Ferruginus Pygmy-Owl*, prepared for Southern Arizona Homebuilders Association.
- Farber, S. and R. Costanza. 1997. The economic value of wetland systems. *Journal of Environmental Management* 24: 41-51.
- Florida Department of Environmental Protection. 2000. Rookery Bay National Estuarine Research Reserve Management Plan 2000–2005.
http://www.dep.state.fl.us/coastal/downloads/management_plans/RookeryBayNERR-2000.pdf. Accessed June 2008.

- Florida Department of Environmental Protection. 2004. Collier-Seminole State Park Unit Management Plan. <http://www.dep.state.fl.us/parks/planning/parkplans/CollierSeminoleStatePark.pdf>. Accessed June 2008.
- Florida Department of Natural Resources. May 1983. Charlotte Harbor Aquatic Preserves Management Plan. Cape Haze, Gasparilla Sound-Charlotte Harbor, Matlacha Pass and Pine Island Sound Aquatic Preserves. http://www.dep.state.fl.us/coastal/downloads/management_plans/aquatic/CharlotteHarbor.pdf. Accessed June 2008.
- Florida Department of Natural Resources. September 1983. Estero Bay Aquatic Preserve Management Plan. http://www.dep.state.fl.us/coastal/downloads/management_plans/aquatic/EsteroBay.pdf. Accessed June 2008.
- Florida Department of Natural Resources. June 1988. Rookery Bay and Cape Romano-Ten Thousand Islands Aquatic Preserves Management Plan. http://www.dep.state.fl.us/coastal/downloads/management_plans/aquatic/RookeryBayandCapeRomano-TenThousandIslands.pdf. Accessed June 2008.
- Florida Fish and Wildlife Conservation Commission. Fish and Wildlife Research Institute, *Recreational Fisheries Landings: Marine Recreational Fisheries Statistics Survey*. http://research.myfwc.com/features/view_article.asp?id=19870. Accessed November 2007.
- Florida Marine Research Institute. 2008. Florida's Mangroves: "Walking Trees." Department of Environmental Protection. <http://www.floridaplants.com/horticulture/mangrove.htm>. Accessed May 2008.
- Food and Agricultural Organization of the United Nations. 2007. The World's Mangroves 1980-2005, FAO Forestry Paper 153. FAO, Rome.
- Grasso, Monica. 1998. Ecological-economic model for optimal mangrove trade off between forestry and fishery production: comparing a dynamic optimization and simulation model. *Ecological Modeling*, 112 (2-3):131-150.
- Grasso, Monica. 1999. *Natural Resource Valuation and Policy in Brazil: Methods and Cases*, ed. Peter Herman May. Columbia University Press, 1999.
- Gupta, T.R. and J.H. Foster. 1975. Economic criteria for freshwater wetland policy in Massachusetts. *American Journal of Agricultural Economics*, 57 (1): 40-45.
- Hiraishi, T. and K. Harada. 2005. Greenbelt Tsunami Prevention in South-Pacific Region Japan, The Port and Airport Research Institute. 42:3-5, 7-25. http://eqtap.edm.bosai.go.jp/useful_outputs/report/hirashi/data/papers/greenbelt.pdf
- Industrial Economics, Incorporated (IEc). 2003. Economic Analysis of Critical Habitat Designation for the Gulf Sturgeon. Prepared for the Division of Economics, U.S. Fish & Wildlife Service.
- Institute of Food and Agricultural Sciences, University of Florida. *Florida Forest Trees*. Florida 4-H Forest Ecology. http://www.sfrc.ufl.edu/4h/Red_mangrove/redmangr.htm. Accessed November 2007.
- Jaap, W.C. and P. Hallock 1990. Coral Reefs. *Ecosystems of Florida*. R.L. Myers and J.J. Ewel, eds. Orlando, University of Central Florida Press: xviii, 765.
- Key West Chamber of Commerce, Community Information. *Trends on the Web January 2008*. <http://www.keywestchamber.org/images/PDF/Trends.pdf>. Accessed November 2007.
- Law, Beverly E. and Nancy P. Arny. *Mangroves-Florida's Coastal Trees*. FOR 43. University of Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences. <http://www.sfrc.ufl.edu/Extension/pubtxt/for43.htm>. Accessed September 2007.

- Livingston, R.J. 1990. Inshore Marine Habitats. *Ecosystems of Florida*. R.L. Myers and J.J. Ewel, eds. Orlando, University of Central Florida Press: xviii, 765.
- Mendelssohn, I. A. and K. L. McKee. 2000. Saltmarshes and mangroves. North American terrestrial vegetation. M. G. Barbour and W. D. Billings. Cambridge, U.K.; New York, Cambridge University Press: xi, 708.
- Milon, J.W. 2002. Natural Resource Valuation of Indian River Lagoon, Chapter 8, *Florida Coastal Environmental Resources: A Guide to Economic Valuation and Impact Analysis*, eds. D. Letson and J.W. Milon. Gainesville, FL: Florida Sea Grant (SGR-124).
- Mote Marine Laboratory. 2004. Status of smalltooth sawfish in U.S. waters. <http://www.mote.org/%7Ecolins/SawfishConservation/SmalltoothStatus.htm>. March 2004.
- National Estuarine Research Reserve Program Regulations (15 CFR Part 921). <http://www.dep.state.fl.us/coastal/sites/rookery/plan>. Accessed June 2008.
- National Marine Fisheries Service. 2000. Status Review of Smalltooth Sawfish (*Pristis pectinata*). December, 2000.
- National Marine Fisheries Service. 2006. Draft Smalltooth Sawfish Recovery Plan. National Oceanic and Atmospheric Administration, August 2006.
- National Park Service. 2001. Everglades National Park, Strategic Plan, 2001–2005. <http://www.nps.gov/ever/parkmgmt/upload/everstrategicplan.pdf> Accessed June 2008.
- National Park Service. 2007. Personal communication with NPS Park Planner, October–November 2007.
- Odum, W. E. and C. C. McIvor. 1990. Mangroves. *Ecosystems of Florida*. R. L. Myers and J. J. Ewel, eds. Orlando, University of Central Florida Press: xviii, 765.
- Pearce, D. W. and R.K. Turner. 1990. Economics of natural resources and the environment. The John Hopkins University Press, Baltimore, MD.
- Poulakis, G.R. and J.C. Seitz. 2004. Recent occurrence of the smalltooth sawfish, *Pristis pectinata* (Elasmobranchiomorphi: Pristidae), in Florida Bay and the Florida Keys, with comments on sawfish ecology. *Florida Scientist* 67(27): 27-35.
- Ramsar Convention Bureau. 2000. Shoreline Stabilization & Storm Protection. *The Ramsar Convention on Wetlands*. Switzerland. 21 December. http://72.14.209.104/search?q=cache:IGhI3a_67EQJ:www.ramsar.org/info/values_shoreline_e.htm+mangrove+bank+stabilization&hl=en&gl=us&ct=clnk&cd=1. Accessed May 2008.
- Scholander, P.F., Hammel, H.T., Bradstreet, E.D., and Hemmingsen, E.A.. 1965. Sap Pressure in Vascular Plants. *Science* 148, 339-346.
- Scholander, P.F. 1968. How Mangroves Desalinate Seawater. *Physiol. Plant.* 21, 258-268.
- Simpfendorfer, C. A. and T. R. Wiley. 2005. Determination of the distribution of Florida's remnant sawfish population and identification of areas critical to their conservation. Final report. Florida Fish and Wildlife Conservation Commission, Tallahassee, Florida. 40 pp.
- Southwick Associates, Inc. 2008. The 2006 Economic Benefits of Wildlife Viewing in Florida. Florida Fish and Wildlife Conservation Commission, Tallahassee.
- Tourism Development Council, Collier County. <http://www.colliergov.net/Index.aspx?page=843>. Accessed October 2007.
- Ueland, J.S. "Ecological Modeling and Human Dimensions of Mangrove Change in Florida." PhD Dissertation, Florida State University, 2005.

U.S Army Corps of Engineers, August 2000. Comprehensive Everglades Restoration Plan. Volume 1 and II. Jacksonville District and South Florida Water Management District.

U.S. Fish and Wildlife Service, 2007. USFWS Threatened and Endangered Species System (TESS), http://ecos.fws.gov/tess_public/. Accessed November 2007.

U.S. Fish and Wildlife Service. 2008a. J.N. “Ding” Darling National Wildlife Refuge Web Page: <http://www.fws.gov/dingdarling/>. Accessed June 2008.

U.S. Fish and Wildlife Service. 2008b. Caloosahatchee National Wildlife Refuge Web Page: <http://www.fws.gov/caloosahatchee>. Accessed June 2008.

APPENDIX A

BOUNDARIES OF THE AREAS PROPOSED FOR CRITICAL HABITAT DESIGNATION

Unit 1: Charlotte Harbor Estuary Unit

The Charlotte Harbor Estuary Unit includes Charlotte Harbor, Gasparilla Sound, Pine Island Sound, Matlacha Pass, San Carlos Bay, Estero Bay, and the Caloosahatchee River. The unit is defined by the following boundaries. It is bounded by the Peace River at the eastern extent at the mouth of Shell Creek at 81° 59.467' W, and the northern extent of the Charlotte Harbor Preserve State Park at 26° 58.933' N. At the Myakka River the estuary is bounded by the SR-776 Bridge and Gasparilla Sound at the SR-771 Bridge. The COLREGS-72 lines between Gasparilla Island, Lacosta Island, North Captiva Island, Captiva Island, Sanibel Island, and the northern point of Estero Island are used as the coastal boundary for the unit. The southern extent of the area is the Estero Bay Aquatic Preserve, which is bounded on the south by the Lee/Collier County line. Inland waters are bounded at SR-867 (McGregor Blvd) to Fort Myers, SR-80 (Palm Beach Blvd), Orange River Blvd, Buckingham Rd, and SR-80 to the west side of the Franklin Lock and Dam (S-79), which is the eastern boundary on the Caloosahatchee River and a structural barrier for sawfish access. Additional inland water boundaries north and west of the lock are bounded by North River Road, SR-31, SR-78 near Cape Coral, SR-765, US-41, SR-35 (Marion Ave) in Punta Gorda, and Riverside Road to the eastern extent of the Peace River at 81° 59.467' W.

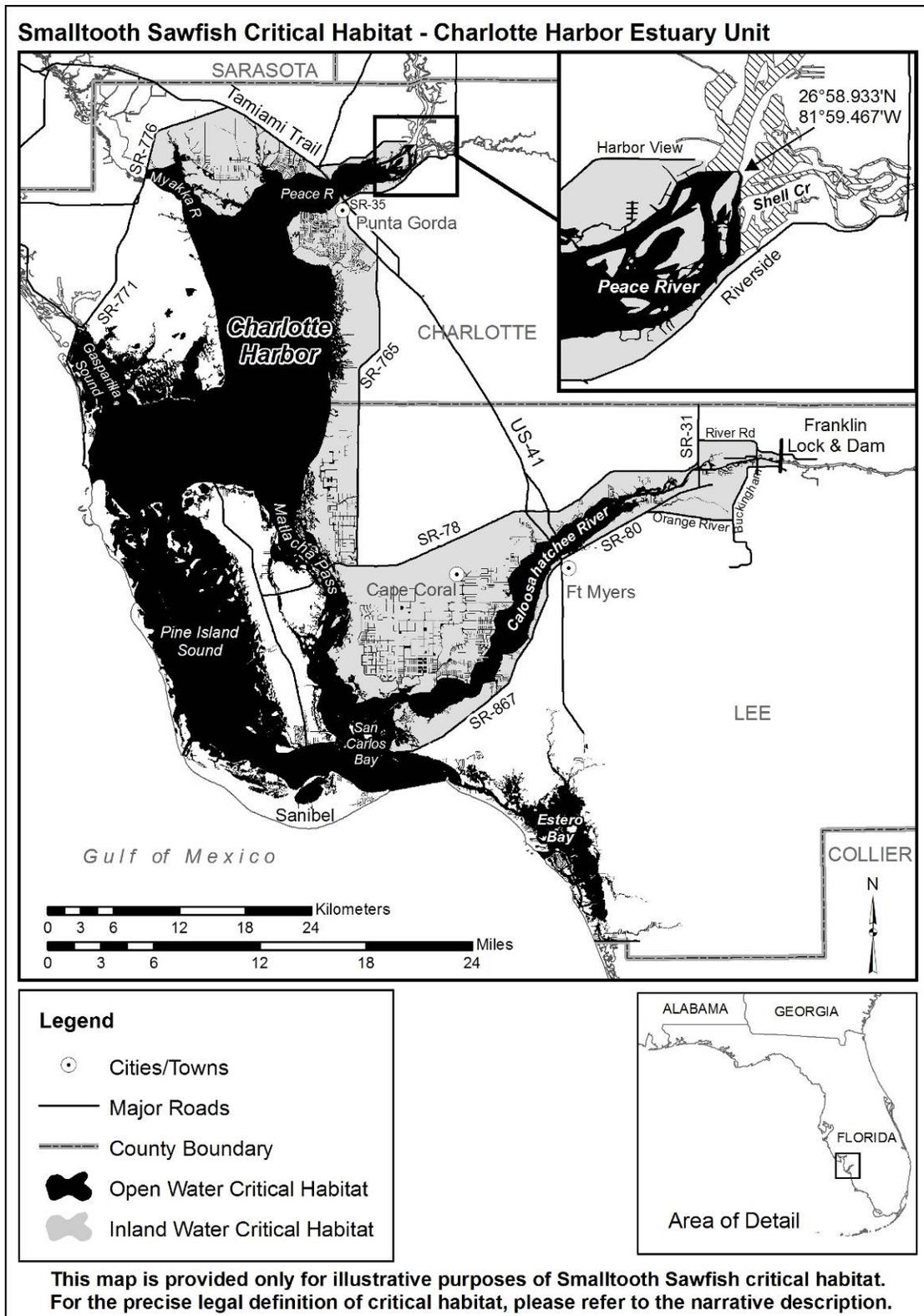


Figure A1: Proposed Critical Habitat Designation for Unit 1

Unit 2: Ten Thousand Islands/Everglades Unit

The TTI/E Unit is located between Cape Romano and Florida Bay. It is bounded on the north by Rookery Bay Aquatic Preserve from State Route 92 southward, Cape Romano-Ten Thousand Islands Aquatic Preserve southern boundary, then by the Everglades National Park coastal boundary, which includes Florida Bay, to US-Highway 1. Inland waters within the critical habitat would extend no further than the Aquatic Preserve and Everglades National Park boundary, with exceptions between Point 55 (see Table A1 for latitude and longitude point boundaries) at Cape Romano-Ten Thousand Islands Aquatic Preserve, and Point 56 and 57, near Everglades City. The boundary again follows the Everglades National Park boundary with exceptions between Point 77 and Point 1, at Main Park Road (SR-9336) at Nine Mile Pond, and Point 2, where it rejoins the Everglades National Park boundary due west of US-Highway 1 (Figure A2).

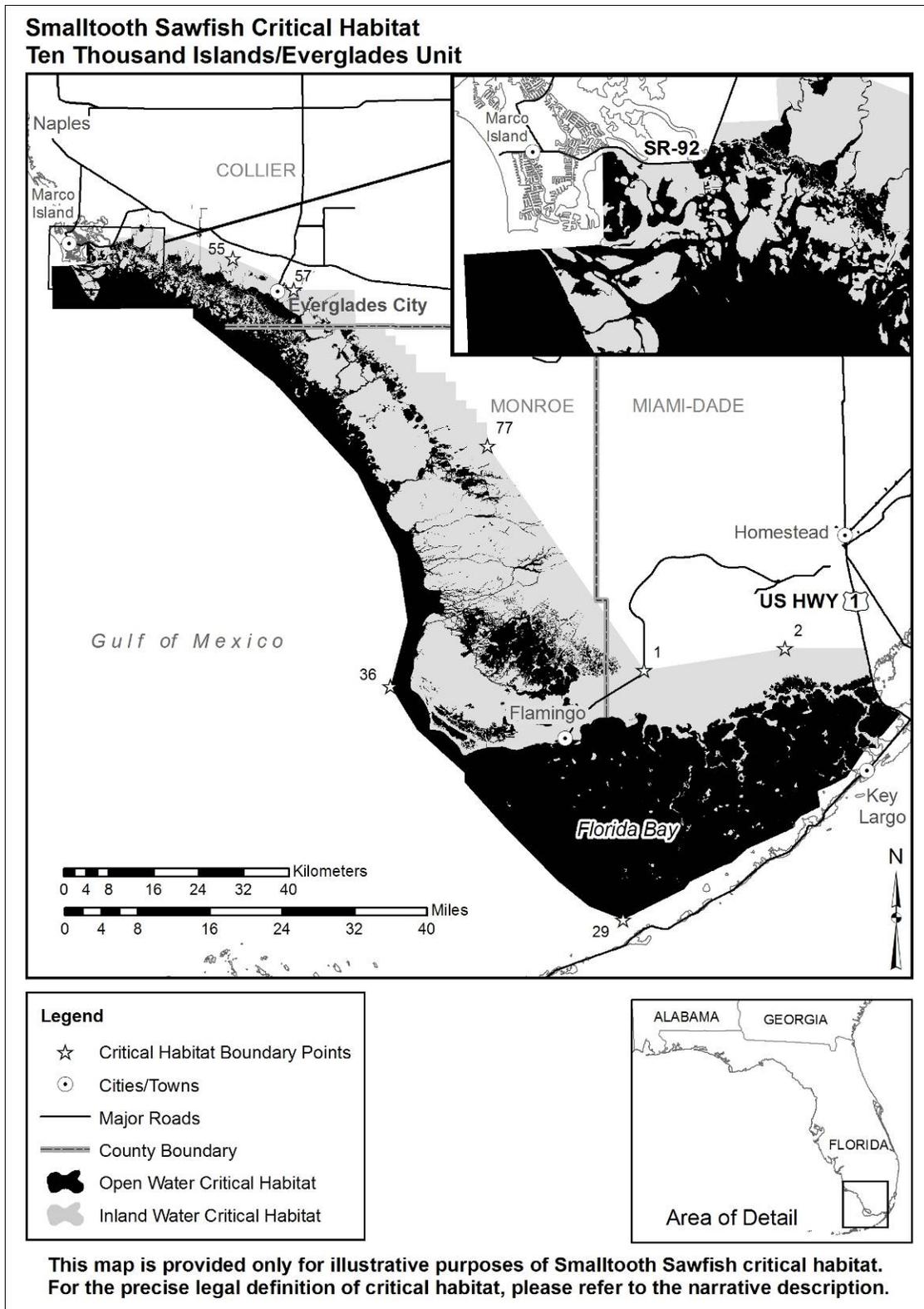


Figure A2: Proposed Critical Habitat Designation for Unit 2

Table A1: Unit 2 Latitude and Longitude Point Boundaries

| ID | LATITUDE | LONGITUDE | DESCRIPTION |
|----|----------|-----------|--|
| 1 | 25.2527 | -80.7988 | Main Park Road (SR-9336) at Nine Mile Pond |
| 2 | 25.2874 | -80.5736 | Everglades National Park boundary |
| 3 | 25.2872 | -80.4448 | Everglades National Park boundary at US-HWY 1 |
| 4 | 25.2237 | -80.4308 | Everglades National Park boundary at US-HWY 1 |
| 5 | 25.1979 | -80.4173 | Everglades National Park boundary at US-HWY 1 |
| 6 | 25.1846 | -80.3887 | Everglades National Park boundary at US-HWY 1 |
| 7 | 25.1797 | -80.3905 | Everglades National Park boundary at US-HWY 1 |
| 8 | 25.148 | -80.4179 | Everglades National Park boundary at Intercoastal Waterway (ICW) |
| 9 | 25.1432 | -80.4249 | Everglades National Park boundary at ICW |
| 10 | 25.1352 | -80.4253 | Everglades National Park boundary at ICW |
| 11 | 25.1309 | -80.4226 | Everglades National Park boundary at ICW |
| 12 | 25.1282 | -80.423 | Everglades National Park boundary at ICW |
| 13 | 25.1265 | -80.4268 | Everglades National Park boundary at ICW |
| 14 | 25.1282 | -80.4432 | Everglades National Park boundary at ICW |
| 15 | 25.0813 | -80.4747 | Everglades National Park boundary at ICW |
| 16 | 25.0676 | -80.4998 | Everglades National Park boundary at ICW |
| 17 | 25.0582 | -80.5218 | Everglades National Park boundary at ICW |
| 18 | 25.0373 | -80.5178 | Everglades National Park boundary at ICW |
| 19 | 25.0326 | -80.5188 | Everglades National Park boundary at ICW |
| 20 | 25.0168 | -80.5487 | Everglades National Park boundary at ICW |
| 21 | 25.0075 | -80.5578 | Everglades National Park boundary at ICW |
| 22 | 24.999 | -80.5609 | Everglades National Park boundary at ICW near Plantation |
| 23 | 24.9962 | -80.5648 | Everglades National Park boundary at ICW |
| 24 | 24.9655 | -80.6347 | Everglades National Park boundary at ICW |
| 25 | 24.943 | -80.6585 | Everglades National Park boundary at ICW |
| 26 | 24.9388 | -80.6716 | Everglades National Park boundary at ICW |
| 27 | 24.9124 | -80.7255 | Everglades National Park boundary at ICW |
| 28 | 24.9006 | -80.7348 | Everglades National Park boundary at ICW |
| 29 | 24.8515 | -80.8326 | Everglades National Park boundary at COLREG-72 |
| 30 | 24.873 | -80.8875 | Everglades National Park boundary at Arsenic Bank Light |
| 31 | 24.9142 | -80.9372 | Everglades National Park boundary at Sprigger Bank Light |
| 32 | 25.0004 | -81.0221 | Everglades National Park boundary |
| 33 | 25.0723 | -81.0858 | Everglades National Park boundary |
| 34 | 25.0868 | -81.0858 | Everglades National Park boundary |
| 35 | 25.1567 | -81.162 | Everglades National Park boundary at Middle Cape Sable |
| 36 | 25.2262 | -81.2044 | Everglades National Park boundary |
| 37 | 25.3304 | -81.1776 | Everglades National Park boundary at Little Shark River |
| 38 | 25.4379 | -81.194 | Everglades National Park boundary |
| 39 | 25.5682 | -81.2581 | Everglades National Park boundary |
| 40 | 25.7154 | -81.3923 | Everglades National Park boundary at Pavillion Key |
| 41 | 25.8181 | -81.5205 | Everglades National Park boundary |
| 42 | 25.8326 | -81.5205 | Everglades National Park boundary at Cape Romano-Ten Thousand Islands Aquatic Preserve |
| 43 | 25.8315 | -81.745 | Rookery Bay Aquatic Preserve boundary (southwest corner) |
| 44 | 25.9003 | -81.7468 | Rookery Bay Aquatic Preserve boundary |
| 45 | 25.903 | -81.6907 | Rookery Bay Aquatic Preserve boundary |
| 46 | 25.938 | -81.6907 | Rookery Bay Aquatic Preserve boundary at SR-92 |
| 47 | 25.9378 | -81.6834 | Rookery Bay Aquatic Preserve boundary at SR-92 |

| ID | LATITUDE | LONGITUDE | DESCRIPTION |
|----|----------|-----------|--|
| 48 | 25.9319 | -81.6718 | Rookery Bay Aquatic Preserve boundary at SR-92 |
| 49 | 25.933 | -81.6508 | Rookery Bay Aquatic Preserve boundary at SR-92 |
| 50 | 25.9351 | -81.6483 | Rookery Bay Aquatic Preserve boundary at SR-92 |
| 51 | 25.9464 | -81.6433 | Rookery Bay Aquatic Preserve boundary at SR-92 |
| 52 | 25.947 | -81.62 | Cape Romano-Ten Thousand Islands Aquatic Preserve boundary |
| 53 | 25.9615 | -81.6206 | Cape Romano-Ten Thousand Islands Aquatic Preserve boundary |
| 54 | 25.9689 | -81.6041 | Cape Romano-Ten Thousand Islands Aquatic Preserve boundary |
| 55 | 25.913 | -81.4569 | Cape Romano-Ten Thousand Islands Aquatic Preserve boundary |
| 56 | 25.8916 | -81.4082 | Everglades National Park boundary west of Everglades City |
| 57 | 25.863 | -81.359 | Everglades National Park boundary east of Everglades City |
| 58 | 25.8619 | -81.2624 | Everglades National Park boundary |
| 59 | 25.804 | -81.2602 | Everglades National Park boundary |
| 60 | 25.804 | -81.2126 | Everglades National Park boundary |
| 61 | 25.7892 | -81.2128 | Everglades National Park boundary |
| 62 | 25.7892 | -81.1969 | Everglades National Park boundary |
| 63 | 25.7743 | -81.1966 | Everglades National Park boundary |
| 64 | 25.774 | -81.1803 | Everglades National Park boundary |
| 65 | 25.7591 | -81.1803 | Everglades National Park boundary |
| 66 | 25.7592 | -81.1641 | Everglades National Park boundary |
| 67 | 25.7295 | -81.1638 | Everglades National Park boundary |
| 68 | 25.7299 | -81.1165 | Everglades National Park boundary |
| 69 | 25.7153 | -81.1164 | Everglades National Park boundary |
| 70 | 25.7154 | -81.1002 | Everglades National Park boundary |
| 71 | 25.6859 | -81.0997 | Everglades National Park boundary |
| 72 | 25.6862 | -81.0836 | Everglades National Park boundary |
| 73 | 25.6715 | -81.0835 | Everglades National Park boundary |
| 74 | 25.6718 | -81.0671 | Everglades National Park boundary |
| 75 | 25.6497 | -81.0665 | Everglades National Park boundary |
| 76 | 25.6501 | -81.0507 | Everglades National Park boundary |
| 77 | 25.6128 | -81.0497 | Everglades National Park boundary |

APPENDIX B

**INITIAL REGULATORY FLEXIBILITY ANALYSIS
FOR THE PROPOSED DESIGNATION OF CRITICAL HABITAT
FOR SMALLTOOTH SAWFISH**

INITIAL REGULATORY FLEXIBILITY ANALYSIS

Introduction

The purpose of the RFA is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to ensure that such proposals are given serious consideration. The RFA does not contain any decision criteria; instead, the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of alternatives to the proposed action, and to ensure that the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the proposed action and applicable statutes.

The following Initial Regulatory Flexibility Analysis (IRFA) has been prepared pursuant to Section 603 of the RFA to provide information to the public about the impacts of the proposed action and significant alternatives to the proposed action. According to the RFA, an IRFA must contain the following information: (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description, and, where feasible, an estimate of the number of small entities affected by the proposed rule; (4) a description of the projected reporting, record keeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirements of the Report or record; and (5) identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule. An IRFA must also describe significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities. Analysis of these factors is based on the impacts analysis developed in the draft Section 4(b)(2) Report.

Reasons why action by the agency is being considered

The purpose and need, issues, problems, and objectives of the proposed ESA critical habitat designation for endangered smalltooth sawfish are discussed in the preamble to the proposed rule to designate critical habitat for the smalltooth sawfish and the *Impacts Analysis for Critical Habitat Designation for Endangered Smalltooth Sawfish*, prepared pursuant to ESA Section 4(b)(2). These discussions are incorporated herein by reference. In summary, the purpose of the proposed critical habitat designation is to designate, to the maximum extent prudent and determinable, the specific areas that contain the physical and biological features essential to the conservation of the species and that may require special management considerations or protections. For smalltooth sawfish, the physical and biological features essential to the conservation of the species because they provide juvenile nursery area functions are red mangroves and shallow euryhaline waters with depths of less than or equal to 3 feet (0.9 meter) at MLLW.

Objectives and legal basis for proposed rule

Under ESA Section 4(a)(3), the U.S. Secretary of Commerce is required, to the maximum extent prudent and determinable, to designate critical habitat for threatened and endangered species. The proposed critical habitat designation represents that designation for smalltooth sawfish. Pursuant to the ESA, the proposed rule identifies the specific areas within the geographical area occupied by the smalltooth sawfish at the time of its listing containing the physical and biological features that are essential to the conservation of the sawfish and that may require special management considerations or protections.

Description and estimate of the number of small entities to which the proposed rule may apply

This rule may affect small businesses, small nonprofit organizations, and small governmental jurisdictions that engage in activities that may affect the essential feature identified in this proposed designation, if they receive funding or authorization for such activity from a Federal agency. Such activities would trigger ESA section 7 consultation requirements, and potential recommendations to modify proposed activities to avoid destroying or adversely modifying the critical habitat. The consultation record from which we have projected likely actions occurring over the next ten years indicates that applicants for federal permits or funds have included small entities. For example, marine contractors have been the recipients of USACE permits for dock construction; some of these contractors may be small entities. According to the Small Business Administration, businesses in the Heavy and Civil Engineering Construction subsector (NAICS Code 237990), which includes firms involved in marine construction projects such as breakwater, dock, pier, jetty, seawall and harbor construction, must have average annual receipts of no more than \$31 million to qualify as a small business (dredging contractors that perform at least 40% of the volume dredged with their own equipment, or equipment owned by another small concern are considered small businesses if their average annual receipts are less than or equal to \$18.5 million). Our consultation database does not track the identity of past permit recipients or any particulars that would allow us to determine whether the recipients were small entities, so we have no basis to determine the number or percentage of future grantees or permittees that may be small businesses. Small businesses in the tourist and commercial fishing industries may benefit from the rule, as conservation of the critical habitat features, particularly mangroves, is expected to at minimum prevent loss of current direct and indirect use of, and values derived from, these habitats within the areas included in the proposed designation. We encourage small businesses, small governmental jurisdictions, and other small entities to provide comment on whether they may be affected by this rulemaking to help us provide an accurate estimate of the number of small entities to which the proposed rule will apply.

A review of historical ESA section 7 consultations involving projects in the areas proposed for designation is described in Section 3.2.2 of the draft Section 4(b)(2) Report prepared for this rulemaking. We projected that, on average, approximately eight Federal projects with non-federal grantees or permittees will be affected by implementation of the proposed critical habitat designation, annually, across both areas proposed for inclusion in the critical habitat designation. Some of these grantees or permittees could be small entities, or could hire small entities to assist in project implementation. Historically, these projects have involved dock/pier construction and repair, water control structure installation or repair, bridge repair and construction, dredging, cable installation, and shoreline stabilization. Potential project modifications we have identified that may be required to prevent these types of projects from adversely modifying critical habitat include: project relocation; environmental conditions monitoring; horizontal directional drilling; road/utility corridor restrictions; alternative shoreline stabilization methods; dock size and width limits; restrictions on structures that modify freshwater flows; and sediment and turbidity control measures. See Table 15 of the draft Section 4(b)(2) report. We have excerpted the project modification costs table below.

Even though we cannot determine relative numbers of small and large entities that may be affected by this rule, there is no indication that affected project applicants would be limited to, nor disproportionately comprised of, small entities. It is unclear whether small entities would be placed at a competitive disadvantage compared to large entities. However, as described in the draft Section 4(b)(2) Report, consultations and project modifications will be required based on the type of permitted action and its associated impacts on the essential critical habitat feature. The costs of many potential project modifications that may be required to avoid adverse modification of critical habitat may be unit costs – e.g., cost per mile or per linear foot of the project. Thus, total project modification costs would be proportional to the size of the project, and it is not unreasonable to assume that larger entities would be involved in implementing the larger projects with proportionally larger project modification costs.

It is also unclear whether the proposed rule will significantly reduce profits or revenue for small businesses. As discussed throughout the draft Section 4(b)(2) Report, we made assumptions that all of the future consultations will be formal, that all will require project modifications, and that all costs of project modifications will be incremental impacts of the proposed designation and not a requirement of other existing regulatory requirements. These assumptions likely overestimate the impacts of the proposed designation. In addition, as stated above, though it is not possible to determine the exact cost of any given project modification resulting from consultation, the smaller projects most likely to be undertaken by small entities would likely result in relatively small modification costs.

We encourage all small businesses, small governmental jurisdictions, and other small entities that may be affected by this rule to provide comment on the potential economic impacts of the proposed designation, such as anticipated costs of consultation and potential project modifications, to improve the above analysis.

Table B1: Potential Project Modification Costs

| Project Modification | Cost | Unit | Range | Approx. Totals |
|--|---|-------------|----------------|---------------------------------|
| Project Relocation | Undeterminable | N/A | N/A | N/A |
| HDD | \$1.39–2.44 million | per mile | 0.2–31.5 Miles | \$278,000–\$76,900,000 |
| Restriction of Utility/Road Corridor Widths | Roadway Retained Sides, 2 Lane = \$1,875 Roadway Retained Sides, 4 Lane = \$2,150 Roadway Bridge, 2 Lane = \$3,370 Roadway Bridge 4 Lane = \$5,050 | linear foot | N/A | \$1,875–\$5,050 per linear foot |
| Alternative Shoreline Stabilization Methods | Undeterminable | N/A | N/A | N/A |
| Limitations on Dock Size | Undeterminable | N/A | N/A | N/A |
| Limitation/Restrictions on Modifying Freshwater Flow | Undeterminable | N/A | N/A | N/A |
| Sediment Controls | Staked Silt Fence = \$2 Floating Turbidity Barrier = \$12 | linear foot | N/A | \$2–\$12 per linear foot |
| Conditions Monitoring | Undeterminable | N/A | N/A | N/A |

Note: Where information was available, the estimated ranges (extents) of the impacts are included.

Description of projected reporting, record keeping, and other compliance requirements of the rule

The proposed critical habitat rule would require that Federal agencies ensure their actions do not destroy or adversely modify critical habitat through a Section 7 consultation. See *Section 1.2* for a description of the proposed rule. The primary compliance mechanism for the proposed rule involves the implementation of project modifications to reduce the impact of federally conducted and permitted actions on the proposed critical habitat. Where available, costs for these modifications are set forth above. Other than any monitoring or reporting recommended during a section 7 consultation, there are no record keeping or reporting requirements associated with the proposed rule. There are, however, administrative costs associated with compliance requirements of the critical habitat designation, and a higher percentage of the actions are assumed to require a formal consultation (historical consultation records used as the basis of this analysis have all been informal).

Identification of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule

Federal laws and regulations that directly or indirectly protect the smalltooth sawfish critical habitat are listed in *Section 2.2*. No Federal laws or rules duplicate or conflict with the proposed rule. Existing Federal laws and rules may overlap with the proposed rule in that they provide protection to shallow euryhaline habitats and mangroves generally. However, no existing laws or rules specifically address negative impacts to, or require the avoidance of the destruction or adverse modification of, the essential features of critical habitat for the smalltooth sawfish.

Description of significant alternatives

Alternative 1: No Action Alternative

No action (status quo): NMFS would not designate critical habitat for smalltooth sawfish. Under this alternative conservation and recovery of the listed species would depend exclusively upon the protection provided under the “jeopardy” provisions of Section 7 of the ESA. Under the status quo, there would be no increase in the number of ESA consultations or project modifications in the future that would not otherwise be required due to the listing of the smalltooth sawfish. However, the physical and biological features forming the basis for our proposed critical habitat designation are essential to sawfish conservation, and conservation for this species will not succeed without the availability of this feature. Thus, the lack of protection of the critical habitat feature from adverse modification could result in continued declines in abundance of smalltooth sawfish, and loss of associated values sawfish provide to society. Further, this alternative is not consistent with the requirement of the ESA to designate critical habitat to the maximum extent prudent and determinable.

Alternative 2: Preferred Alternative

Under this alternative two specific areas that provide nursery functions for juvenile sawfish are proposed as critical habitat. These areas are located along peninsular Florida, encompassing portions of Charlotte, Lee, Collier, Monroe, and Miami-Dade counties. This area contains the physical and biological features essential to the conservation of the U.S. DPS of smalltooth sawfish. The essential features are red mangroves and shallow euryhaline habitats characterized by water depths between the MHW line and 3 ft (0.9 m) measured at MLLW that provide nursery area functions to smalltooth sawfish.

The preferred alternative was selected because it best implements the critical habitat provisions of the ESA, by defining the specific features that are essential to the conservation of the species, and due to the important conservation benefits are expected to result from this alternative relative to the no action alternative.

Alternative 3: Varying Numbers of Units Alternative

Under this alternative, we considered both combining the Charlotte Harbor Estuary Unit and the TTI/E Unit into a single unit for designation and splitting both units into multiple smaller units. Under the first scenario, the unit would include the Naples beach area between the 2 proposed units, and thus would encompass a larger total area than the 2 proposed units. Though juveniles have been encountered in the Naples beach area, they have not been encountered in high densities. We do not believe that juveniles move between the Charlotte Harbor Estuary and TTI/E Units along this stretch of beach. Furthermore, while red mangroves exist along this area (though they are much more sparsely distributed than in the 2 proposed units), the salinity regimes are much more purely marine than estuarine, and the features are not considered to provide nursery functions essential to the conservation of the species in these areas. Thus, we rejected this alternative because the Naples Beach area is not considered to meet the definition of critical habitat.

Under the second scenario, we considered options to split both the Charlotte Harbor Estuary Unit and the TTI/E Unit into multiple smaller units. We considered designating Charlotte Harbor and the

Caloosahatchee Rivers as separate units, including limiting the sizes of each of these areas strictly to locations of past high density encounters of juveniles. We considered the same type of partitioning of the TTI/E Unit into smaller isolated units based on past high density encounters alone.

We rejected the alternative of separating Charlotte Harbor and the Caloosahatchee River because state and local water resource managers consider the systems as a single integrated aquatic system. For both proposed units, we rejected the alternative of multiple smaller units drawn around past high density juvenile encounters because we believe it would have omitted habitat that is almost certain nursery habitat for the sawfish between the units. In addition, the proposed essential features are continuously distributed from the harbor to the river, so this option would have omitted areas that meet the definition of critical habitat. Moreover, a designation limited to past encounters would not take into account the limits of this type of data in defining the extent of habitat use by the sawfish, and it would not provide protection for expanded nursery habitat needed for a recovering population. In addition, it was not clear that designating multiple smaller units would result in lower economic impacts of the designation, as the precise location of future consultations within these areas cannot be predicted based on available information.