

as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effect of the designation. The draft analysis was made available for review on November 21, 2002. We accepted comments on the draft analysis until December 6, 2002.

Our draft economic analysis evaluated the potential future effects of *Polygonum hickmanii* as a threatened species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without critical habitat" baseline and compared it to a "with critical habitat" scenario. The "without critical habitat" baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat, including educational benefits. The most likely economic effects of critical habitat designation are on private landowners carrying out development activities funded or authorized by a Federal agency.

Based on our economic analysis, we concluded that the designation of critical habitat would not result in a significant additional regulatory burden above and beyond that attributable to the listing of *Polygonum hickmanii*. Our economic analysis does take into account that unoccupied habitat is being designated and that there may be some cost associated with new section 7 consultations that would not have occurred but for critical habitat being

designated. Our economic analysis also recognizes that there may be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be temporarily lowered due to perceived increase in the regulatory burden. However, we believe these impacts will be short-term or minimal in cost.

In the final economic analysis, we conclude that, over the next 10 years the total costs to all landowners attributable to the designation are expected to be approximately \$11,000 to \$36,000 annually. However, we anticipate the costs will be even less because the costs of preparing Environmental Impact Reports for proposed developments, which were figured into the estimates, would have already been prepared to satisfy California Environmental Quality Act requirements for the lead State agency.

The values presented above may be an overestimate of the potential economic effects of the designation because the analysis includes a number of assumptions about the likelihood of future section 7 of the Act consultations, Environmental Impact Report preparation costs, and the costs involved in project modifications. Please see the economic analysis and final addendum for more information. Furthermore, the final designation has been reduced to encompass 117 ha (287 acres) versus the 125 ha (308 ac) proposed as critical habitat, a difference of approximately 8 ha (21 ac), that may reduce the economic effects of the designation.

A copy of the final economic analysis with supporting documents are included in the supporting record for this rulemaking and may be obtained by contacting our Ventura Fish and Wildlife Office (*see ADDRESSES*).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of \$100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government.

This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations

of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not reviewed this final critical habitat designation.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to 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 effect of the rule on small entities (*i.e.*, 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. SBREFA also amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In this rule, we are certifying that the critical habitat designation for *Polygonum hickmanii* will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

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 (13 CFR 121.201). 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 to 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.