

animals and *Sesbania tomentosa*; one on the PMRF's Enhanced Capability regarding several listed animals and *Panicum niihauense* and *Sesbania tomentosa*; one for the mountaintop surveillance sensor test integration center facility at PMRF at Barking Sands regarding several listed animals and *Panicum niihauense*, and *Sesbania tomentosa*; and one for the Navy's INRMP for PMRF at Barking Sands regarding several listed animals and *Wilkesia hobyi* at Makaha Ridge. In addition, *Panicum niihauense* and *Sesbania tomentosa* were identified as occurring in Polihale State Park, adjacent to the Naval facility. The sixth informal consultation was conducted on several listed animals, *Alsinidendron lychnoides*, *Diellia erecta*, and *Dubautia latifolia* with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) through their Wildlife Incentive Program for noxious weed control actions on leased cabin lots within Kokee State Park. NRCS does not anticipate the need to reinstate consultation for these on-going actions as they are not occurring within the areas of designated critical habitat (Terrell Kelly, NRCS, pers. comm., 2001).

Except for the NRCS project, none of these consultations affected or concerned small entities. However, the NRCS project is not occurring within the designated critical habitat. In all six consultations, we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect listed species. With the exception of the NRCS project, none of the other consultations affected or concerned small entities, and none of the proposed projects are ongoing. As a result, the requirement to reinstate consultation for ongoing projects will not affect a substantial number of small entities on Kauai.

There have been no consultations on any of these 83 species on the island of Niihau. Therefore, the requirement to reinstate consultations for ongoing projects will not affect a substantial number of small entities on Niihau.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 that would otherwise not be required. However, there will be little additional impact on State and local governments and their activities because all but one of the critical habitat areas are occupied by at least one species. Other than the federally funded PMRF and NRCS projects, we are aware of relatively few activities in the designated critical habitat areas for these 83 plants that

have Federal involvement, and thus, would require consultation for ongoing projects. As mentioned above, we have conducted no formal consultations and only six informal consultations under section 7 on Kauai to date which involved only nine of the 83 species. As a result, we cannot easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area designated as critical habitat will be due to the critical habitat designations.

On Kauai, the designations are on Federal, State, or private land. 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. Almost all of this land (nearly 100 percent) is within the State Conservation District where State land-use controls severely limit development and most activities. Less than one percent of this land is within the State Agricultural District, and less than one percent is within the State Rural District. 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 improvements in communications and tracking facilities; ranching; road improvements; recreational use, such as hiking, camping, picnicking, game hunting, and fishing; botanical gardens; and crop farming. With the exception of communications and tracking facilities improvements by the FAA or the Federal Communications Commission, these activities are unlikely to have Federal involvement. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Corps, and watershed management and restoration projects sponsored by NRCS. However the NRCS restoration projects typically are voluntary, and the irrigation ditch system projects within lands that are in agricultural production are rare and may affect only a small percentage of the small entities within these critical habitat designations.

Land that are within the State Urban District are primarily located within undeveloped coastal areas. The types of

activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations from the Corps or FEMA, 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, watershed management and restoration projects sponsored by NRCS, and activities funded or authorized by the EPA. However, we are not aware of a significant number of future activities that would require Federal funds, permits, or authorizations in these coastal areas. Therefore, we conclude that the rule would not affect a substantial number of small entities. We are not aware of any commercial activities on the Federal lands included in these critical habitat designations.

The entire island of Niihau is under one private ownership and within the State Agricultural District. The current and projected land uses on Niihau are cattle and sheep ranching, commercial game hunting, and military exercises to train downed combat pilots on how to evade capture (Decision Analysts Hawaii (DAHI) 2001). The rule would not affect a substantial number of small agricultural entities on the island of Niihau. Therefore, we conclude that the rule would not affect a substantial number of small entities.

We also considered the likelihood that this rule would result in significant economic impacts to small entities. In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were