

and management plans at PTA, which do not directly affect small entities. None of these consultations directly affected or concerned small entities, and none of the ongoing projects directly affect small entities. As a result, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on the island of Hawaii.

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 *Achyranthes mutica*, *Adenophorus periens*, *Argyroxiphium kauense*, *Asplenium fragile* var. *insulare*, *Bonania menziesii*, *Clermontia drepanomorpha*, *Clermontia lindseyana*, *Clermontia peleana*, *Clermontia pyrularia*, *Colubrina oppositifolia*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Delissea undulata*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei*, *Ischaemum byrnone*, *Isodendron hosakae*, *Mariscus fauriei*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothocestrum breviflorum*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Sicyos alba*, *Silene hawaiiensis*, *Solanum incompletum*, *Vigna o-wahuensis*, and *Zanthoxylum dipetalum* ssp. *tomentosum* 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 annual 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 41 species on the island of Hawaii 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 41 species from the island of Hawaii in a takings implications 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. This rule imposes no regulatory requirements unless an agency is seeking Federal funding or authorization, so it does not have Federal implications. In addition, this rule will not have substantial direct compliance costs because many of the planned projects that could affect critical habitat have no Federal involvement.

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 do not alter where and what federally sponsored activities may occur, they may assist these local governments in long-range planning, rather than waiting for 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 rule does not unduly burden the judicial system and does meet 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 Endangered Species 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 41 plant species from the island of Hawaii.

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

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond