

highway vehicle industry. To identify potential small entities related to off-highway vehicle use that may be affected by the proposed designation, we considered the membership list of the Off-Road Business Association (updated June 11, 2003) to be an indication of the potential number of small entities that may be affected by the proposed designation of critical habitat. Based on the June 11, 2003, list, 247 companies were members of the Off-Road Business Association. Most of the Off-Road Business Association members represented business primarily located in California.

We considered the potential relative cost of compliance to these small entities and evaluated only small entities that are expected to be directly affected by the proposed designation of critical habitat. Based on the consultation history for *Astragalus magdalenae* var. *peirsonii*, we do not anticipate that the proposed designation of critical habitat will result in increased compliance costs for small entities. The business activities of these small entities and their effects on *Astragalus magdalenae* var. *peirsonii* or its proposed critical habitat have not directly triggered a section 7 consultation with the Service under the jeopardy standard and likely would not trigger a section 7 consultation under the adverse modification standard after designation of critical habitat. The proposed designation of critical habitat does not, therefore, create a new cost for the small entities to comply with the proposed designation. Instead, proposed designation only impacts Federal agencies that conduct, fund, or permit activities that may affect critical habitat for *Astragalus magdalenae* var. *peirsonii*. Moreover, none of the small entities have been applicants with a Federal agency for a section 7 consultation with the Service. On April 3, 2003, we also completed a section 7 consultation with BLM on the Imperial Sand Dunes RAMP. In that biological opinion, we concluded that the implementation of the RAMP is not likely to jeopardize the continued existence of *Astragalus magdalenae* var. *peirsonii*. Thus, we conclude that the proposed designation of critical habitat is not likely to result in a significant impact to this group of small entities.

In addition, we completed an informal section 7 consultation with BLM on the potential effects to *Astragalus magdalenae* var. *peirsonii* of a private company filming a movie on Federal lands within the Algodones Dunes. Given the relatively small number of consultations related to film-making activities on Federal lands

within the Algodones Dunes, we anticipate that the proposed designation of critical habitat is not likely to have a significant impact on this group of small entities.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed.

In summary, we have considered whether this proposed designation would result in a significant economic impact on a substantial number of small entities and find that it would not. This rule would result in project modifications only when proposed activities with a Federal nexus would destroy or adversely modify critical habitat. While this may occur, it is not expected to occur frequently enough to affect a substantial number of small entities. Even if a small entity is affected, 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. The kinds of measures we anticipate we would recommend can usually be implemented at low cost. Therefore, we are certifying that the proposed designation of critical habitat for the *Astragalus magdalenae* var. *peirsonii* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. This determination will be revisited after the close of the comment period and revised, if necessary, in the final rule.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect may be modified prior to final rulemaking based upon development and review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and Executive Order 12866. This analysis is for the purpose of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn. v. U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

In the draft economic analysis, we will determine whether designation of

critical habitat will 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.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 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. This proposed rule to designate critical habitat for the *Astragalus magdalenae* var. *peirsonii* is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. 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.*), the Service will use the economic analysis to further this rule's effect on nonfederal 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 *Astragalus magdalenae* var. *peirsonii*. This preliminary assessment concludes that this proposed rule does not pose significant takings implications. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policies, we requested information from and coordinated development of this proposed critical habitat designation with appropriate State resource agencies in California. The proposed designation of critical