

Again, these costs reflect costs to the Service to conduct the consultation.

The actual impacts of the final rule may even be smaller. These estimates were based on the proposed designations. However, this final rule designates 5,771 hectares (19,199 acres) less than had been proposed, or a 44 percent reduction.

These conclusions are supported by the history of consultations on Molokai. Since these 41 plant species were listed (between 1991 and 1999), we have conducted only 19 informal consultations and no formal consultations on the island of Molokai, in addition to consultations on Federal grants to State wildlife programs, which would not affect small entities. The 19 informal consultations have concerned seven of the 41 species (*Centaurium sebaeoides*, *Cyanea mannii*, *Cyanea procera*, *Eugenia koolauensis*, *Labordia triflora*, *Sesbania tomentosa*, and *Tetramolopium rockii*) and were conducted with the U.S. Department of the Navy (Navy), NRCS, State of Hawaii, Maui County, Corps, FCC, and private parties. One informal consultation was conducted with the U.S. Navy regarding a proposed U.S. Marine Corps training area on privately-owned leased land in west Molokai. Three of the 41 species, *Centaurium sebaeoides*, *Sesbania tomentosa*, and *Tetramolopium rockii*, were reported from the project area. One informal consultation was conducted on behalf of a private non-profit organization, requesting a species list for Kamalo and Kapualei. Three of the 41 species, *Cyanea mannii*, *Cyanea procera*, and *Labordia triflora*, were reported from this area. One informal consultation was conducted on behalf of a private consulting firm, requesting a species list for a proposed project regarding a VHF direction-finder in Mauna Loa. Two of the 41 species, *Eugenia koolauensis* and *Sesbania tomentosa*, were reported from the project area. Six informal consultations were conducted on behalf of private individuals or consulting firms, requesting species lists for different locations on Molokai. None of the 41 species were reported from these locations. Five informal consultations were conducted on behalf of the NRCS, requesting species lists or regarding revegetation or habitat restoration projects at different locations on Molokai. None of the 41 species were reported from these locations. Two informal consultations were conducted on behalf of the State of Hawaii and Maui County regarding proposed landfill projects. None of the 41 species were reported from these locations. Two informal consultations were conducted

on behalf of the U.S. Army Corps of Engineers, regarding a stream restoration project and unexploded ordnance removal activities at Papohaku Rangelands Bombing Range and Punakua Land Target Area. None of the 41 species were reported from the project areas. One informal consultation was conducted on behalf of the FCC regarding an antenna cell site in Kaunakakai. None of the 41 species were reported from the project area.

Seven of the informal consultations may have concerned small entities (the private individuals, consulting firms, or the non-profit organization). However, these seven informal consultations were requests for species lists and not for our concurrence on a specific proposed project. We have determined that the State of Hawaii and Maui County are not small entities. The Corps, NRCS, FCC, and the Navy are not small entities. For the 12 informal consultations with the State of Hawaii, Maui County, and Federal agencies, we concurred with each agency's or entity's determination that the project, as proposed, was not likely to adversely affect listed species. Although four of the NRCS projects are ongoing, they do not directly affect nor concern small entities.

In addition, on Molokai, 49 percent of the designations are on private lands, 50 percent of the designations are on State lands, and 1 percent of the designations are on Federal lands. Nearly all of the land within the critical habitat units is unsuitable for development, land uses, and activities. This is due to their remote locations, lack of access, and rugged terrain. Approximately 89 percent of this land is within the State Conservation District where State land-use controls severely limit development and most activities.

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.

For these reasons, we are certifying that the designation of critical habitat for *Adenophorus periens*, *Alectryon macrococcus*, *Bidens wiebkei*, *Brighamia rockii*, *Canavalia molokaiensis*, *Centaurium sebaeoides*, *Clermontia oblongifolia* ssp. *brevipes*,

Ctenitis squamigera, *Cyanea dunbarii*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea mannii*, *Cyanea procera*, *Diellia erecta*, *Diplazium molokaiense*, *Eugenia koolauensis*, *Flueggea neowawraea*, *Hesperomannia arborescens*, *Hibiscus arnottianus* ssp. *immaculatus*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendron pyrifolium*, *Labordia triflora*, *Lysimachia maxima*, *Mariscus fauriei*, *Melicope mucronulata*, *Melicope reflexa*, *Neraudia sericea*, *Peucedanum sandwicense*, *Phyllostegia mannii*, *Plantago princeps*, *Pteris lidgatei*, *Schiedea lydgatei*, *Schiedea nuttallii*, *Schiedea sarmentosa*, *Sesbania tomentosa*, *Silene alexandri*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Stenogyne bifida*, *Tetramolopium rockii*, and *Zanthoxylum hawaiiense* 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))

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our detailed assessment of the economic effects of this designation are described in the draft economic analysis and the final addendum to the economic analysis. Based on the effects identified in these documents, we believe that this rule will not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and will not have 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 because 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 that designation of critical habitat for the 41 Molokai plants