

Advocacy Advises FWS to Address Small Business Impacts in its Designation of Critical Habitat for the Spikedace and Loach Minnows

On July 6, 2006, the Office of Advocacy (Advocacy) sent a letter to the U.S. Fish and Wildlife Service (FWS), in response to a notice of availability of draft economic analysis that it recently published, *Endangered and Threatened Wildlife Plants; Proposed Designation of Critical Habitat for Spikedace (Meda fulgida) and Loach Minnow (Tiaroga cobitis)* (71 Fed. Reg. 32496, June 6, 2006). Advocacy recommended that FWS complete an Initial Regulatory Flexibility Analysis (IRFA) that would require the agency to evaluate the economic impact of the proposed critical habitat designation on small entities and to consider specific alternatives to minimize small business burdens. A complete copy of Advocacy's letter to the FWS may be accessed at <http://www.sba.gov/advo/commnets/>.

- The Endangered Species Act requires FWS to designate critical habitat for endangered and threatened species to provide those species extra protection. Under critical habitat designations (CHD), a user of land that falls within a critical habitat designation is responsible for mitigation to prevent habitation loss for the threatened and endangered species, and for developers, a consultation process is also required.
- FWS's draft economic impact analysis indicates that impacts due to implementation of the Spikedace and Loach Minnow CHD conservation activities may affect small entities engaged in water management and use, livestock grazing, recreation, and residential and related development. Small farming operations, for example, will be required to divert water from agricultural use to ensure that the species has an adequate water supply which will result in reductions in crop production and a loss in revenue.
- FWS certified this proposed rule as not having a significant impact on a substantial number of small entities. However, after review of FWS's economic analysis, and input from the small business community, Advocacy believes that the agency underestimated the number of small entities likely to be impacted and the significance of the economic impact on these entities. Therefore, Advocacy asked FWS to better consider small business costs and regulatory alternatives in an IRFA.
- Advocacy acknowledges FWS for reopening the comment period to allow interested parties an opportunity to comment on, and request changes to, the proposed critical habitat designation and the draft economic analysis. However, Advocacy believes that a more expansive view of the data on small entity impacts demonstrates that certification of this rule is inappropriate.

For more information, visit Advocacy's Web page at: <http://www.sba.gov/advo>, or contact regulatory and legislative counsel for regional affairs Sarah Wickham by email at sarah.wickham@sba.gov or by phone at (202) 205-6972.