

from the Corps or FEMA, housing or resort development that may require permits from the Department of Housing and Urban Development, small farms that may receive funding or require authorizations from the Department of Agriculture, watershed management and restoration projects sponsored by NRCS, and activities funded or authorized by the EPA. However, we are not aware of a significant number of future activities that would require Federal funds, permits, or authorizations in these coastal areas.

Even where the requirements of section 7 might apply due to critical habitat, based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for these three species from Lanai, we can describe only the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of these species and the threats they face, especially as described in the final listing rules and in this critical habitat designation, as well as our experience with similar listed plants in Hawaii. In addition, all of these species are protected under the State of Hawaii's Endangered Species Act (Hawaii Revised Statutes, Chap. 195D–4). Therefore, we have also considered the kinds of actions required under the State licensing process for these species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides; management of competing non-native species; restoration of degraded habitat; propagation; outplanting and augmentation of existing populations; construction of protective fencing; and periodic monitoring. These measures are not likely to result in a significant economic impact to a substantial number of small entities because any measure included as a reasonable and prudent alternative would have to be economically feasible to the individual landowner and because, as discussed above, we do not believe there will be a substantial number of small entities affected by the Act's consultation requirements.

In summary, we have determined that, because all of the critical habitat designations are on lands under one landownership and because that landowner is not a small entity, this rule would not affect a substantial number of small entities and would not result in a significant economic effect on a substantial number of small entities. Most of this private land within the areas being designated as critical habitat is currently being used for recreational or conservation purposes, and therefore is not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area being designated. The most likely future section 7 consultations resulting from this rule would be for informal consultations on federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by NRCS and the Service. These consultations would likely occur on only a subset of the total number of parcels, all under one ownership, and, therefore, would not affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect the single landowner. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, we are certifying that the designation of critical habitat for *Bidens micrantha* ssp. *kalealaha*, *Portulaca sclerocarpa*, and *Tetramolopium remyi* will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

#### **Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))**

In the economic analysis, we determined whether designation of critical habitat would cause: (a) Any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Refer to the final addendum to the economic analysis for a discussion of the effects of this determination.

#### **Executive Order 13211**

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy production supply and distribution facilities. No energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe the designation of critical habitat for *Bidens micrantha* ssp. *kalealaha*, *Portulaca sclerocarpa*, and *Tetramolopium remyi* on Lanai will affect future energy production. 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.):

(a) This rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule will not produce a Federal mandate on State or local governments or the private sector of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

#### **Takings**

In accordance with Executive Order 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of designating critical habitat for the three species from Lanai in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.