

Advocacy Advises FWS to Address Small Business Impacts in its Designation of Critical Habitat for the Endangered Alabama Beach Mouse

On September 7, 2006, the Office of Advocacy (Advocacy) filed a comment with the U.S. Fish and Wildlife Service (FWS), in response to a notice of revised proposed rule and notice of availability of draft economic analysis that it recently published, *Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Endangered Alabama Beach Mouse*. Advocacy recommended that FWS complete an Initial Regulatory Flexibility Analysis (IRFA) to evaluate the economic impact of the proposed critical habitat designation on small entities and to consider regulatory alternatives to minimize small business burdens. A complete copy of Advocacy's letter to FWS may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- 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 required.
- Based on consultations with the small business community, Advocacy believes that the draft economic impact analysis provided by FWS for this CHD overlooks sectors of small entities in the private development industry that may be significantly affected, such as developers and builders.
- Under the RFA, when an agency proposes a rule, it must perform an IRFA, unless the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. FWS did not provide an IRFA, and Advocacy believes that FWS cannot provide a factual basis for certification.
- Advocacy commended 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. Advocacy recommended that FWS complete an IRFA for the proposed rule and subject this analysis for public comment prior to moving forward with a final rule.

For more information, visit Advocacy's Web page at <http://www.sba.gov/advo>, or contact Assistant Chief Counsel Janis Reyes by email at janis.reyes@sba.gov or by phone at 202-619-0312.