on FMCSA's and PHMSA's analysis, it is reasonably foreseeable that the action would not *significantly* increase total regulated motor vehicle mileage, nor would it change how these vehicles operate, or the vehicle fleet mix of motor carriers.

FMCSA and PHMSA conclude that the rule changes would have a negligible impact on the quality of several environmental components described in the EA and therefore would not require an Environmental Impact Statement. Subsequently, FMCSA and PHMSA are issuing a Finding of No Significant Impact with regard to potential environmental impact of this action.

A copy of the joint FMCSA and PHMSA Final Environmental Assessment (Final EA) is included in both dockets, FMCSA–2006–25660 and PHMSA–2010–0319 (HM–255). FMCSA and PHMSA sought public comment on its draft environmental assessment and received no comments about it.

Executive Order 12898 (Environmental Justice)

FMCSA and PHMSA evaluated the environmental effects of this final rule in accordance with Executive Order 12898 and determined there are neither environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. None of the alternatives analyzed in the Agencies' EA, discussed under NEPA, would result in high and adverse environmental impacts.

Executive Order 13045 (Protection of Children)

FMCSA and PHMSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agencies have determined this rule does not create an environmental risk to health or safety that may disproportionately affect children. None of the alternatives analyzed in the Agencies' EA, discussed under NEPA, result in environmental risk to health or safety disproportionately affecting children.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

FMCSA and PHMSA analyzed this rulemaking in accordance with the principles and criteria in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This rulemaking is required by law and does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on tribal governments. Thus, the funding and consultation requirements of E.O. 13175 do not apply and no tribal summary impact statement is required.

Executive Order 13211 (Energy Effects)

FMCSA and PHMSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. FMCSA and PHMSA determined that it will not be a ''significant energy action'' under that Executive Order because it will not be economically significant and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 392

Highway safety, Motor carriers.

In consideration of the foregoing, PHMSA and FMCSA amend title 49, Code of Federal Regulations, chapter I, part 177, and chapter III, part 392, as set forth below:

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 1. The authority citation for part 177 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127; sec. 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994); sec. 32509 of Pub. L. 112–141, 126 Stat. 405, 805 (2012); 49 CFR 1.97.

■ 2. Section 177.804 is revised to read as follows:

§ 177.804 Compliance with Federal Motor Carrier Safety Regulations.

(a) *General.* Motor carriers and other persons subject to this part must comply with 49 CFR part 383 and 49 CFR parts 390 through 397 (excluding §§ 397.3 and 397.9) to the extent those regulations apply.

(b) *Additional prohibitions.* A person transporting a quantity of hazardous materials requiring placarding under 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73:

(1) Must comply with the safe clearance requirements for highway-rail grade crossings in § 392.12 of this title;

(2) May not engage in, allow, or require texting while driving, in accordance with § 392.80 of this title; and

(3) May not engage in, allow, or require the use of a hand-held mobile telephone while driving, in accordance with § 392.82 of this title.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 3. The authority citation for part 392 is revised to read as follows:

Authority: 49 U.S.C. 504, 13902, 31136, 31151, 31502; Section 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994), as amended by sec. 32509 of Pub. L. 112–141, 126 Stat. 405, 805 (2012); and 49 CFR 1.87.

■ 4. Section 392.12 is added to read as follows:

§ 392.12 Highway-rail crossings; safe clearance.

No driver of a commercial motor vehicle shall drive onto a highway-rail grade crossing without having sufficient space to drive completely through the crossing without stopping.

Issued in Washington, DC on August 21, 2013 under authority delegated in 49 CFR 1.97 (PHMSA) and 1.87 (FMCSA).

By the Pipeline and Hazardous Materials Safety Administration.

Cynthia L. Quarterman,

Administrator.

By the Federal Motor Carrier Safety Administration.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–23375 Filed 9–24–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2013–0016; 4500030113]

RIN 1018–AZ41

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Grotto Sculpin (Cottus specus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, exclude all areas that were proposed as critical habitat for the

grotto sculpin *(Cottus specus)* under the Endangered Species Act in this final rule. In total, approximately 94 km² (36.28 mi²) plus 31 kilometers (19.2 miles) of surface stream that were proposed as critical habitat are excluded under section 4(b)(2) of the Act from this final designation for sites within Perry County, Missouri, due to the commitment of city, county, and private entities in the implementation of a Perry County Community Conservation Plan for the grotto sculpin.

DATES: This rule becomes effective on October 25, 2013.

ADDRESSES: This final rule is available on the Internet at *http://www.fws.gov/midwest/Endangered* and the rule and comments and materials received are available at *http://www.regulations.gov* at Docket No. FWS–R3–ES–2013–0016. Comments and materials received, as well as supporting documentation used in the preparation of this rule, are also available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Ecological Services Field Office, 101 Park DeVille Dr., Suite A, Columbia, MO 65203; telephone: 573–234–2132; facsimile: 573–234–2181. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Amy Salveter, Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 101 Park DeVille Dr.; Suite A, Columbia, MO 65203, telephone: 573–234–2312; facsimile: 573–234–2181. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations, revisions, and exclusions of critical habitat can only be completed by issuing a rule. This rule provides a rationale why all areas proposed for designation meet the requirements for exclusion under Section 4(b)(2) of the Act.

We, the U.S. Fish and Wildlife Service (Service), proposed to list the grotto sculpin as an endangered species on September 27, 2012 (76 FR 59488). On September 27, 2012, we published in the **Federal Register** a proposed critical habitat designation for the grotto sculpin. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

We can exclude an area from critical habitat if the benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species. The critical habitat areas we are excluding in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the grotto sculpin, and those areas where the benefits of exclusion from designation outweigh the benefits of inclusion. We are excluding critical habitat in Perry County, Missouri, as follows:

- Two units comprising all underground aquatic habitat underlying approximately 94 km² (36.28 mi²).
- Two units that include approximately 31 kilometers (19.2 miles) of surface stream.

Economic analysis associated with previous proposal to designate critical habitat. In order to consider economic impacts of the proposed designation published in the **Federal Register** on September 27, 2012, we prepared a draft analysis of the economic impacts of the proposed critical habitat designation and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on May 7, 2013 (78 FR 26581), allowing the public to provide comments on our analysis. We have incorporated the comments and have completed the final economic analysis (FEA) concurrently with this final determination.

Opportunity for the public to comment on the Perry County Community Conservation Plan. Concurrent with the DEA, we announced the availability of the Perry County Community Conservation Plan (PCCCP) in the **Federal Register** on May 7, 2013 (78 FR 26581), allowing the public to provide comments on the voluntary conservation measures outlined in the PCCCP to benefit the grotto sculpin. We have incorporated the comments and have completed an evaluation of the PCCCP concurrently with this final determination.

Peer review and public comment. We sought comments from independent specialists to ensure that our proposal was based on scientifically sound data and analyses. We obtained opinions from two knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, and whether we had used the best available information. These peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final rule. We also considered all comments and information received from the public during the comment periods.

Previous Federal Actions

Please see the listing rule published elsewhere in today's **Federal Register** for a complete history of previous Federal actions.

Background

Below we discuss only those topics directly relevant to the designation of critical habitat for the grotto sculpin in this section of the rule. More information on the species' taxonomy, distribution, biology, life history, habitat, and threats can be found in the Service's proposed listing and critical habitat rule published September 27, 2012, in the **Federal Register** (77 FR 59488) and in the final listing rule published elsewhere in today's **Federal Register**.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the grotto sculpin during two comment periods. The first comment period associated with the publication of the proposed rule (77 FR 59488) opened on September 27, 2012, and closed on November 26, 2012. We also requested comments on the proposed critical habitat designation and associated draft economic analysis during a comment period that opened May 7, 2013, and closed on June 6, 2013 (78 FR 26581). We did not receive any requests for a public hearing. We held a public meeting in Perryville, Missouri, on October 30, 2012. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and draft economic analysis during these comment periods.

During the first comment period, we received 35 comment letters directly addressing the proposed critical habitat designation. During the second comment period, we received six comment letters addressing the proposed critical habitat designation or the draft economic analysis. During the October 30, 2012, public meeting, numerous Perry County residents made

comments or asked questions on the proposed designation of critical habitat for the grotto sculpin. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below. Comments received were grouped into 13 general issues specifically relating to the proposed critical habitat designation for the grotto sculpin and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, fish ecology expertise, and conservation biology principles. We received responses from two of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the grotto sculpin. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final listing rule but did not specifically address critical habitat.

Comments From States

Section 4(i) of the Act states that ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from the State regarding the proposal to designate critical habitat for the grotto sculpin are addressed below.

Comment: The Missouri Department of Conservation questioned the need for critical habitat designation and stated that working with private landowners on a voluntary basis to implement best management practices is a proven, practical, and effective approach to the protection and recovery of listed species.

Our Response: Private landowners play a very important role in the management and conservation of threatened and endangered species. In fact, nearly 75 percent of listed species occur on private lands, in part because private landowners prove to be committed land stewards. The Service agrees that working cooperatively with private landowners to develop and implement a conservation plan that addresses the threats to the species can be an effective way to conserve the grotto sculpin. In order to exclude areas from critical habitat, however, we need to consider whether that partnership and the benefits it will provide to the species outweigh the benefits associated with designating critical habitat. The Service's determination to exclude critical habitat designation as outlined in this final rule is based, in part, on the strong commitment of multiple Federal, State, county, municipal, and private entities to implement the Perry County Community Conservation Plan.

Comment: The Missouri Department of Conservation noted that their agency was in the process of developing a karst management plan to assist in the conservation of grotto sculpin, and suggested that such a document is an example of a proactive approach toward recovery of the species. This document has since been completed (Crites and Schubert 2013, pp. 1–23).

Our Response: The Service has considered the Missouri Department of Conservation's karst management plan, along with the Perry County Community Conservation Plan, in weighing the benefits of excluding critical habitat compared to those benefits of designating critical habitat. As discussed more fully under Exclusions, the conservation actions contained in those plans will sufficiently reduce threats to the species' habitat such that the benefits of designating critical habitat are greatly reduced.

Public Comments

Comment: Several commenters questioned if critical habitat would economically impact businesses, hinder development and road building projects, reduce revenues within areas designated, or provide disincentives for companies wanting to locate in Perry County.

Our Response: The potential impact of critical habitat designation on various business and development projects was analyzed in the draft and final economic analyses. In the DEA, incremental economic impacts over an 18-year period were estimated to be between $140,000 (a low-end scenario) and $4,000,000 (high-end scenario) (Industrial Economics Inc. 2013, p. ES–5). In the low-end scenario, it was estimated that 76 percent of the associated costs would involve development projects, while 12.5 percent pertained to agriculture and grazing and the remaining 11.3 percent to agriculture (Industrial Economics Inc. 2013, p. ES–8). In the high-end scenario, habitat and species management efforts resulting from implementing the Perry County Community Conservation Plan would account for approximately 96 percent of projected incremental impacts. The remaining costs are attributed to development, agriculture and grazing, and transportation (Industrial Economics Inc. 2013, pp. ES8–9). Additionally, in cases where a Federal nexus occurs (Federal property or where a Federal permit or Federal funds are involved), Federal agencies must determine if proposed projects would likely adversely modify critical habitat. Because the majority of proposed critical habitat was on private land, any potential impact of final designation on local economies would pertain to section 7(a)(2) requirements when a Federal permit or Federal funds were involved.

Comment: One commenter asked if the Service would condemn private property designated as critical habitat.

Our Response: No, the Service does not ''condemn'' land designated as critical habitat. Only activities that involve a Federal permit, license, or funding, and are likely to destroy or adversely modify the area of critical habitat would be affected if critical habitat were designated. If this is the case, we work with the Federal agency and, where appropriate, private or other landowners to amend their project to allow it to proceed without adversely affecting the critical habitat.

Comment: One commenter inquired what costs would be associated with actions necessary to offset impacts to critical habitat.

Our Response: Any costs associated with the proposed designation of critical habitat were covered in the DEA that was made available to the public on May 7, 2013 (78 FR 26581),

Comment: One commenter asked how the designation of critical habitat would affect regulations associated with zoning and development in Perryville and Perry County.

Our Response: As outlined above, in cases where a Federal nexus occurred and critical habitat was designated, Federal agencies would have to determine if proposed projects would likely adversely modify critical habitat. No other restrictions or regulations would be instituted if critical habitat was designated.

Comment: One responder asked what reports or permits would be associated with critical habitat.

Our Response: No additional permits or reports would be required for the designation of critical habitat other than permits that are required under other existing Federal (e.g., Sections 401 and 404 of the Clean Water Act) and State (e.g., water quality standards under Missouri Clean Water Law 640 and 644) statutes.

Comment: Multiple commenters requested clarification of critical habitat boundaries, especially surface vs. subsurface areas, how they were determined, and if the Service could arbitrarily increase these areas in the future.

Our Response: The proposed critical habitat boundaries were determined based on what we considered occupied habitat within two surface streams (Blue Spring Branch and Cinque Hommes Creek) and the recharge areas of five cave systems (Moore Cave, Crevice Cave, Mystery Cave, Rimstone River Cave, and Running Bull Cave). Grotto sculpin are known to occupy underground aquatic habitats including cave streams, springs, and resurgence areas. Consequently, the recharge zones of the caves listed above included all interconnected aquatic habitats between surface and subsurface areas. The Service cannot arbitrarily increase areas designated as critical habitat in the future. Any additional areas that may be determined to be essential to the conservation of the species in the future (see next response) can only be designated as critical habitat if such areas are outlined in a subsequent draft proposed rule that would be subject to the same review process, analysis, and final determination as was undertaken with this current rulemaking.

Comment: Two commenters requested clarification of the definition of critical habitat and what factors are considered in a designation.

Our Response: Under section 3 of the Act, critical habitat is defined as: (1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Areas essential to the conservation of the grotto sculpin were identified in the Service's proposed rule of September 27, 2012 (77 FR 59488). Section 4(b)(2) of the Act states that the Secretary shall designate or make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impacts of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she 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.

Comment: One commenter asked if there are guidelines for best management practices and how such recommendations would be made available to private landowners.

Our Response: Best management practices that target actions that could benefit the grotto sculpin on private property do exist, and such recommendations will be made available through various land management agencies who work cooperatively with private landowners (*e.g.,* Natural Resources Conservation Service (NRCS), the University of Missouri Perry County Extension Service, the Missouri Department of Conservation's Private Lands Division, and the Service's Partners for Fish and Wildlife Program). Karst management guidelines are also available on the Missouri Department of Conservation's internet site at: *http://mdc.mo.gov/your-property/improve-your-property/building-karst-best-practices.* Additionally, the Missouri Department of Conservation (MDC) recently finalized management recommendations and best management practices for the grotto sculpin (Crites and Schubert 2013, pp. 16–20).

Comment: Multiple commenters asked if funds would be available to private landowners to assist in implementing management practices or guidelines that contribute to the conservation of the grotto sculpin.

Our Response: Various landowner incentive cost-share programs are available through NRCS, MDC, and the Service's Fish and Wildlife Program. The amount of available funding, however, depends on multiple factors, including Congressional appropriations, the type of actions needed, and the length of the appropriate cost-share agreement.

Comment: Multiple commenters asked what enforcement mechanisms would be associated with critical habitat if designated and who would enforce such regulations.

Our Response: The designation of critical habitat would not result in the initiation of any separate enforcement provisions. As outlined above, in cases where a Federal nexus occurred and critical habitat was designated, Federal agencies would have to determine if proposed projects would likely adversely modify critical habitat.

Comment: Multiple commenters provided support for the Perry County Community Conservation Plan (PCCCP) and stated that implementation of the plan would address threats to the species, improve water quality, and contribute to the conservation of the grotto sculpin such that the species should not be listed or should be listed as threatened rather than endangered, or that critical habitat should not be designated. The Service did not receive any comments in opposition to the PCCCP.

Our Response: As stated elsewhere in this final rule, the Service agrees that the actions outlined in the PCCCP address threats to the species such that critical habitat should be excluded from designation. Working collaboratively with the residents of Perry County and other Federal, State, and local partners is the most effective and proactive approach to conservation of this species. However, there is not yet sufficient evidence that the PCCCP is adequate to avoid listing the grotto sculpin. Nonetheless, the Service will reevaluate the status of the grotto sculpin during a 5-year review subsequent to its listing.

Comment: One agency questioned the estimated economic impact related to formal consultations associated with Federal projects that were anticipated within areas designated as critical habitat. This agency noted that if critical habitat were designated, it would work closely with the Service through informal consultation to implement conservation measures that would avoid any potential adverse modification to critical habitat.

Our Response: Had critical habitat been designated, the Service would prefer informal over formal consultation to avoid any potential adverse modification to critical habitat. However, in light of our decision to exclude areas proposed for critical habitat designation, this is no longer a relevant issue.

Comment: One commenter noted that the inability to establish recovery benchmarks for the grotto sculpin at this time devalued the draft economic analysis related to proposed critical habitat designation.

Our Response: Despite the lack of recovery benchmarks, the Service is required to conduct an economic analysis for any critical habitat that is proposed. The Service is currently in the process of establishing a recovery outline for the grotto sculpin to establish conservation priorities until a recovery plan can be developed.

Comment: One commenter stated that species protection and recovery are more effectively achieved by providing

incentives to landowners rather than imposing land-use restrictions and penalties associated with critical habitat.

Our Response: As noted in the Service's proposed rule of September 27, 2013 (77 FR 59488), there would have been minimal impact to private landowners had critical habitat been designated and such a designation would not have imposed land-use restrictions and penalties on private property. The Service supports cooperative partnerships that address threats to listed species and their habitat through conservation planning as in the case of the PCCCP. Additionally, the Service supports multiple landowner incentive programs that can assist private land owners in the implementation of conservation measures outlined in a collaborative plan. Such programs are available through multiple Federal and State agencies, and we remain hopeful that the funding necessary for implementation will remain available. The Service acknowledges, however, that the availability of funds for various Federal and State landowner incentive programs depends on multiple factors.

Summary of Changes From Proposed Rule

In the proposed rule published on September 27, 2012 (77 FR 59488), we proposed four units, totaling approximately 94 km^2 (36.28 mi^2) plus 31 kilometers (19.2 miles) of surface stream as critical habitat for the grotto sculpin. Subsequent to publication of the proposed rule, a collaborative partnership involving Federal, State, county, municipal, and private entities developed the Perry County Community Conservation Plan. The plan outlines detailed conservation measures that address threats to habitat that were identified in the proposed rule. We considered this conservation plan and the working partnership with those entities in evaluating potential exclusions from critical habitat. Based on that analysis, as discussed fully under Exclusions below, we determined that all areas that were proposed as critical habitat should be excluded from this final designation.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements (PCEs), such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside areas proposed for critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the grotto sculpin from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on September 27, 2012 (77 FR 59488), and in the information presented below. Additional information can be found in the final listing rule published elsewhere in today's **Federal Register**, and based on published literature (Burr *et al.* 2001, pp. 276–279; Gerken and Adams 2008, pp. 74–78; Adams *et al.* 2013, pp. 484–494), unpublished reports, and professional opinions by recognized experts. While little is known of the specific habitat requirements for this species, the best available information shows that the species requires adequate water quality, quantity, and flow, a stable stream channel, minimal sedimentation, organic input into caves during rain events, and a sufficient prey base for juveniles (Burr *et al.* 2001, pp. 291, 294–295; Gerken and Adams 2008, pp. 74–76; Adams *et al.* 2013, pp. 484–494). Due to the complex nature of the multiple karst regions in Perry County, diverse hydrologic components will be essential to the conservation of grotto sculpin; these include cave streams, resurgences, springs, surface streams, and surface and subterranean interconnected or interspatial habitats (Vandike 1985, pp. 1–10; Day 2008, pp. 22–24; Adams *et al.* 2013, p. 493). To identify the physical and biological features essential to the grotto sculpin, we relied on current conditions at locations where the species survives and the information available on this species.

Space for Individual and Population Growth and for Normal Behavior

The specific space requirements for the grotto sculpin are unknown, but given the mixture of habitats used by different life stages of this fish (Burr *et al.* 2001, p. 284; Gerken and Adams 2008, p. 76), space is not likely a limiting factor; however, silt and various pollutants may affect the species' overall distribution and abundance (Burr *et al.* 2001, p. 294; Gerken and Adams 2008, p. 76). Grotto sculpin occupy cave streams, resurgences (also known as ''spring branches'') (Vandike 1985, p. 10), springs, and surface streams (Adams 2012, pers. comm.; Adams *et al.* 2013, pp. 491–493; Burr *et al.* 2001, p. 284). They occupy pools and riffles with moderate flows and variable depths (4 to 33 centimeters (cm) (1.6 to 13 in)) (Burr *et al.* 2001, p. 284). Although grotto sculpin have been documented to occur over a variety of substrates (for example, silt, gravel, cobble, rock rubble, and bedrock), the presence of cobble or pebble is necessary for spawning (Burr *et al.* 2001, p. 284; Adams *et al.* unpub. data; Adams *et al.* 2013, pp. 491–492).

Grotto sculpin tend to be associated with an abundance of invertebrate prey, deeper cave pools, substrate containing cobble, and sustained water flow (Gerken 2007, pp. 16–17). Surface habitat used by grotto sculpins is characterized by an abundance of amphipods and isopods. In caves, grotto sculpins occupy deeper pools with cobble, and with a relatively high abundance of amphipods and isopods. Although usually in lower abundance, grotto sculpins also occupy shallow cave pools where the substrate consists of silt deposits deeper than 1.9 cm (0.8 in) (Gerken 2007, p. 16). Juvenile grotto sculpins use resurgences as nursery areas, where they maximize growth before migrating upstream into caves to reproduce or downstream to surface streams (Day 2008, p. 18).

Habitat conditions described above provide space, cover, shelter, and sites for foraging, breeding, reproduction, and growth of offspring for the grotto sculpin. These habitats are found in cave streams, resurgences, springs, and surface streams; therefore, we identify those elements as physical or biological features essential to the conservation for grotto sculpin. Additionally, interconnected karst areas and interstitial spaces that allow for the free flow of water between occupied surface and subsurface habitats are primary components of essential physical and biological features for the grotto sculpin.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Although the specific food items of grotto sculpin have not been determined, they are likely similar to

the diet of banded sculpin. Banded sculpin prey include ephemeropterans, dipterans, chronomids, gastropods, amphipods, isopods, fish, spiders, aquatic oligochaetes, caddisflies, damselfly larvae, ostracods, stoneflies, beetles, crayfish, and salamanders (Phillips and Kilambi 1996, pp. 69–72; Pflieger 1997, p. 253; Tumlinson and Cline 2002, pp. 111–112; Niemiller *et al.* 2006, p. 43). Prey availability is related to the organic input that is transported with sediment and other organic materials via sinkholes into stream habitats (Burr *et al.* 2001, p. 291). An abundance of aquatic invertebrates is necessary to support a viable population of grotto sculpin (Niemiller *et al.* 2006, p. 43; Gerken and Adams 2008, p. 75). Therefore, based on this information, we identify the availability of appropriate organic input supporting the aquatic invertebrate prey base to be a primary component of the essential physical and biological features for the grotto sculpin.

The grotto sculpin occurs in pools and riffles of cave streams, resurgences, springs, and surface streams (Burr *et al.* 2001, pp. 280–284; Adams 2012, pers. comm.; Adams *et al.* 2013, pp. 491–493). It can occur over multiple substrates including sand, silt, gravel, pebble, cobble, breakdown, and bedrock, although the association with silt might be due to the prevalence of sediment within occupied habitat rather than a preference for such substrates (Vandike 1985, p. 38; Burr *et al.* 2001, p. 284; Gerken 2007, pp. 13, 22–25; Gerken and Adams 2008, pp. 76–77).

Optimum water temperature, flow rates, and water depth in occupied streams have not been established for grotto sculpin and vary widely depending on life stage and location (*e.g.,* pools of cave streams versus flowing water in resurgences or surface streams) (Gerken 2007, pp. 20–27). Water depth varied, but ranged between 4 and 33 cm (1.6 and 13.0 in), and flow rates were between .05 and 6.67 cm/sec (0.2 and 2.6 in/sec) (Burr *et al.* 2001, p. 284; Gerken 2007, p. 17).

Occupied cave streams, resurgences, springs, surface streams, interconnected karst areas, and interstitial spaces should have reduced levels of silt, sustained water flows, high dissolved oxygen levels, and reduced amounts of organic and inorganic contaminants. Interconnected karst areas and interstitial spaces should be free of debris and have reduced levels of silt to allow for free flow of water between occupied habitats. Water quality standards for contaminants should follow guidelines established by the Environmental Protection Agency, except for ammonia and copper. Water quality criteria for ammonia and copper should follow minimum levels reported by Wang *et al.* (2007, pp. 2048–2055) and established for juvenile freshwater mussels (less than 4.6 parts per billion copper per liter and less than 370 parts per billion ammonia expressed as nitrogen per liter).

Optimum water quality parameters have not been determined for the grotto sculpin. Habitat information for other species that inhabit cave streams and springs in Missouri (such as the endangered Tumbling Creek cavesnail) may be used as suitable surrogates for the grotto sculpin. In the absence of information specific to the grotto sculpin's water quality needs, we believe the criteria established for the Tumbling Creek cavesnail are also suitable for the grotto sculpin. Therefore, we recommend the following water quality parameters for the grotto sculpin: An average daily discharge of 0.07 to 150 cubic feet per second (cfs); water temperature of cave streams, springs, resurgences, and surface streams should be between 55 and 62 °F (12.78 and 16.67 °C); dissolved oxygen levels should equal or exceed 4.5 milligrams per liter; and turbidity of an average monthly reading should not exceed 200 Nephelometric Units (units used to measure sediment discharge) and should not persist for a period greater than 4 hours. Adequate water flow, temperature, and quality (as defined above) are essential for normal behavior, growth, and viability during all life stages of the grotto sculpin. Therefore, based on the information above, we identify adequate water flow, temperature, and quality to be physical and biological features essential to the conservation for the grotto sculpin.

Cover or Shelter

Burr *et al.* (2001, p. 284) noted that grotto sculpin occur in the open as well as under rocks. Rocks within cave streams allow the grotto sculpin to avoid predators (Gerken 2007, p. 25); at least six different species of piscivorous, predatory fish occur within occupied grotto sculpin habitat (Burr *et al.* 2001, p. 284). Additionally, rocks provide a substrate for egg laying (Gerken 2007, p. 2; Adams 2005, p. 10; Adams *et al.* 2013, p. 492). In addition to rocks, large cobble has been identified as an important component of sculpin habitat (Gerken 2007, pp. 22–27).

Due to the wide variety of habitats used by grotto sculpin depending on age and season (Burr *et. al* 2001, pp. 283–284, 294; Gerken 2007, pp. 27–30; Gerken and Adams 2008, pp. 75–76), occupied underground and surface aquatic habitats including associated transitional aquatic habitats are all essential physical or biological features for the species. The grotto sculpin requires cave and surface streams with a stable stream bottom and solid bedrock and stable stream banks to maintain a stable horizontal dimension and vertical profile of pool and riffle habitats. A mixture of bottom substrates, including sand, gravel, pebbles, cobble, ceiling breakdown areas and larger rocks, is necessary to provide cover and attachment surfaces for egg masses (Adams *et al.* 2013, pp. 491–492). Additionally, bottom substrates must not be covered with excessive amounts of silt.

Therefore, based on the information above, we identify the following as primary components of the physical or biological features essential to the conservation of the grotto sculpin: Cave streams, resurgences, springs, surface streams, and interconnected areas between surface and subterranean habitats with stable bottom and banks; rocks or large cobble to provide cover; and substrates consisting of fine gravel with coarse gravel or cobble, or bedrock with sand and gravel, with low amounts of fine sand and sediments within the interstitial spaces of the substrates.

Sites for Breeding, Reproduction, or Rearing

Adams (2005, p. 10; Adams *et al.* 2008, p. 8; Gerken 2007, pp. 19–21) demonstrated that grotto sculpin spawn in caves but some young-of-the-year move to resurgences or surface streams and spend much of their lives away from caves. Juvenile grotto sculpin likely move out of caves to avoid predation by adult sculpin (Gerken 2007, p. 19) or move to take advantage of higher levels of prey in such habitats (Burr *et al.* 2001, p. 291; Gerken 2007, pp. 19–20; Day 2008, pp. 18–21). Gerken (2007, p. 19) and Day (2008, p. 18) postulated that juvenile grotto sculpin use resurgences and surface streams as nursery areas to gain size by taking advantage of increased food resources. At some point in their maturation process, juvenile sculpin move from resurgences and surface streams into caves to complete their life cycle (Gerken 2007, p. 19; Day 2008, p. 18). Based on the information above, consistent connectivity between cave streams and resurgences or surface streams is a primary component of the physical or biological features essential to the conservation for the grotto sculpin because they allow for the free flow of water between occupied surface and subsurface habitats.

Primary Constituent Elements for the Grotto Sculpin

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the grotto sculpin in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species. Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the grotto sculpin are:

(1) Geomorphically stable stream bottoms and banks (stable horizontal dimension and vertical profile) with riffles, runs, pools, and transition zones between these stream features.

(2) Instream flow regime with an average daily discharge between 0.07 and 150 cubic feet per second (cfs), inclusive of surface runoff, cave streams, resurgences, springs, and occupied surface streams and all interconnected karst areas with flowing water.

(3) Water temperature between 12.8 and 16.7 °C (55 and 62 °F), dissolved oxygen 4.5 milligrams or greater per liter, and turbidity of an average monthly reading of no more than 200 Nephelometric Turbidity Units for a duration not to exceed 4 hours.

(4) Adequate water quality characterized by low levels of contaminants. Adequate water quality is defined as the quality necessary for normal behavior, growth, and viability of all life stages of the grotto sculpin.

(5) Bottom substrates consisting of a mixture of sand, gravel, pebble, cobble, solid bedrock, larger cobble and rocks for cover, with low amounts of sediments.

(6) Abundance of aquatic invertebrate prey base to support the different life stages of the grotto sculpin.

(7) Connected underground and surface aquatic habitats that provide for all life stages of the grotto sculpin, with sufficient water levels to facilitate movement of individuals among habitats.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and may require special management considerations or protection. The features essential to the conservation of grotto sculpin center around attributes that highlight the importance of water quality within the karst recharge areas of occupied cave streams, resurgences, and surface streams. Special management considerations or protection are required within occupied habitats to address these threats. Management activities that could ameliorate these threats include (but are not limited to) actions that:

(1) Minimize potential adverse effects from contaminants originating from sinkholes where trash, debris, chemical containers, or animal carcasses have been deposited;

(2) reduce soil erosion and silt deposition;

(3) reduce storm runoff of potentially harmful agricultural pesticides, various oil pollutants, and other sources of water soluble contaminants;

(4) implement best management practices to minimize possible contamination from septic systems;

(5) provide recommendations that improve the efficiency and efficacy of vertical drains;

(6) place and manage vegetative buffers around vertical drains designed to reduce soil erosion, reduce water flow, and improve the quality of water runoff;

(7) implement best management practices to minimize potential impacts from residential, commercial, industrial and agricultural development;

(8) provide recommendations that significantly reduce sources of nitrification and fecal coliform and coliform bacteria originating from domestic livestock;

(9) implement best management practices that enhance surface stream and riparian corridor stability;

(10) enforce existing Federal and State regulations that are in place to maintain high water quality standards;

(11) minimize, enhance, and conserve water levels of underground aquifers, cave streams, resurgences, springs, and surface streams; and

(12) provide technical assistance through public outreach and education.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we used the best scientific data available to identify critical habitat. We reviewed available information pertaining to the habitat requirements of this species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are not identifying any areas outside the geographical area occupied by the species because occupied areas are sufficient for the conservation of the species.

In order to determine which sites are currently occupied, we used information from surveys conducted by Burr *et al.* (2001, pp. 280–286), Adams (2005, pp. 11–13), Day (2008, pp. 9–11; 62–66), Gerken (2007, pp. 5–8), and Gerken and Adams (2008, pp. 74–76), dye tracing studies conducted by Moss and Pobst (2010, pp. 146–160, 177, 180–192) and information provided by Adams *et al.* (2013, pp. 484–494). Currently, occupied habitat for the species includes all cave streams, resurgences, springs, and surface streams associated with the recharge areas for the Moore Cave System, the Crevice Cave System, Mystery Cave, Rimstone River Cave, Running Bull Cave, and Hot Caverns; as well as Thunder Hole Resurgence, Mystery Cave Resurgence, Cinque Hommes Creek, and Blue Spring Branch. After identifying the specific locations occupied by the grotto sculpin, we determined the appropriate area of occupied segments of aquatic habitats essential for the conservation of the species. These areas are collectively contained within the Central Perryville and Mystery–Rimstone karst areas as described by House (1976, pp. 13–14) and Burr *et al.* (2001, pp. 280–282).

Although there are underground portions within the Central Perryville and Mystery–Rimstone karst areas that are inaccessible to humans, all underground aquatic habitats within the recharge zones of the Moore Cave System, the Crevice Cave System, Mystery Cave, Rimstone River Cave, Running Bull Cave, Thunder Hole Resurgence, Mystery Cave Resurgence, Cinque Hommes Creek, and Blue Spring Branch are believed to be occupied by the grotto sculpin. Areas delineated within the Central Perryville and Mystery–Rimstone karst areas are believed to comprise the entire known range of the grotto sculpin and components of these areas as outlined above were used in the proposed critical habitat designation of September 27, 2012 (77 FR 59488).

We are excluding all units from critical habitat for the grotto sculpin, as described below. For a description of the areas that were proposed as critical habitat (and excluded in this final rule) see the September 27, 2012, proposal

(77 FR 59488). We determined that 94 km² (36 mi²) of aquatic, karst, nonsurface stream habitat (includes caves, resurgent streams, and interconnective underground aquatic areas) and 31 km (19 mi) of two surface streams met the definition for critical habitat for grotto sculpin. We are excluding all of those areas from designation in this final rule.

Final Determination for Critical Habitat and Effects of Critical Habitat Designation

In the proposed rule published on September 27, 2012 (77 FR 59488), we proposed four units, totaling approximately 94 km² (36.28 mi²) plus 31 kilometers (19.2 miles) of surface stream as critical habitat for the grotto sculpin. Subsequent to publication of the proposed rule, a collaborative partnership involving Federal, State, county, municipal, and private entities developed the Perry County Community Conservation Plan. The plan outlines detailed conservation measures that address threats to habitat that were identified in the proposed rule. We considered this conservation plan and the working partnership with those entities in evaluating potential exclusions from critical habitat. Based on that analysis, as discussed fully under Exclusions below, we determined that all areas that were proposed as critical habitat should be excluded from this final designation. Because we are excluding all areas from designation (that is, we are not designating critical habitat) for the grotto sculpin, typical requirements under section 7(a)(2) of the Act are not applicable.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an Integrated Natural Resources Management Plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation of September 27, 2012 (77 FR 59488). Therefore, our decision to exclude critical habitat for the grotto sculpin is not pursuant to any exemption under section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise her discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of grotto sculpin, the benefits of critical habitat include public awareness of grotto sculpin presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for grotto sculpin due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether

exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we evaluated whether certain lands in the proposed critical habitat (Unit 1: Central Perryville Karst Area; Unit 2: Mystery–Rimstone Karst Area; Unit 3: Blue Spring Branch; and Unit 4: Cinque Hommes Creek) were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We are excluding all areas from critical habitat designation for the grotto sculpin. Tables 1 and 2 below provide approximate areas (km^2 (mi^2); km (mi)) of lands that meet the definition of critical habitat but are being excluded under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 1—NONSURFACE STREAM AREAS EXCLUDED FROM THE DESIGNATION OF CRITICAL HABITAT BY CRITICAL HABITAT UNIT

Unit	Specific area	Areas meeting the definition of critical habitat, in Km^2 (Mi^2)	Areas excluded from critical habitat, in Km^2 (Mi^2)
1	Central Perryville Karst Area	46 (18)	46 (18)
2	Mystery–Rimestone Karst Area	48 (19)	48 (19)
Total		94 (36)	94 (36)

TABLE 2—SURFACE STREAM AREAS EXCLUDED FROM THE DESIGNATION OF CRITICAL HABITAT BY CRITICAL HABITAT UNIT

Unit	Specific area	Areas meeting the definition of critical habitat, in Km (Mi)	Areas excluded from critical habitat, in Km (Mi)
3	Blue Spring Branch	6 (4)	6 (4)
4	Cinque Hommes Creek	24 (14)	24 (14)
Total		31 (19)	31 (19)

We are excluding these areas because we believe that:

(1) Their value for conservation will be preserved for the foreseeable future by existing protective actions, or

(2) They are appropriate for exclusion under the ''other relevant factor'' provisions of section 4(b)(2) of the Act.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis of the proposed critical habitat designation and related factors (Industrial Economics Incorporated 2013).

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for the grotto sculpin; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decisionmakers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA considers those costs that may occur in the 18 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond an 18-year timeframe.

Due to uncertainties associated with the Service's ability to quantify potential incremental conservation efforts resulting from the designation of critical habitat, it was difficult to predict what projects would likely generate recommendations for additional conservation measures (Industrial Economics Incorporated 2013, pp. 4–21). Nonetheless, the Service anticipated that the designation of critical habitat would not likely preclude development in Perry County. Consequently, because any impacts associated with additional conservation efforts are not anticipated to have a substantial effect on the regional economy (Industrial Economics Incorporated 2013, pp. 4–21).

Consequently, no areas are excluded based on economic impacts. A copy of the FEA with supporting documents may be obtained by contacting the Columbia, Missouri Ecological Services Field Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.fws.gov/midwest/Endangered* or *http://www.regulations.gov.* at Docket No. FWS–R3–ES–2013–0016.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether any conservation partnerships would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation, as explained below.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

We consider a current land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We believe that the Perry County Community Conservation Plan fulfills the above criteria, and are excluding non-Federal lands covered by this plan that provide for the conservation of the grotto sculpin.

Perry County Community Conservation Plan

The Perry County Community Conservation Plan (PCCCP) is a collaborative and cooperative plan involving 56 entities and organizations (Perry County Community Economic and Environment Committee (PCCEEC)) in Perry County, Missouri, who are committed to the ongoing implementation of conservation measures that benefit the grotto sculpin and address threats identified in the proposed rule of September 27, 2012 (77 FR 59488) and the final listing rule published elsewhere in today's **Federal Register**. Entities and residents of Perry County have been, and continue to be, committed to implementing land use practices that provide conservation benefits to the grotto sculpin (PCCEEC 2013, pp. 48–119), but the PCCEEC is committed to the implementation of additional measures that will address threats to the species into the foreseeable future (PCCEEC 2013, p. 42). Evidence of the PCCEEC's commitment to the PCCCP is demonstrated by an estimation that no less than $250,000 has been devoted to the completion of this plan since November 2012 (PCCEEC 2013, p. 42). As of April 2013, PCCEEC became a permanent group formed to ensure that actions outlined in the PCCCP would be ongoing and implemented into the future (PCCEEC 2013, p. 42).

In addition to conservation measures outlined in the PCCCP, the PCCEEC adopted the Missouri Department of Conservation's Best Management Practices (BMPs) for karst areas (available at: *http://mdc.mo.gov/your-property/improve-your-property/building-karst-best-practices*) (PCCEEC 2013, p. 21), and is committed to practices that are outlined in a Perry County karst management plan (Crites 2013, pers. comm.; Crites and Schubert 2013, pp. 16–20) and a broader interagency Perry County Karst Watershed Plan that is in development (PCCEEC 2013, p. 43). The Perry County karst management plan and the Perry County Karst Watershed Plan that is in development will further highlight the partnership between the PCCEEC and its Federal, State, and private partners and will outline multiple actions that will improve, enhance, and maintain grotto sculpin karst and surface stream habitats. The Perry County Karst Management Plan covers areas beyond those that were proposed as critical habitat for the species (Crites and Schubert 2013, pp. 2–3) and will further contribute to improved water quality of aquatic karst areas within Perry County.

The PCCEEC's commitment to the conservation of the grotto sculpin is further demonstrated by the numerous planned conservation actions outlined in the PCCCP that are scheduled between April 2013 and April 2014 (PCCEEC 2013, pp. 42–45). Conservation projects to benefit the species include numerous outreach events; removing trash and debris from sinkholes; water quality monitoring; developing a new sinkhole policy and sinkhole improvement budget for the City of Perryville; and inventorying and prioritizing sinkholes targeted for cleanup, maintenance, and management. The PCCCP incorporates the principles of adaptive management, and the document will continually be updated as new information becomes available (PCCEEC 2013, pp. 5, 46). Additionally, the plan contains a monitoring component that will provide a basis for evaluating the effectiveness of the plan (PCCEEC 2013, p. 46). Because the grotto sculpin is dependent on the health of the aquatic environment, adequate water quality monitoring will be essential to assess the effectiveness of actions implemented under the PCCCP. In cooperation and collaboration with the Missouri Department of Natural Resources and the Perry County Health Department, regular water quality monitoring is anticipated in habitats occupied by the sculpin (PCCEEC 2013, p. 42, 44).

Because all the areas that meet the definition of critical habitat proposed in our September 27, 2012, proposed rule (77 FR 59488) are primarily on private land, a strong partnership between private landowners and Federal, State, and local agencies is essential to the conservation and recovery of the grotto sculpin. Assessing the effectiveness of the PCCCP will require regular monitoring of the status of the grotto sculpin, and the access to private property will be critical to such monitoring. The private landowner of one cave occupied by the grotto sculpin has denied access to the site, and the inability to monitor the species at other localities would further hinder the potential to implement on-the-ground actions that would contribute to the conservation and recovery of the grotto sculpin. Excluding these areas from critical habitat will further enhance the partnership and trust that currently exists between Federal, State, and private entities and will encourage cooperation among private landowners who otherwise may be reluctant to participate in the collaboration. In a study that evaluated the potential adverse impacts of critical habitat designation for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), Brook *et al.* (2003, pp. 1638, 1644; Seasholes 2007, p. 8) reported that 56 percent of landowners interviewed

would not grant permission to survey for the species on their property. Because interested entities cannot force access onto private property to conduct biological surveys, the inability to conduct such inventories would jeopardize the ability to conserve and recover such species.

In evaluating a conservation plan, the Service considers whether the plan is complete and if it provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act. We have evaluated the PCCCP and determined that it is complete and adequately addresses threats to habitats occupied by the grotto sculpin. Because all areas proposed as critical habitat in our September 27, 2012, proposed rule (77 FR 59488) are on private land, it is anticipated that there would be few Federal nexuses where a consultation under section 7(a)(2) of the Act would be necessary. The PCCCP will provide the opportunity to undertake various conservation benefits that benefit the grotto sculpin in areas that would not be covered through environmental review through section 7(a)(2) consultation. Because many of the actions outlined in the PCCCP, the Missouri Department of Conservation's Perry County karst management plan (Crites and Schubert 2013, pp. 16–20), and the draft Perry County Karst Watershed Plan involve recommendations that will benefit areas occupied by the grotto sculpin, we believe that these documents will provide the same or a better level of protection from adverse modifications to these habitats. How threats identified in the proposed listing rule of September 27, 2012 (77 FR 59488), and the final listing rule published elsewhere in today's **Federal Register** are addressed by the PCCCP is summarized in Table 3.

TABLE 3—PERRY COUNTY COMMUNITY CONSERVATION PLAN ACTIONS THAT ADDRESS THREATS IDENTIFIED IN THE SERVICE'S FINAL LISTING RULE PUBLISHED ELSEWHERE IN TODAY'S **Federal Register**

Threat	Plan of action to address threat	Cooperators or participating entity
Debris and chemicals in sinkholes and groundwater.	Sinkhole cleanup; vegetated buffers; eliminate use of lawn chemicals; implement BMPs; public outreach and education; implement Karst BMPs; implement the MDC 2013 Perry County karst management plan; Perryville ordinances.	CP, MDC–PLD, NRCS, PCCEEC, PCFB, PCR, PFW, UMES
Sinkhole erosion and destabilization.	Purchase easements in Perryville; refine techniques for stabilizing sinkholes; sinkhole improvement plan policy for city; implement Karst BMPs; sinkhole improvement programs; implement the MDC 2013 Perry County karst management plan; Perryville ordinances.	CP, PCCEEC, PCFB
Erosion and chemicals from vertical drains.	NRCS vertical drain guidelines; implement the MDC 2013 Perry County karst management plan.	NRCS, PCCEEC, PCFB, PCR, PCS
Improper installation and maintenance of septic systems.	Provide new landowners with septic system guidelines, monitor rural septic systems, enforce septic system regulations, outreach and education; implement Karst BMPs; implement the MDC 2013 Perry County karst management plan; Perryville ordinances.	CP, PCCEEC, PCHD, PCFB
Industrial, commercial, and residential stormwater runoff.	Develop and implement industrial, commercial, and residential construction and maintenance guidelines for stormwater drains; implement karst BMPs; stormwater improvements; implement the MDC 2013 Perry County karst management plan; Perryville ordinances.	CP, PCCEEC, PCFB, PCDA, PCEDA
Deposition of silt due to erosion from agricultural crops, overgrazing of livestock.	Install and maintain vegetative buffers around vertical drains; repair and enhance erosion gullies; plant and maintain riparian corridors for surface streams; construct alternate water sources for livestock; outreach and education events; implement Karst BMPs; implement the MDC 2013 Perry County karst management plan.	MDC–PLD, NRCS, PCCEEC, PCFB, PCR, PCSW, PFW, UMES
Contamination and nitrification from livestock wastes.	Compost or remove dead animals; guidelines to reduce animal concentrations at feeding stations.	PCCEEC, PCFB, PCR, UMES
Contamination from underground storage tanks in Perryville.	Perryville and county ordinances and guidelines; replace or repair leaking tanks	CP, PCC, PCCEEC, PCDA, PCEDA
Overall water quality degradation from silt, persistent chemicals, application of toxic herbicides and pesticides; improper disposal of drug prescriptions or antibiotics, fertilizers, overgrazing, nitrification, contaminants in sinkholes from various sources.	Implement karst BMPs; implement the MDC 2013 Perry County karst management plan; install vegetated buffers; technical assistance from Federal, State, local, university extension service staff; comply with pesticide and herbicide labeling instructions; guidelines for grazing, use of cover crops and strips; clean-up of sinkholes, especially ones containing debris; water testing; conservation covers; filter strips; install grade stabilization structures; terrace construction in agricultural fields; riparian buffers; alternative water sources for livestock; implement Conservation Reserve Program; nutrient and manure management; abandon well plugging program; sinkhole improvement programs; MODNR/PCSW Sensitive Areas Resource Concern Program; Perryville ordinances including Surface Water Runoff Policy; Perryville Police Department drug disposal program; investigate waste water complaints.	CP, MDC–PLD; MODNR, NRCS, PCCEEC, PCDA, PCFB, PCHD, PPD, PCR, PCSW, PFW
Address threats through public outreach and education.	Adult education classes; higher education classes; landowner workshops; consultations and technical assistance to private land owners, developers; 4–H classes; local and regional newspapers; agricultural crop application training; water testing clinics; septic tank installers training; Stream Team Environmental Stewardship education and training; Missouri Ground Water Flow Program; Enviroscape Program; city and county recycling efforts; watershed location and education signage; East Perry County Fair; NRCS/MDC annual meetings; Perry County landowner meetings; implement the MDC 2013 Perry County karst management plan.	MDC–PLD; NRCS, PCCEEC, PCFB, PCHD, PCTC, PCS, PFW, UMES

Legend:

CP = City of Perryville.
MDC–PLD = Missouri Department of Conservation–Private Lands Division.
MODNR = Missouri Department of Natural Resources.
NRCS = Natural Resources Conservation Service.
PCC = Perryville Chamber of Commerce.
PCCEEC = Perry County Community Economic and Environment Committee.
PCEDA = Perry County Economic Development Authority.
PCFB = Perry County Farm Bureau.
PCHD = Perry County Health Department.
PCDA = Perry County Development Authority.
PCTC = Perryville Career & Tech Center.
PCR = Perry County Residents.
PCS = Perry County Schools.
PCSW = Perry County Soil and Water District.
PFW = U.S. Fish and Wildlife Service's Partners for Fish and Wildlife Program.
PPD = Perryville Police Department.
UMES = University of Missouri Extension Service.

Benefits of Inclusion—Perry County Community Conservation Plan

The principal benefit of designating critical habitat is that federally funded or authorized activities that adversely affect critical habitat must undergo consultation under section 7 of the Act. Consultations on Federal actions involving critical habitat ensure that habitat needed for the survival and recovery of a species is not destroyed or adversely modified, in addition to the jeopardy standard applied to all listed species.

Benefits of Exclusion—Perry County Community Conservation Plan

Subsequent to the proposal to list and designate critical habitat for the grotto sculpin, a collaborative partnership was developed between multiple Federal, State, and private entities in the development of a conservation plan to address threats to the species. The Perry County Community Economic and Environment Committee (PCCEEC) was established to work closely with the University of Missouri Perry County Extension Service and the Service to develop the PCCCP. To date, at least 56 entities have joined the partnership in the development and implementation of the plan. Additionally, the Missouri Department of Conservation developed a Perry County karst management plan to further address threats to grotto sculpin habitat. Exclusion of critical habitat will further strengthen the partnership that has developed and foster implementation of conservation measures outlined for the species in management plans aimed to address threats to the grotto sculpin. In the case of grotto sculpin, we believe that the benefits derived from implementing actions outlined in the above-mentioned plans will exceed those that would be provided by the designation of critical habitat and will avoid added administrative costs to the Service, Federal agencies, and other entities. As a federally listed species, we anticipate there will be few projects on privately owned lands that will have a Federal nexus to trigger consultation under section 7. We believe that the plans outlined above: (1) Provide for sufficient habitat protection for recovery of the grotto sculpin, (2) provide for the conservation of the essential physical and biological features, (3) provide a reasonable expectation that the conservation management strategies will be implemented into the future, (4) provide conservation strategies that are likely to be effective, and (5) contain a monitoring program using an adaptive management approach to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

The benefits of excluding lands covered by the PCCCP from designated critical habitat include: Maintenance of effective working partnerships to promote the conservation of the grotto sculpin and its habitat; establishment of new partnerships; providing benefits from the conservation plan to the grotto sculpin and its habitat which exceed those that would be provided by the designation of critical habitat; and avoiding added administrative costs to the Service, Federal agencies, and applicants.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Perry County Community Conservation Plan

We believe that the benefits of excluding from critical habitat all of the areas we identified within the PCCCP and our proposed rule of September 27, 2012 (77 FR 59488), outweigh the benefits of including these areas; therefore, we are excluding these areas from this final critical habitat determination. Because a commitment by entities in Perry County to the PCCCP will ameliorate threats to the grotto sculpin, we conclude that the exclusion of critical habitat will not result in the extinction of this species.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management of Budget will review all significant rules. OIRA has determined that this rule is significant because it will raise novel legal or policy issues due to the exclusion of all critical habitat units proposed in the September 27, 2012, proposed rule (77 FR 59488).

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility

analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the grotto sculpin as proposed in our September 2012 proposed rule (77 FR 59488) will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., administrative cost of considering adverse modification; costs associated with development and implementation of the Perry County Community Conservation Plan; and impacts to development, agriculture, grazing activities and transportation (Industrial Economics Incorporated 2013, p. 4–1)). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected if critical habitat was designated. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the grotto sculpin. Federal agencies also must consult with us if their activities may affect critical habitat if designated. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification Standard''* section).

In our final economic analysis of the proposed critical habitat designation, we attempted to evaluate the potential economic effects on small business entities resulting from conservation actions related to the listing of the grotto sculpin and the proposed designation of critical habitat. Due to uncertainties associated with the Service's ability to quantify potential incremental conservation efforts resulting from the proposed designation of critical habitat, it was difficult to predict what projects would likely generate recommendations for additional conservation measures (Industrial Economics Incorporated 2013, p. 4–21). Nonetheless, the Service anticipated that the designation of critical habitat would not likely preclude development in Perry County. Consequently, any impacts associated with additional conservation efforts were not anticipated to have a substantial effect on the regional economy (Industrial Economics Incorporated 2013, p. 4–21). Therefore, no areas proposed for critical habitat designation would have been excluded based on economic impacts. The analysis is based on the estimated impacts associated with the rulemaking as described in the Executive Summary, chapters two through five, and Appendices A and B of the analysis and evaluates the potential for economic impacts related to: (1) Development, (2) agriculture and grazing, and (3) transportation.

The only potential impacts on small entities associated with the proposed critical habitat rule of September 27, 2012, would be costs incurred by third-party participants related to the adverse modifications standard under section 7(a)(2) of the Act where a Federal nexus occurred. In some cases, the City of Perryville would incur some costs associated with section 7(a)(2) consultations, but this impact would represent less than 0.1 percent of the annual revenue for the City of Perryville (Industrial Economics Incorporated 2013, p. A–6). As many as 53 businesses engaged in residential, commercial, and industrial development could incur administrative costs associated with implementation of the Perry County Community Conservation Plan, and all of these entities have annual revenues at or below the relevant small business thresholds for their respective North American Industry Classification System Industries (Industrial Economics Incorporated 2013, p. A–5). However, necessary third-party administrative costs would represent only between 0.01 and 0.03 percent of annual revenues (Industrial Economics Incorporated 2013, p. A–5). The only other potential third-party administrative cost was associated with transportation projects in the City of Perryville, but such costs would constitute less than 0.01 percent of the annual revenue for the city (Industrial Economics Incorporated 2013, p. A–6).

In summary, we considered whether the proposed designation would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities if proposed critical habitat was finalized. Therefore, we are certifying that the designation of critical habitat for the grotto sculpin would not have resulted in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB

has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to an analysis involving critical habitat designation. Thus, based on information in the economic analysis, energy-related impacts associated with grotto sculpin conservation activities within proposed critical habitat was not anticipated (Industrial Economics Incorporated 2013, p. A–11). As such, the proposed designation of critical habitat was not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

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

(2) We do not believe that this rule will significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The FEA concludes incremental impacts may occur due to administrative costs of section 7 consultations for development and transportation activities; however, these are not expected to significantly affect small governments. Incremental impacts stemming from various species conservation and development control activities are expected to be borne by the Federal Government, Missouri Department of Transportation, Perry County, Perry County Soil and Water Conservation District, and City of Perryville, which are not considered small governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of the proposed designation of critical habitat for grotto sculpin in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The takings implications assessment concludes that the proposed designation of critical habitat for grotto sculpin would not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Missouri. We received comments from the Missouri Department of Conservation and have addressed them in the Summary of Comments and Recommendations section of the rule. Had critical habitat been designated in areas currently occupied by the grotto sculpin, no additional restrictions to those currently in place would have been imposed other than administrative costs associated with implementation of actions outlined in the Perry County Community Conservation Plan and management recommendations provided in the Missouri Department of Conservation's Perry County karst management plan (Crites and Schubert 2013, pp. 16–20). Such costs are anticipated to be nominal and, therefore, would have little incremental impact on State and local governments and their activities. Critical habitat designation may have provided some benefit to these governments in that the areas that contain the physical or biological features essential to the conservation of the species would be more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species would be specifically identified. This information does not alter where and what federally sponsored activities may have occurred had critical habitat been designated. However, it may have assisted local governments in long-range

planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat would rest squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are excluding critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the grotto sculpin. The areas of critical habitat in the September 27, 2012, proposed rule (77 FR 59488) were presented on maps, and the rule provided several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating or excluding critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands occupied by the grotto sculpin at the time of listing that contain the physical or biological features essential to conservation of the species, and no tribal lands unoccupied by the grotto sculpin that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the grotto sculpin on tribal lands.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Columbia, Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this rulemaking are the staff members of the Columbia, Missouri Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 16 U.S.C. 4201–4245; unless otherwise noted.

■ 2. In § 17.95, amend paragraph (e) by adding an entry for ''Grotto Sculpin *(Cottus specus)''* after the entry for ''Leon Springs Pupfish *(Cyprindon bovinus)'',* to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Grotto Sculpin *(Cottus specus)*

Pursuant to section 4(b)(2) of the Act, we have excluded all areas determined to meet the definition of critical habitat under section 3(5)(a) of the Act for the grotto sculpin. Therefore, no specific areas are designated as critical habitat for this species.

* * * * *

Dated: September 17, 2013.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–23182 Filed 9–24–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2012–0065; MO 92210–0–0008 B2]

RIN 1018–AY16

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for the Grotto Sculpin (Cottus specus) Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine endangered species status under the Endangered Species Act of 1973, as amended, for the grotto sculpin, a species from Perry County, Missouri. The effect of this regulation will be to add this species to the lists of Endangered and Threatened Wildlife/Plants.

DATES: This rule becomes effective October 25, 2013.