

Advocacy Advises FWS to Address Small Business Impacts in its Designation of Critical Habitat for Seven Species of Mussels in the Southeast

On August 2, 2006, the Office of Advocacy (Advocacy) sent a letter to the U.S. Fish and Wildlife Service (FWS), in response to a notice of proposed rule that the agency recently published, *Endangered and Threatened Wildlife Plants; Proposed Designation of Critical Habitat for Five Endangered and Two Threatened Mussels in Four Northeast Gulf of Mexico Drainages* (71 Fed. Reg. 32746, June 6, 2006). Advocacy recommended that FWS provide an Initial Regulatory Flexibility Analysis (IRFA) or certification that the proposed rule will not have a significant impact on a substantial number of small entities at the same time as the publication of the notice of proposed rule. A complete copy of Advocacy's letter to the FWS may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- The Regulatory Flexibility Act requires agencies to publish an IRFA or a certification that the proposed rule will not have a significant impact on a substantial number of small entities at the same time as the publication of a proposed rule in the *Federal Register*, unless the agency makes a written declaration that an emergency exists.
- The agency has made no finding of an emergency; therefore, failure to prepare an IRFA or provide a factual basis to certify the rule was improper.
- Advocacy recognizes FWS's commitment to publishing a notice of availability of the draft economic impact analysis of the proposed designation in the future and reopening the comment period. However, Advocacy cautions that by postponing this analysis there is less opportunity for FWS to collect information from public comments that arise from the publication of the regulatory flexibility analysis and to consider flexibilities for small business carefully.

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.