

the receipts of the business whose size is at issue and those of all its affiliates in determining the size of the business. Therefore, KGKD and Kobayashi are not small businesses.

The Kauai cave wolf spider and the Kauai cave amphipod have only been listed since January 2000 and no consultations have occurred involving these species. As a result, the requirement to reinstate consultations for ongoing projects will not affect a substantial number of small entities on Kauai.

None of the designation is on Federal lands. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. However, activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these designations consist of 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, or restoration projects sponsored by NRCS. In addition, consultation with the ACOE may occur if a permit is required for a project in Waikomo Stream that may negatively impact adjacent cave systems. Waikomo Stream runs between two known occupied cave systems and consultation may be required if the activities on the stream may affect the cave systems and the Kauai cave amphipod and Kauai cave wolf spider. However, we are not aware of a significant number of future activities that would require Federal funds, permits, or authorizations in the designated areas. Two to three small fruit and vegetable farmers may be impacted by the designation but these entities do not represent a substantial number of the total small entities in these industries. Therefore, we conclude that the rule would not affect a substantial number of small entities.

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 in section 7 consultations-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 the Kauai cave wolf spider and the Kauai cave amphipod 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 final addendum to the economic analysis. Based on the effects identified in this document, 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 significant 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 Kauai cave amphipod and the Kauai cave wolf spider 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 August 25, 2000 *et seq.*):

(a) For the reasons described in the final economic analysis, 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. Further, the

designation of critical habitat imposes no direct obligations on State or local governments.

(b) This rule will not "significantly or uniquely" affect small governments, so 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.

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 Kauai cave wolf spider and the Kauai cave amphipod in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii.

The designations may have some benefit to these governments, in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for a case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Kauai cave wolf spider and Kauai cave amphipod.