find that the petition and information in our files does not present substantial scientific or commercial information indicating that climate change may be a threat to the Eastern population of the boreal toad.

Ultraviolet Radiation—The effect of increased UV–B radiation resulting from ozone depletion has been implicated as a contributing factor in amphibian declines, particularly on species inhabiting mountainous regions. However, studies are conflicting as to whether UV–B radiation has any effect on boreal toads and other frog species. A correlation was demonstrated between increased levels of UV–B and amphibian mortality in boreal toads and the Cascades frog (*Rana cascadae*), but there was no effect of ambient UV–B radiation on red-legged frog (*R. aurora*) hatching success (Blaustein *et al.* 1994, pp. 1791, 1793–1794). No evidence linking UV–B levels to the decline of the boreal toad was found in another study (Corn 1998, pp. 18, 21–25). Another study suggested that UV–B and pH could have synergistic effects on embryonic success (Long *et al.* 1995, entire). However, as stated in the ''Pollutants'' section under Factor A, pH does not appear to be an issue for boreal toads, and, consequently, the synergistic effects of UV–B and pH on boreal toads are not expected to occur in the wild. Therefore, we determine that the petition and information in our files do not present substantial scientific or commercial information indicating that UV–B radiation may be a threat to the Eastern population of the boreal toad.

Summary for Factor E

Based on our evaluation, the petition and information in our files present substantial information that listing the Eastern population of the boreal toad due to isolation and small population size may be warranted. Based on our evaluation, neither the petition nor information in our files presents substantial information that listing the Eastern population of the boreal toad due to climate change or UV–B radiation may be warranted. However, we will evaluate the potential threat of climate change and UV–B radiation more thoroughly during the 12-month status review if we determine that a valid DPS of boreal toad exists.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing the Eastern population of the boreal toad as a DPS may be warranted. This finding is based on information provided under Factors C and E.

Because we have found that the petition presents substantial information indicating that listing the Eastern population of the boreal toad as a DPS may be warranted, we are initiating a status review to determine whether listing the Eastern population of the boreal toad under the Act is warranted. During the status review, we will fully address the cumulative effects of threats discussed under each factor. Additionally, if during the status review period the Eastern population of the boreal toad is classified as its own species, the Service will determine if listing the newly classified species is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Colorado Field Office in Grand Junction and Lakewood, Colorado.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 27, 2012.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–8806 Filed 4–11–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2010–0043; 4500030114]

RIN 1018–AV49

Endangered and Threatened Wildlife and Plants; Listing 23 Species on Oahu as Endangered and Designating Critical Habitat for 124 Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our August 2, 2011, proposal to list as endangered and to designate critical habitat for 23 species on the island of Oahu in the Hawaiian Islands under the Endangered Species Act of 1973, as amended (Act); designate critical habitat for 2 plant species that are already listed as endangered; and to revise critical habitat for 99 plant species that are already listed as endangered or threatened. We also announce the availability of a draft economic analysis (DEA) of the proposed designation and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted on this rulemaking do not need to be resubmitted, as they will be fully considered in preparation of the final rule. We are also considering revising the boundary for Oahu—Lowland Dry—Unit 8, from that described in the proposed rule, based on new information regarding the biological conditions within certain portions of the unit.

DATES: The comment period end date is May 14, 2012. We request that comments be submitted by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES:

Document Availability

You may obtain a copy of the DEA via *http://www.regulations.gov* at Docket No. FWS–R1–ES–2010–0043 or by contacting the office listed under **FOR FURTHER INFORMATION CONTACT**.

Comment Submission

You may submit comments by one of the following methods:

• *Electronically:* Go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Search for Docket No. FWS–R1–ES–2010–0043, which is the docket number for this rulemaking.

• *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2010–0043; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Loyal Mehrhoff, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Box 50088, Honolulu, HI 96850; by telephone at 808–792–9400; or by facsimile at 808–792–9581. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing of 23 species on Oahu and the designation of critical habitat for 124 species that was published in the **Federal Register** on August 2, 2011 (76 FR 46362), our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to the species from human activity, the degree to which threats from human activity can be expected to increase due to the designation, and whether that increase in threats outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of habitat for the 124 species described in the proposed rule;

(b) What areas that contain features essential to the conservation of the 124 species described in the proposed rule should be included in the designation, and why;

(c) The habitat components (primary constituent elements) essential to the conservation of the species, such as substrate, plant associations, stream characteristics, and the quantity and spatial arrangement of these features on the landscape needed to provide for the conservation of the species;

(d) What areas (if any) not occupied by the species are essential for the conservation of the species, and why; and

(e) Special management considerations or protections that the features essential to the conservation of the 124 species may require, including managing for the potential effects of climate change.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any reasonably foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) Information on whether the benefit of an exclusion of any particular area outweighs the benefit of inclusion under section 4(b)(2) of the Act, after considering both the potential impacts and benefits of the proposed critical habitat designation. Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species.

(6) Information on the projected and reasonably likely impacts of climate change on the 124 species for which critical habitat is being proposed.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comment.

(8) Information on the extent to which the description of economic impacts in the DEA is reasonable and accurate.

(9) Information on the probable or reasonably foreseeable economic impacts to water users that could potentially result from the designation of critical habitat.

(10) Information on the potential cost of irrigation-related activities, as well as their timing and likely source of funding, Federal permit requirements, and the extent or scale of repairs or modifications required.

(11) Information on the planned development activities within the areas proposed as critical habitat.

(12) Information on primary constituent elements that may or may not be present in certain portions of proposed Oahu—Lowland Dry—Unit 8, as identified in Part II, Chapter 2 of the DEA (see Figure 3.3 of the DEA).

(13) Information on whether portions of proposed Oahu—Lowland Dry—Unit 8 are essential for the conservation of the species, as identified in Part II, Chapter 3 of the DEA.

(14) Information on potential future Federal actions and possible economic impacts of the proposed critical habitat designation within Oahu—Lowland Dry—Unit 8 at Kalaeloa, as identified in Part II, Chapter 3 of the DEA.

(15) Information on whether conservation measures or conservation recommendations that ensure Federal actions avoid jeopardizing the species are also adequate to avoid adversely modifying critical habitat.

If you submitted comments or information on the proposed rule during the initial comment period from August 2 to October 3, 2011 (76 FR 46362), please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during all comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2010–0043, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R1–ES–2010–0043, or by mail from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the 124 species described in the August 2, 2011, proposed rule (76 FR 46362). For more information on previous Federal actions for these species, refer to the proposed designation of critical habitat published in the **Federal Register** on August 2, 2011 (76 FR 46362).

Previous Federal Actions

On August 2, 2011, we published a proposed rule to list 23 species on Oahu as endangered and designate critical habitat for 124 species (76 FR 46362) over approximately 43,491 acres (ac) (17,603 hectares (ha)). Within that proposed rule, we announced a 60-day comment period, which closed October 3, 2011. Approximately 93 percent of the area proposed as critical habitat is already designated as critical habitat for other species, including 99 plant species for which critical habitat was designated in 2003 (68 FR 35950; June 17, 2003).

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

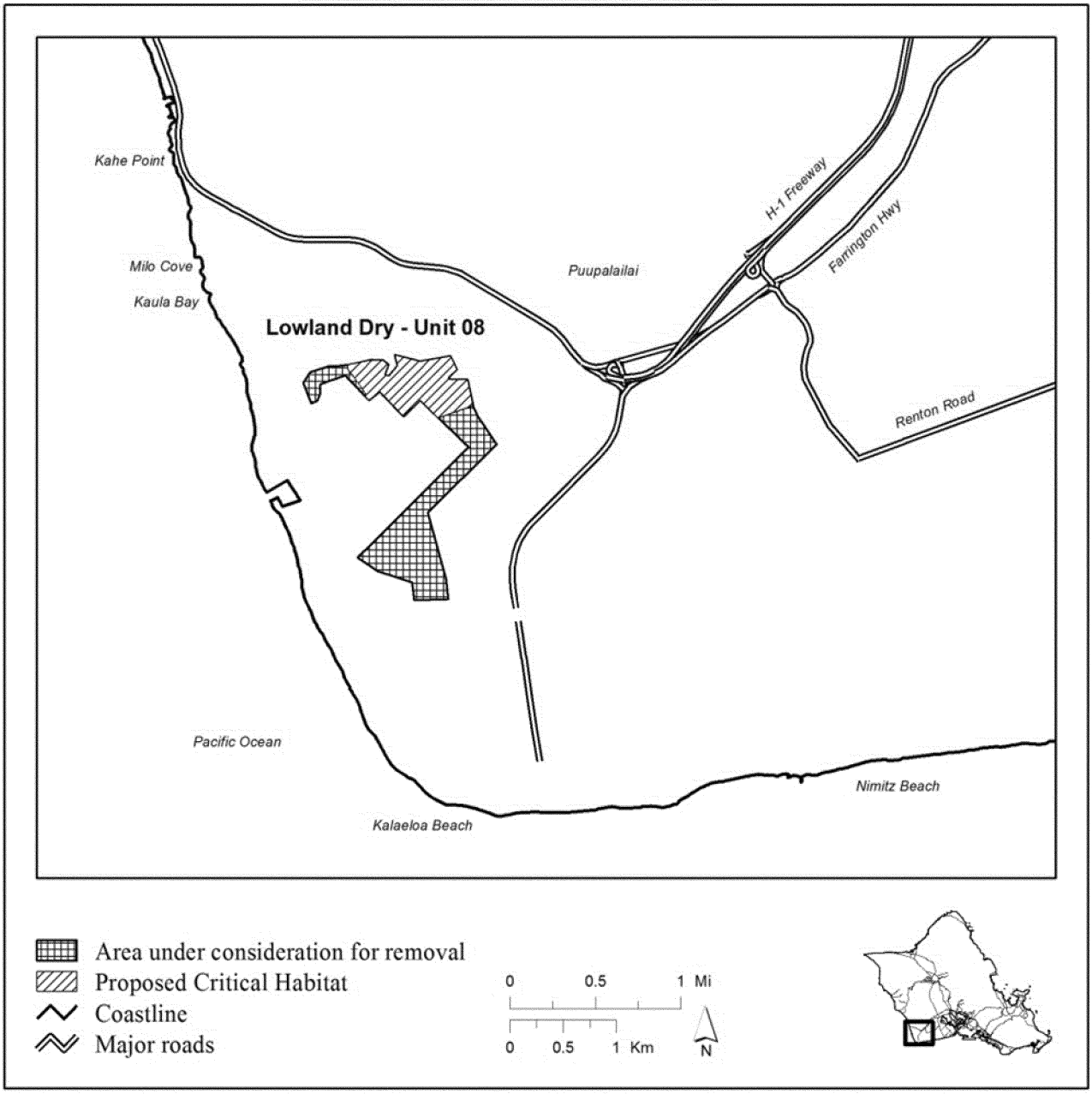
Potential Oahu—Lowland Dry—Unit 8 Boundary Adjustment

The August 2, 2011, proposed rule proposed to designate Oahu—Lowland Dry—Unit 8 as critical habitat for 17 endangered (or proposed endangered) plants (also see Part II, Chapter 3 of the DEA, pp. 61–64). This unit is composed of pockets of native and nonnative species. We initially determined this area to be essential for the conservation and recovery of these lowland dry plant species because we believed it provided the environmental conditions essential for each species, including the appropriate microclimatic conditions for germination and growth of the plants (e.g., light availability, soil nutrients, hydrologic regime, temperature, and space for population growth and expansion), as well as to maintain the historical geographical and ecological distribution of each species. In addition, proposed Oahu—Lowland Dry—Unit 8 provides the coral outcrop substrate that is a unique habitat requirement for *Chamaesyce skottsbergii* var. *skottsbergii.*

None of the endangered plants currently occur in Lowland Dry Unit 8, although both *Achyranthes splendens* var. *rotundata* and *Chamaesyce skottsbergii* var. *skottsbergii* were reported from this area as recently as 1989 and 1993, respectively. *Chamaesyce skottsbergii* var. skottsbergii is restricted to the arid coastal plain of Ewa, Oahu. It may have been a common species in the original ecosystem that existed on the Ewa Plains, although it is suspected to have been reduced to scattered remnants by the turn of the 20th century (FWS 1993, p. 6). In 1936, it was recorded as ''abundant'' in one location on the Ewa Plains but was not documented again for 40 years, when it was rediscovered in 1976, in the vicinity of the present Kalaeloa Barbers Point Deep Draft Harbor. In 1982, at the time of listing, this species was known from 4 occurrences containing approximately 1,000 to 1,500 individuals (Char and Balakrishnan 1979, p. 67; HBMP 2008). Almost all known individuals at that time were found in the area around Oahu—Lowland Dry—Unit 8. Surveys conducted between 1983 and 1984, in the vicinity of the former Barbers Point Naval Air Station, indicated there was a total of approximately 5,000 plants (HINHP 1991; USFWS 1993, pp. 13–15). However, surveys conducted a decade later located only several hundred plants in the same location (USFWS 1993, pp. 13–15). Currently *Chamaesyce skottsbergii* var. *skottsbergii* is only known from approximately 1,500 wild and outplanted individuals on the Navy's former Trap and Skeet Range and the Service's Kalaeloa Unit of the Oahu National Wildlife Refuge. This species has been extirpated from all other known locations on the Ewa Plains.

We are considering revising the boundaries of Oahu—Lowland Dry—Unit 8 based on comments received related to the physical and biological conditions of portions of the unit, and new biological information gained from field visits to Kalaeloa indicating certain portions of this unit may not be essential to the conservation of the species in question. During our field visits, we observed that approximately 69 percent of the originally proposed unit is no longer suitable due to development and land modification activities including grading, dredging, waste/recycle pile management, compost piles, solar array installation, fill deposition, golf course development, and road construction. Under section 3(5)(A)(ii) of the Act, specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act can only be designated as critical habitat if such areas are essential for the conservation of the species. Those portions of Oahu—Lowland Dry—Unit 8 that may not be essential to the conservation of the species based on new biological information are identified below in Figure 1. We are considering removing approximately 185 ac (75 ha) from the proposed unit and designating critical habitat in the remaining approximately 107 ac (43 ha). Accordingly, we are seeking public comments regarding the removal from this unit of the areas that may not be essential for the conservation of the species.

Figure 1
Oahu–Lowland Dry Unit 8



Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the 124 Oahu species

identified in the proposed rule (76 FR 46362; August 2, 2011), the benefits of critical habitat include public awareness of the presence of the species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects authorized, funded, or undertaken by Federal agencies.

Final decisions on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a DEA concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES** section).

Draft Economic Analysis

This analysis draws heavily on economic analyses conducted for previous critical habitat designations, because there is a 93 percent overlap between the proposed designation and the prior critical habitat designations and because economic impacts, particularly to potential water resources, are similar between the proposed critical habitat and the previous designations. The DEA has been developed in two parts, because of differences in development potential based on the geographic area involved. Part I focuses on the proposed designation for 123 species on Oahu, exclusive of the Kalaeloa area. None of the proposed critical habitat units in this area contain significant residential, commercial, industrial, or agricultural development or operations, and few projects are anticipated within the proposed critical habitat units. This situation reflects that fact that most of the land is unsuitable for development, farming, or other economic activities due to the rugged mountain terrain, lack of access, remote locations, and existing land use controls that severely limit development and most other economic activities in the mountainous interior of Oahu. Part II of the DEA is focused on the City of Kapolei and the Kalaeloa area, which is west of the city of Honolulu, in the vicinity of the former Barbers Point Naval Air Station (NAS). The NAS was decommissioned in 1999, under the Base Realignment and Closure Act, and the surrounding community is in the process of developing a strategic plan for sustaining and developing the economy in this area. In May 2005, the Hawaii Community Development Authority, in response to the closure of the NAS, adopted a strategic plan that would develop Kalaeloa into a diversified economy. The City of Kapolei has also prepared an urban design plan that defines how they want to evolve as Kapolei develops into a secondary urban center to absorb future growth emanating from the City of Honolulu. The proposed critical habitat units overlap with some of the development envisioned for this area; this has been evaluated and fully considered in Part II of the DEA.

The DEA describes the economic impacts of all potential conservation efforts for these species; many of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat when evaluating the benefits of excluding particular areas under section 4(b)(2) of the Act.

Draft Economic Analysis, Part I

Because there is a 93-percent overlap between the critical habitat proposed on August 2, 2011, and the areas considered in the past economic analyses, and because of the similar nature of potential water resource economic impacts, this analysis draws heavily on previous economic analyses. Part I of the DEA was developed using relevant economic information from three detailed economic analyses prepared for previous proposed critical habitat rules on Oahu (Oahu elepaio, 66 FR 30372, June 6, 2001; 99 Oahu plants, 67 FR 37108, May 28, 2002; 12 picture-wing flies, 72 FR 67428, November 28, 2007). Part I of the DEA also considers relevant economic information from three economic analyses that evaluated potential impacts to water resources on other Hawaiian islands, which is an issue also being evaluated in this analysis (Newcomb's snail, 67 FR 15159, March 29, 2002; 83 Kauai and Niihau plants, 67 FR 36851, May 28, 2002; 48 species on Kauai, 73 FR 62592, October 21, 2008). Those studies present economic information and context regarding the regulatory and socio-economic baseline, against which the potential incremental impacts of the proposed designation are evaluated. For a further description of the methodology of the analysis in Part I of the DEA, see Chapter 3, ''Previous Economic Analyses of Critical Habitat Designations on Oahu.''

Part I of the DEA summarizes the previously predicted economic costs of critical habitat designation on 40,446 ac (16,371 ha) that overlap with the August 2, 2011, proposed critical habitat designation, and the areas that do not overlap. The terrestrial areas being proposed as critical habitat are remote and lack development potential. In addition, approximately 93 percent of the area proposed as critical habitat completely overlaps critical habitat that is already designated. Our previous economic analyses of critical habitat designations for the Oahu elepaio and 99 Oahu plants evaluated potential economic costs over a 10-year timeframe (2002–2012), and the previous economic analysis for the Hawaiian picture-wing fly species evaluated potential economic costs over a 20-year timeframe (2008–2028). We believe these analyses are still valid within the 93-percent-overlap area, as the potential activities and conservation measures considered in those studies are similar to those that would be applicable under the current proposal. We are aware of only a small number of section 7 consultations that have been conducted within the 93-percent-overlap area, because these areas lack development potential. In addition, the physical or biological features described within the overlap areas under the existing and proposed designations are similar (e.g., 99 Oahu plants (ecosystem type, elevation (68 FR 35950; June 17, 2003)); Oahu elepaio (ecosystem type, associated native species, rainfall, elevation (66 FR 63752; December 10, 2001)); Hawaiian picture-wing flies (ecosystem type, elevation, host plants (73 FR 73794; December 4, 2008))). Therefore, we anticipate few, if any incremental costs attributable to the proposed critical habitat designation in the 93-percent-overlap area beyond those identified in the previous

economic analyses. We also do not anticipate section 7 consultation costs to be significantly different than those identified in our previous economic analyses within the 93-percent-overlap area. This is because: (1) Habitat is considered in section 7 consultations, regardless of critical habitat designation; (2) any conservation measures needed to protect a species' habitat requirements would be identified during section 7 consultation; (3) those measures would also conserve the physical or biological features that were identified for the existing and the proposed critical habitat designation; and (4) those measures would coincidentally benefit unoccupied critical habitat, as the occupied and unoccupied critical habitat areas entirely overlap.

Of the remaining 7 percent (2,478 ac (1,001 ha)) of proposed critical habitat that does not overlap existing critical habitat, 95 percent (2,354 ac (951 ha)) is classified as being in conservation districts, and 5 percent (124 ac (50 ha)) is within urban or agricultural districts. Figure 4 and the corresponding key in the draft economic analysis (pp. 23–25), identifies objectives for land uses within the conservation district zoning. However, 74 percent (92 ac (37 ha)) of these urban or agricultural district lands are within State forest reserves, parks, seabird sanctuaries, or natural area reserves, and are also unlikely to be developed. The remaining lands (32 ac (13 ha)) are on the Naval Radar Transmitting Facility at Lualualei (which are unlikely to be developed), or lands of unknown use. These unknown use lands are most likely roads and existing manmade structures, which do not contain the physical or biological features, or are not essential to the conservation of the species. Further, no section 7 consultations have been conducted in these areas to date. Accordingly, with the possible exception of presently unknown costs associated with the proposed damselfly critical habitat (as discussed in the next paragraph), we do not believe the proposed designation of critical habitat in the non-overlap areas would result in any appreciable economic impacts. This conclusion is based on the lack of development potential for these areas. We acknowledge there may be circumstances under which additional costs may be incurred because of the designation of critical habitat, for example, due to the nature of a particular project or because currently occupied habitat becomes unoccupied in the future. Accordingly, we are seeking information from the public on the potential costs of this critical habitat designation to ensure the final determination is based on the best available scientific and commercial information.

Our August 2, 2011, proposed rule includes the proposed listing of the blackline Hawaiian damselfly (*Megalagrion nigrohamatum nigrolineatum*), crimson Hawaiian damselfly (*Megalagrion leptodemas*), and oceanic Hawaiian damselfly (*Megalagrion oceanicum*) as endangered, and the proposed designation of critical habitat for these species. The aquatic life-history stages of these species may use open water areas, slow sections or pools, or stream riffle areas, and adults perch on streamside vegetation and patrol along stream corridors. For species like these damselflies, which are at risk because of loss of habitat, an action could jeopardize the continued existence of a listed species through alteration of its habitat, regardless of whether that habitat has been designated as critical habitat (51 FR 19927; June 3, 1986). Because Federal agencies would need to consider damselfly habitat impacts in occupied areas during section 7 consultation regardless of a critical habitat designation, any conservation measures needed to avoid jeopardy would, in most cases, be sufficient to avoid adversely modifying critical habitat (*i.e.,* the outcome of a section 7 consultation under the jeopardy standard and adverse modification standards would be similar). Accordingly, we do not anticipate the need for project modifications or measures to address effects to critical habitat beyond those that would result from the jeopardy analysis. We acknowledge there could be a difference between consulting on effects for some species and their critical habitat, depending on the particular circumstances of the Federal action being proposed. In addition, some level of incremental economic impact may accrue in unoccupied critical habitat areas, because they would not otherwise be subject to section 7 consultation. Critical habitat could also trigger incremental economic impacts if an occupied area were to become unoccupied as a result of a stochastic or other catastrophic event. In this situation, a Federal agency would still have a section 7 consultation responsibility based on the critical habitat designation, even though the species is no longer present. Conservation recommendations under this scenario could target management actions to reintroduce the species into the vacated critical habitat area. There have been few section 7 consultations in the areas being proposed as Hawaiian damselfly critical habitat, and we are generally unaware of any future development plans. In addition, there is very little information available on potential direct or indirect costs related to critical habitat designation in aquatic areas on Oahu or elsewhere in the Hawaiian Islands. Although future Federal actions that could affect either the damselflies or their critical habitat are unpredictable, the areas generally lack development potential because of their topography and remote locations.

Most of the damselflies' proposed primary constituent elements (PCEs) are related to elevation, annual precipitation, substrate, and associated native vegetation, which are comparable to those propsoed for the Oahu plant species identified in the proposed rule. However, the damselflies' proposed PCEs also have an aquatic habitat component (*e.g.,* slow reaches of streams, pools, etc.), which would be considered during section 7 consultation on a Federal action. Each of the units proposed as damselfly critical habitat is occupied by one or more of the damselfly species. Accordingly, it is likely that most, if not all, potential future section 7 consultation costs or project modifications costs would result from the listing of the damselflies, and would represent baseline costs. However, there is very little information available on potential direct or indirect costs related to critical habitat designation in aquatic areas on Oahu or elsewhere in the Hawaiian Islands. We acknowledge there could be circumstances under which additional costs may be incurred because of the designation of critical habitat, for example due to the nature of a particular project or because currently occupied habitat becomes unoccupied in the future. Because there is some uncertainty, we are seeking information from the public on the potential cost of activities involving water structures (including irrigation-related activities), their timing and likely source of funding, the extent or scale of future repairs or modifications contemplated, and Federal permits that may be required, to ensure the final determination is based on the best available scientific and commercial information. We will fully consider all comments we receive related to future water management activities, economic concerns, Federal involvement, or other regulatory requirements to ensure the final determination is based on the best scientific data available.

Draft Economic Analyis, Part II

Part II of the DEA assesses the potential economic impacts associated with the proposed 566-ac (229-ha) critical habitat designation at Kalaeloa, Oahu, for 24 plant species. Only two of these plants, *Achyranthes splendens* var. *rotundata* (round-leaved chaff flower) and *Chamaesyce skottsbergii* var. *skottsbergii* (Ewa Plains akoko) currently occur at Kalaeloa, although the other 22 species were historically present. Six of the seven proposed units are currently occupied by either *Achyranthes splendens* var. *rotundata* or *Chamaesyce skottsbergii* var. *skottsbergii,* and represent proposed unoccupied critical habitat for 22 other species. One proposed unit (Oahu—Lowland Dry—Unit 8) is not currently occupied by any of the 17 species for which this unit is being proposed as critical habitat. The critical habitat units that are occupied by the species are not expected to incur any appreciable economic impact related to additional conservation measures, because Federal actions in areas occupied by the species already undergo section 7 consultation, and the need to incorporate additional conservation measures related to critical habitat designation would generally not be anticipated. This is because the PCEs for occupied critical habitat areas are habitat-based (i.e., elevation, annual precipitation, substrate, canopy, subcanopy, and understory), and habitat is considered during section 7 consultations involving these species, regardless of a critical habitat (see Part II, Chapter 4 of the DEA). We acknowledge there could be a difference in conservation measures, depending on the particular circumstances of the Federal action being proposed, but we are unable to quantify that difference based on our consultation history to date (i.e., we have no section 7 precedent in Hawaii with which to formulate an incremental cost/value difference). In addition, because future Federal actions in these areas are unknown at this time, we are unable to reasonably predict their future impacts on the species and the proposed critical habitat areas. However, we are seeking comments on these issues.

Critical habitat could also trigger incremental economic impacts if an occupied area were to become unoccupied as a result of a stochastic or other catastrophic event. In this situation, a Federal agency would still have a section 7 consultation responsibility based on the critical habitat designation, even though the species is no longer present. Conservation recommendations under this scenario could target management actions to reintroduce the species into the vacated critical habitat area. However, we are unaware of any instances of this situation arising.

We received several comment letters in response to the proposed rule that published in the **Federal Register** on August 2, 2011 (76 FR 46362), expressing concern that the proposed critical habitat designation could result in economic impacts to current or planned activities, with particular emphasis directed toward the Oahu—Lowland Dry—Unit 8, near the Kalaeloa Barbers Point Deep Draft Harbor. Some of the economic activities that were specifically identified in this area included aggregate transshipment operations; hot mix asphalt plant facilities; harbor expansion; maritime and related service needs, including light industrial, warehouse, and distribution facilities; resort and mixed use residential/commercial activities; marina facilities; industrial lot development; biofuel tankfarm construction and transshipment operations; and solar power facilities. Other economic activities were identified in Oahu—Lowland Dry—Unit 10, where a solar power generating facility is planned. These comment letters are available for public review at *http://www.regulations.gov,* under docket number FWS–R1–ES–2010–0043.

Although these comments are informative from the standpoint of further understanding the ongoing and planned development activities in the area, absent a Federal nexus, the designation of critical habitat would have no direct economic impacts to those activities. We are also unaware of any indirect economic impacts that would result from critical habitat designation, absent a Federal nexus. Several of the commenters indicated they would provide additional comments related to economic impacts once the draft economic analysis for the proposed critical habitat designation became available for public review. In this regard, comments that specifically identify Federal permits, licenses, funding, or other Federal assistance that are or would be necessary for ongoing or planned development activities would be helpful. All comments received will be fully considered in the Service's final critical habitat determination.

In the absence of definitive data or other economic information, the analysis presents a range of economic effects. The lower-bound estimate of effects is that the landowners would incur no economic impact from the designation of critical habitat. The upper-bound estimate of effects is that each parcel owner would participate in section 7 consultation with the Service before initiating their action, and the Service, Federal action agency, and/or the parcel owner would incur additional costs (see DEA Table 4.3, p. 75).

Total incremental administrative costs to address critical habitat concerns in occupied critical habitat, in 2011 dollars over a 21-year timeframe, would be approximately $405 for technical assistances, $2,380 for an informal consultation, and $5,000 for a formal consultation. The potential upper-bound administrative costs to address critical habitat concerns for occupied critical habitat units assumes that every parcel within the unit would have a formal consultation because of critical habitat designation. The total annualized costs in 2011 dollars over a 21-year timeframe would be approximately $1,380 for the Service, $1,550 for the Federal action agency, $875 for the third (private or State) party receiving Federal funding or seeking a Federal permit, and $1,200 for the biological assessment.

Oahu—Lowland Dry—Unit 8 is the only unit that is not currently occupied by any of the 17 species for which it is proposed as critical habitat. Consequently, Federal agencies are not currently compelled to consult with the Service on any actions that they authorize, fund, or carry-out with regard to possible effects on the 17 plants for which critical habitat is proposed in this unit. In the future, should critical habitat be designated for this area, Federal agencies would need to consult with the Service to ensure that their actions do not adversely modify critical habitat. However, due to the infrequency of section 7 consultations with Federal agencies on private development activities, the Service is unsure how the designation of critical habitat will affect future conservation measures and associated economic impacts. This unit contains 13 separate parcels, none of which are owned by the Federal Government. Although the parcels in Oahu—Lowland Dry—Unit 8 are planned to be commercially developed, for the most part, it remains difficult for the Service to determine the likelihood that such planned activities will be subject to a consultation. The primary reason why the Service has difficulty predicting how the planned future activities will be subject to a section 7 consultation is the inability to identify a Federal nexus that would require consultation. Accordingly, we are seeking specific public comments in this regard.

Due to the uncertainty of whether or not future commercial development will be subject to a section 7 consultation, the analysis in Part II of the DEA presents a range of potential effects. The lower-bound estimate is no economic effect because future development would not be subject to a section 7 consultation. However, should future development require section 7 consultation, it would presumably be attributable to the proposed critical habitat designation. The upper-bound estimate of effects is that each parcel owner would participate in section 7 consultation with the Service before initiating their action, and the Service, Federal action agency, or the parcel owner would incur additional administrative costs. The upper-bound estimate of administrative costs to address critical habitat concerns for a single parcel in unoccupied critical habitat, annualized in 2011 dollars over a 21-year timeframe, would be approximately $5,500 for the Service, $6,200 for the Federal action agency, $3,500 for the third (private or State) party receiving Federal funding or seeking a Federal permit, and $4,800 for the biological assessment, or $20,000 total annualized costs.

With regard to possible costs for conservation measures, as discussed above, the Service cannot identify a reasonably foreseeable Federal nexus which would lead to a formal section 7 consultation, related to the types of future uses identified in the Kapolei Area Long Range Master Plan or the Kalaeloa Master Plan. Therefore, the analysis estimates the upper-bound limit of such economic impacts based on land assessments and the percentage of parcel lands proposed as critical habitat. Specifically, because the Service is unable to estimate how much of the proposed critical habitat could be disturbed as part of planned future development activities without violating the prohibition on destroying or adversely modifying critical habitat, this analysis bases its upper-bound estimate of economic impacts using the very conservative approach that the designation could effectively lead to all of the proposed areas remaining in an open, undeveloped state. Oahu—Lowland Dry—Unit 8 surrounds the Kalaeloa Barbers Point Deep Draft Harbor. This unit consists of 13 mostly undeveloped distinct parcels ranging from as little as 3 ac (1.2 ha) to over 400 ac (162 ha) in size. The Kapolei Area Long Range Master Plan generally identifies intense development for these parcels, and the County has already zoned these areas in a manner appropriate for planned future development. The total current assessment for these parcels is slightly over $206 million, which according to the Real Property Assessment Division, reflects the current market value for the properties. The analysis assumes that the designation of critical habitat could lead to a loss in land values if property owners are unable to implement their development plans. The upper-bound annualized property value impacts from critical habitat designation over a 21-year timeframe is a total of $55,806,934 for all 13 parcels in proposed Oahu—Lowland Dry—Unit 8. Since the DEA was prepared before the Service gained new biological information on the unit, the approximate $55.8 million estimate is based on the 292 acres originally proposed within the unit. As discussed above, we are considering removing 185 acres (approximately 63%) of the area originally proposed as critical habitat from this unit. A proportional adjustment to the $55.8 million upper-bound estimate would result in an estimated $20.6 million in economic costs for the 107 acres remaining in the unit, under the worst-case scenario (*i.e.,* no development may occur). However, this scenario is unlikely, and actual costs will probably be much less.

Given the relatively small land area proposed for designation island-wide, coupled with the fact that the designation is generally not expected to result in any additional conservation measures for the species above and beyond the baseline (particularly in occupied critical habitat areas), this designation is not expected to significantly affect land market prices on the island even though the designation could have an effect on individual parcels. The designation of critical habitat could lead to economic costs if the designation caused either significant delays in the planned development of the land or if the designation leads to restrictions in the type of development allowed. In the first instance, a delay in planned development, which could be caused by a section 7 consultation with the Service that otherwise would not have occurred absent critical habitat, may correspond to a delay in the realization of revenue streams associated with the development (i.e., rental income) even if the consultation results in no change to the type of development initially planned. Land value losses could be greater under the second scenario if a section 7 consultation results in a change in the type of development that would have occurred absent a designation of critical habitat and associated consultation with the Service. For example, if a section 7 consultation results in less land area being developed than originally conceived and allowed under pre-existing conditions, the total value of the development and associated revenue streams may be less.

There could also be a difference between consulting on effects for some species and their critical habitat, depending on the particular circumstances of the Federal action being proposed. Some level of incremental economic impact to land values may accrue in unoccupied critical habitat areas, because they would not otherwise be subject to section 7 consultation. Critical habitat could also trigger incremental economic impacts if an occupied area were to become unoccupied as a result of a stochastic or other catastrophic event. In this situation, a Federal agency would still have a section 7 consultation responsibility based on the critical habitat designation, even though the species is no longer present. Conservation recommendations under this scenario could target management actions to reintroduce the species into the vacated critical habitat area. We are unaware of any instances of this situation arising, although there could potentially be an impact to land values if a Federal action were to be proposed in such areas.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of the species.

Required Determinations—Amended

In our August 2, 2011, proposed rule (76 FR 46362), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O.

13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), E.O. 13175 (Government-to-Government Relationship with Tribes), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq*). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), 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. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, 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; and 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 considered the types of activities that might trigger regulatory impacts under this designation as well as 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.

To determine if the proposed designation of critical habitat for the 124 species included in the proposed rule (76 FR 46362, August 2, 2011) would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as commercial and residential development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where listed species are present, including the 101 Oahu plant species described in the proposed rule, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would, in most cases, be incorporated into the existing consultation process.

Our regulatory flexibility analysis considers the potential economic effects on small entities resulting from the implementation of conservation actions related to the proposed designation of critical habitat for 124 Oahu species, and looks in more detail at the proposed designation in the Kalaeola area (which is considered in Part II of the DEA), based on the potential for development in that area. As estimated in Part I, Chapter 11 of the DEA, incremental impacts of the proposed designation in Oahu with the exception of Kalaeloa would likely be limited to additional incremental costs of time spent by the Service, Federal action agency, and any third parties in section 7 consultation over and above time spent on the jeopardy analysis component of the consultation. We anticipate few, if any, incremental costs attributable to the proposed critical habitat designation where it overlaps existing critical habitat (approximately 93-percent overlap). Within this area, any conservation measures needed to protect the physical or biological features in occupied habitat areas would likely be identified during section 7 consultation based on occupancy by the species. Those measures would coincidentally benefit unoccupied habitat because those areas entirely overlap. Ninty-five percent of the non-overlap areas is classified as conservation district, and 5 percent is within urban or agricultural districts. However, 74 percent of the lands within urban or agricultural districts are within State forest reserves, parks, seabird sanctuaries, or natural area reserves, and are unlikely to be developed. Most of the remaining lands are on the Naval Radar Transmitting Facility at Lualualei (which are unlikely to be developed) or lands of unknown use (most likely roads and existing manmade structures).

Small entities may participate in section 7 consultation as a third party (the primary consulting parties being the Service and the Federal action agency); therefore, it is possible that the small entities may spend additional time considering critical habitat during section 7 consultation for the 124 Oahu species. Based on the best available information, these administrative impacts would likely be the only potential incremental impacts of critical habitat that may be borne by small entities. We do not believe the proposed designation would have a significant effect on a substantial number of small entities because none of the proposed critical habitat units contains significant residential, commercial, industrial, or agricultural development or operations, and few projects are anticipated within the proposed critical habitat. Any existing and planned projects, land uses, and activities that could affect the proposed critical habitat that have no Federal involvement would not require section 7 consultation and would not be restricted by the requirements of the Act. Finally, many of the anticipated projects and activities with Federal involvement are conservation efforts that would be expected to trigger formal section 7 consultations. If formal consultation were to be required, we anticipate that a project proponent could modify the project or take measures to protect the affected species or critical habitat, such as establishing conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. The Service has been involved with these types of projects for many years throughout the Hawaiian Islands. We are unaware of instances where these types of activities have resulted in any significant economic impacts to the individuals or agencies involved.

In addition, in the 2001, 2003, and 2008 economic analyses for the designation of critical habitat for the Oahu elepaio, 99 species of Oahu plants, and 12 Hawaiian picture-wing flies, respectively, we evaluated the potential economic effects on small entities resulting from the protection of these species and their habitats related to the proposed designation of critical habitat, and determined that designation would not have a significant economic impact on a substantial number of small entities. The significant overlap (93 percent) between the critical habitat designations for the Oahu elepaio, 99 Oahu plant species, and 6 Oahu picture-wing flies and this proposed critical habitat designation is further evidence that the designation of critical habitat in the areas evaluated in Part I of the DEA will not have a significant economic impact on a substantial number of small entities. None of the proposed critical habitat units considered in Part I of the economic analysis contains significant residential, commercial, industrial, or agricultural development or operations, and few projects are anticipated within the proposed critical habitat. This situation reflects the fact that most of the land is unsuitable for development, farming, or other economic activities due to the rugged mountain terrain, lack of access, and remote locations, and existing land-use controls severely limit development and most other economic activities in the mountainous interior of Oahu.

Although some existing and continuing activities involve the operation and maintenance of existing manmade features and structures in certain areas, these areas do not contain the primary constituent elements for the species, and would not be impacted by the designation. Any existing and planned projects, land uses, and activities that could affect the proposed critical habitat that have no Federal involvement would not require section 7 consultation and would not be restricted by the requirements of the Act. Finally, many of the anticipated projects and activities with Federal involvement are conservation efforts that would be expected to trigger formal section 7 consultations. If formal consultation were to be required, we anticipate that a project proponent could modify the project or take measures to protect the affected species or critical habitat, such as establishing conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. The Service has been involved with these types of projects for many years throughout the Hawaiian Islands. We are unaware of instances where these types of activities have resulted in any significant economic impacts to the individuals or agencies involved.

Our regulatory flexibility analysis for the Kalaeloa area contained in Part II of the DEA is based on an assessment of the highest level of incremental costs (upper-bound) of critical habitat designation due to reductions in land value due to development restrictions following the designation of critical habitat and administrative consultation costs. The analysis focuses on impacts to development activities, which may be experienced by small entities, and assumes that the designation of critical habitat would primarily impact businesses in the building construction industry. As estimated in Chapter 4 of Part II the DEA, incremental impacts of the proposed designation in occupied habitat areas would likely be limited to additional incremental costs of time spent by the Service, Federal action agency, and any third parties in section 7 consultations over and above the time spent on the jeopardy analysis component of the consultation. Small entities may participate in a section 7 consultation as a third party, and it is possible that they could spend additional time considering critical habitat during section 7 consultation for these 24 plant species. These administrative impacts would likely be the only potential incremental impacts of designating critical habitat in occupied habitat that may be borne by small entities. Critical habitat could theoretically trigger incremental economic impacts if an occupied area were to become unoccupied as a result of a stochastic or other catastrophic event. In this situation, a Federal agency would still have a section 7 consultation responsibility based on the critical habitat designation, even though the species is no longer present. Conservation recommendations under this scenario could target management actions to reintroduce the species into the vacated critical habitat area. However, we are unaware of any actual instances of this situation arising.

Based on the DEA, the only critical habitat unit facing potential property value impacts would be the unoccupied unit, Oahu—Lowland Dry—Unit 8. Property value impacts were used because we are not certain about how the designation will affect future conservation measures through the section 7 consultation process, so we used a ''worst case scenario'' assumption that designation could effectively lead to critical habitat remaining in an undeveloped state. However, we believe this is extremely unlikely to occur. Oahu—Lowland Dry—Unit 8 is the only proposed critical habitat unit in Kalaeloa that is not currently occupied by at least one listed species, and consequently, Federal agencies are not currently compelled to consult with the Service on actions they authorize, fund, or carry out in this unit. Although some of the parcels in Oahu—Lowland Dry—Unit 8 are planned to be commercially developed, it is difficult to determine the likelihood that planned activities would have Federal involvement, which would trigger the need for section 7 consultation. Due to this uncertainty, the DEA presents a range of possible effects. The lower-bound estimate is that there would be no economic effect because future development would not be subject to section 7 consultation. As Oahu—Lowland Dry—Unit 8 is unoccupied, any costs associated with section 7 consultation would be attributable to the proposed critical habitat designation. The upper-bound estimate assumes none of the parcels in Oahu—Lowland Dry—Unit 8 could be developed, which could lead to a property value loss. If this were to occur, potentially up to 13 small developers could be affected with an average financial impact of 2.0 percent to 2.8 percent to their annual receipts. Similarly, under the upper-bound assumption that every parcel would incur a formal consultation, the financial impact (due to administrative costs) to the average small developer would be 0.03 percent of annual receipts. Under this scenario, up to 34 small businesses could potentially be impacted, although it is unlikely that every parcel would be subject to section 7 consultation in the future. It is also unlikely that every potentially affected developer would be a small business as defined by the Small Business Administration. Accordingly, the potential economic impacts of the proposed designation on small entities are likely overstated. There is also no factual basis for the Service to conclude the designation of critical habitat would result in the inability of landowners to develop their parcels in the Kalaeloa area, based on our existing section 7 consultation history for this area.

In summary, we have considered whether the proposed designation of critical habitat for 124 species on Oahu would result in a significant economic impact on a substantial number of small entities. Information for our analysis was gathered from the Small Business Administration, stakeholders, and the

Service. For the above reasons and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Pacific Islands Fish and Wildlife Office, Pacific Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 30, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–8807 Filed 4–11–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 110202088–2183–01]

RIN 0648–BA34

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes to amend the Bottlenose Dolphin Take Reduction Plan (BDTRP) and implementing regulations by permanently continuing medium mesh gillnet fishing restrictions in North Carolina coastal state waters, which would otherwise expire on May 26, 2012. This action will remove the expiration date to continue current nighttime fishing restrictions of medium mesh gillnets operating in North Carolina coastal state waters from November 1 through April 30. Members of the Bottlenose Dolphin Take Reduction Team (BDTRT) recommended these regulations be continued permanently, without modification, to ensure: (1) Continued conservation of strategic bottlenose dolphin stocks in North Carolina with historically high serious injury and mortality rates associated with medium mesh gillnets; and (2) BDTRP goals are met. NMFS also proposes to amend the BDTRP with updates, including updates recommended by the BDTRT for non-regulatory conservation measures.

DATES: Written comments on the proposed rule must be received no later 5 p.m. eastern time on May 14, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2010–0230, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2010–0230 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Assistant Regional Administrator for Protected Resources, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701–5505.
- *Fax:* 727–824–5309; Attn: Assistant Regional Administrator for Protected Resources.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

This proposed rule, the BDTRP, 2008 BDTRP amendment, BDTRT meeting summaries with consensus recommendations, and other background documents are available at the Take Reduction Team web site: *http://www.nmfs.noaa.gov/pr/interactions/trt/bdtrp.htm,* or by submitting a request to Stacey Horstman [see **FOR FURTHER INFORMATION CONTACT**].

FOR FURTHER INFORMATION CONTACT: Stacey Horstman, NMFS Southeast Region, *Stacey.Horstman@noaa.gov,* 727–824–5312; or Kristy Long, NMFS Office of Protected Resources, *Kristy.Long@noaa.gov,* 301–427–8402.

SUPPLEMENTARY INFORMATION:

Regulatory Changes to the BDTRP

BDTRP and Medium Mesh Gillnet Restrictions

Section 118(f)(1) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1387(f)(1)) requires NMFS to develop and implement take reduction plans to assist in the recovery or prevent the depletion of strategic marine mammal stocks that interact with Category I and II fisheries. The MMPA includes in its definition of ''strategic stock'' a marine mammal stock: (1) For which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) which is declining and likely to be listed as a threatened species under the Endangered Species Act (ESA); or (3) which is designated as a depleted species under the MMPA (16 U.S.C. 1362(1), (19), and (20)). PBR is the maximum number of animals, not including natural mortalities, that can be removed annually from a stock, while allowing that stock to reach or maintain its optimum sustainable population level. Category I or II fisheries are fisheries with frequent or occasional incidental mortality and serious injury of marine mammals, respectively (16 U.S.C. 1387(c)(1)(A)(i) and (ii)).

As specified in the MMPA, the short-term goal of a take reduction plan is to reduce, within six months of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to levels less than PBR for the stock (16 U.S.C. 1387(f)(2)). The long-term goal of a plan is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. The MMPA also requires NMFS to amend take reduction plans and implementing