

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

+ North American Vertical Datum.

# Depth in feet above ground.

\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### City of Cornell

Maps are available for inspection at City Hall, 222 Main Street, Cornell, WI 54732.

##### Unincorporated Areas of Chippewa County

Maps are available for inspection at Clerk's Office, 711 North Bridge Street, Room 109, Chippewa Falls, WI 54729.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 4, 2008.

##### David I. Maurstad,

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E8-18529 Filed 8-11-08; 8:45 am]

BILLING CODE 9110-12-P

#### DEPARTMENT OF TRANSPORTATION

##### Federal Railroad Administration

##### 49 CFR Part 260

[Docket No. FRA-2008-0061]

RIN 2130-AB91

##### Railroad Rehabilitation and Improvement Financing Program

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NRPM); extension of comment period.

**SUMMARY:** On June 9, 2008, FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (73 FR 32515) proposing amending the eligibility and application form and content criteria of the Railroad Rehabilitation and Improvement Financing (RRIF) Program to ensure the long-term sustainability of the program, promote competition in the railroad industry, and reduce the risk of default for applicants and the Government. Due to an administrative error, a Preliminary Regulatory Evaluation (Evaluation) was not included in the docket. This notice announces an extension of the comment period until August 26, 2008 to allow for consideration of the Evaluation.

**DATES:** Comments must be received by August 26, 2008. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

**ADDRESSES:** Comments should reference Docket No. FRA-2008-0061 and may be submitted the following ways:

- *E-Gov Web site:* <http://www.regulations.gov>. This Web site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail:* DOT Docket Management System: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.
- *Hand Delivery:* DOT Docket Management System; West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* You should identify the docket ID, FRA-2008-0061, at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that FRA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at <http://www.regulations.gov>.

**Note:** Comments are posted without changes or edits to <http://www.regulations.gov>, including any personal information provided. There is a privacy statement published on <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** John Kern, Attorney-Advisor, Office of the Chief Counsel, Federal Railroad Administration, 1200 New Jersey

Avenue, SE., Washington, DC 20590 ([John.Kern@dot.gov](mailto:John.Kern@dot.gov) or 202-493-6044).

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access and Filing

You may submit or retrieve comments online through <http://www.regulations.gov>, which is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at [http://www.archives.gov/federal\\_register](http://www.archives.gov/federal_register) and the Government Printing Office's Web page at <http://www.gpoaccess.gov>.

Issued in Washington, DC on August 7, 2008.

**Joseph H. Boardman,**  
*Administrator.*

[FR Doc. E8-18710 Filed 8-8-08; 12:00 pm]

BILLING CODE 4910-06-P

#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

##### 50 CFR Part 17

[FWS-R1-ES-2007-0006; 92210-1117-0000-B4]

RIN 1018-AU93

##### Endangered and Threatened Wildlife and Plants; Revised Proposed Designation of Critical Habitat for 12 Species of Picture-wing Flies From the Hawaiian Islands

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended required determinations.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the revised proposed designation of critical habitat for 12 species of Hawaiian picture-wing flies (*Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. neoclavisetae*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) 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 revised proposed rule, the associated DEA, and the amended required determinations section. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

**DATES:** We will consider comments received or postmarked on or before September 11, 2008.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018-AV91; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. 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:** Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, P.O. Box 50088, Honolulu, HI 96850; telephone 808-792-9400; facsimile 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 revised proposed designation of critical habitat for the 12 Hawaiian picture-wing fly species that was published in the *Federal Register* on November 28, 2007

(72 FR 67428), the June 2008 DEA of Critical Habitat Designation for the Hawaiian Picture-wing Flies, and this document, including 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 (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent;

(2) Specific information on:

(a) The amount and distribution of habitat for the 12 Hawaiian picture-wing fly species;

(b) What areas occupied at the time of listing contain features essential for the conservation of the species we should include in the designation and why, and

(c) Which areas not occupied at the time of listing are essential to the conservation of the species and why.

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

(4) Information on the extent to which any State and local environmental protection measures we reference in the DEA may have been adopted largely as a result of the species' listing.

(5) Information on whether the DEA identifies all State and local costs and benefits attributable to the proposed critical habitat designation, and information on any costs and benefits that we have overlooked.

(6) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes that are likely to occur if we designate critical habitat as currently proposed.

(7) Information on whether the DEA identifies all costs and benefits that could result from the designation.

(8) Information on whether the DEA correctly assesses the effect on regional costs or benefits associated with any land use controls that may result from the proposed designation.

(9) The extent to which the description in the DEA of economic impacts to public land management and other activities is complete and accurate.

(10) Information on areas that the critical habitat designation could potentially impact to a disproportionate degree.

(11) Economic data on the incremental costs of designating any particular area as critical habitat.

(12) Information on any quantifiable economic or other potential benefits of the proposed designation of critical habitat. Factors which may be considered under the potential benefits of critical habitat designation may include, but are not limited to, aesthetic considerations, recreational use, biodiversity, aquatic resources, intrinsic values, and benefits to local communities.

(13) Any foreseeable economic, national security, or other relevant impacts that may result from the proposed designation, and in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts. Other impacts in addition to economic effects that may be considered in the designation of critical habitat may include, but are not limited to, social factors, ecological factors, and impacts on local communities.

(14) Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act, after considering the potential impacts and benefits of the proposed critical habitat designation.

(15) Whether we could improve or modify our approach to designating critical habitat to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

If you submitted comments or information during the initial comment period from November 28, 2007, to January 28, 2008, on the proposed rule (72 FR 67427), 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 preparation of our final determination. Our final determination concerning revised proposed critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, and 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 our proposed rule, the associated DEA, and our amended required determinations by one of the methods listed in the **ADDRESSES** section. We will not consider comments

sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

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. 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. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this notice, will be available for public inspection on <http://www.regulations.gov>, 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 DEA by mail from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**), by visiting the Federal eRulemaking Portal at <http://www.regulations.gov>, or on our Web site at <http://www.fws.gov/pacificislands>.

### Background

Under the terms of a settlement agreement approved by the U.S. District Court for the District of Hawaii on August 31, 2005 (*CBD v. Allen*, CV-05-274-HA), we were to (1) make a final listing decision for the 12 picture-wing flies by May 6, 2006; (2) propose to designate critical habitat by September 15, 2006; and (3) finalize a critical habitat rule by April 17, 2007. A joint stipulation was approved by the Court on April 18, 2007, to allow additional time to reconsider the proposed rule in light of comments received to the August 15, 2006, proposed designation of approximately 18 acres as critical habitat for 11 of the 12 species of Hawaiian picture-wing flies (71 FR 46944), and to provide an opportunity for additional public comment. Under the terms of the extension, we were required to submit a proposed critical habitat rule to the **Federal Register** by November 15, 2007, and a final critical habitat rule by November 15, 2008.

On November 28, 2007, we published a revised proposed designation of approximately 9,238 acres (ac) (3,738 hectares (ha)) as critical habitat in four counties (City and County of Honolulu, Hawaii, Maui, and Kauai), in Hawaii in the **Federal Register** (72 FR 67427). For additional information on previous

Federal actions concerning the 12 species of Hawaiian picture-wing flies for which we are proposing to designate critical habitat, refer to the November 28, 2007, proposed revised designation of critical habitat and the final listing rule published in the **Federal Register** on May 9, 2006 (71 FR 26835).

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat in this notice. For more information on the taxonomy and biology of the 12 species of Hawaiian picture-wing flies, refer to the final listing rule published in the **Federal Register** on May 9, 2006 (71 FR 26835), and the revised proposed critical habitat rule published in the **Federal Register** on November 28, 2007 (72 FR 67428).

Section 3 of the Act defines critical habitat as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (a) essential to the conservation of the species, and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, 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 the destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions that may affect areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

### Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial 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 have prepared a DEA of the proposed revised critical habitat designation based on our November 28, 2007, proposed rule to designate critical habitat for 12 species of Hawaiian picture-wing flies. We request comment on the accuracy of our methodology for distinguishing baseline and incremental costs, the assumptions underlying it, and alternate methodologies that may merit consideration.

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the 12 Hawaiian picture-wing fly species. The DEA quantifies the economic impacts of all potential conservation efforts for the 12 Hawaiian picture-wing fly species; some 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 two types of impacts: (1) Baseline impacts are those that would occur with or without designation of critical habitat, and (2) incremental impacts are those that would occur only with critical habitat designation. Baseline impacts represent the costs incurred regardless of whether critical habitat is designated. Incremental impacts represent the costs incurred specifically with the designation of critical habitat for the 12 Hawaiian picture-wing fly species. In other words, the incremental costs are those attributable solely to the designation of critical habitat for the picture-wing flies that are above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the 12 Hawaiian picture-wing fly species were listed, and forecasts both baseline and incremental impacts likely to occur after the proposed critical habitat is finalized. The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the 12 Hawaiian picture-wing fly species from 2009 through 2028.

The draft economic analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. Decision-makers can use the information from the final economic assessment to assess whether the effects of the revised designation might unduly burden a particular group or economic sector. The draft economic analysis also looks retrospectively at costs that have been incurred since May 9, 2006, the date we listed the 12 Hawaiian picture-wing fly species under the Act (71 FR 26835), and considers those costs that may occur in the 20 years following the designation of critical habitat. Because the draft economic analysis considers the potential economic effects of all actions relating to the conservation of

the 12 Hawaiian picture-wing fly species, including costs associated with sections 4, 7, and 10 of the Act and those attributable to the revised designation of critical habitat, it may overestimate the potential economic impacts of the critical habitat designation.

The analysis quantifies economic impacts of picture-wing fly critical habitat designation associated primarily with the following activities: (1) Preservation and watershed management in all but the Pit Crater unit on the Big Island; (2) game management and public recreational hunting in most of the units where land is owned by the State; (3) potential for future development on about 3 acres (1.2 hectares) of the Pit Crater unit on the Big Island; (4) harvesting of commercial timber from portions of the Stainback Forest and Waiakea Forest units; and (6) section 7 consultation administrative costs.

The total pre-designation baseline costs during the period from 2006 to 2008 in the area proposed for critical habitat designation are estimated by the DEA to range from \$750,130 using a 3 percent discount rate to \$808,100 using a 7 percent discount rate. Because these costs are projected to occur whether critical habitat is designated or not, they cannot be considered in the Service's determination of whether the benefits of including an area as critical habitat outweigh the benefits of excluding the area. These costs are related to preservation and watershed management activities, and all or nearly all of the pre-designation baseline costs have been or will be borne by Federal and State agencies. A portion of the preservation and watershed management costs has been borne by a few private landowners.

The annualized post-designation baseline costs during the period 2009 to 2028 for preservation and water management activities are estimated to range from \$348,845 using a 3 percent discount rate to \$379,753 using a 7 percent discount rate. Because these costs are projected to occur whether critical habitat is designated or not, they would not be considered in the Service's determination of whether the benefits of including an area as critical habitat outweigh the benefits of excluding the area. All or nearly all of the post-designation baseline costs would be borne by Federal and State agencies, although a portion of the preservation and watershed management costs would be borne by a few private landowners. The combined post-designation baseline cost for these conservation activities is estimated by

the DEA to be \$5,345,730 at a 3 percent discount rate, and \$4,305,470 at a 7 percent discount rate.

The DEA estimates that the annualized post-designation incremental costs for the activities described below during the period 2009 to 2028 may range from \$44,733 using a 3 percent discount rate to \$46,916 using a 7 percent discount rate. If we determine that these costs would occur as a result of critical habitat designation, they can be considered in our analysis of whether the benefits of including an area as critical habitat outweigh the benefits of excluding the area. The activity having the highest incremental cost ranking is preservation and watershed management, with an annualized value of approximately \$23,969 using a 3 percent discount rate to \$25,568 using a 7 percent discount rate. The second highest cost reflects a possible opportunity loss of harvesting trees in the Stainback Forest and Waiakea Forest units, resulting in an annualized value of approximately \$12,693 using a 3 percent discount rate to \$12,176 using a 7 percent discount rate.

There may also be post-designation incremental costs of \$68,590 using a 3 percent discount rate to \$56,000 using a 7 percent discount rate from 2009–2028, related to future section 7 consultations for preservation and watershed management activities. All or nearly all of the post-designation incremental costs would be borne by Federal and State agencies, although a portion of the preservation and watershed management costs would be borne by a few private landowners. The combined post-designation incremental cost for all activities is projected to be \$685,450 using a 3 percent discount rate, and \$531,780 using a 7 percent discount rate.

Only the incremental costs of designating critical habitat, over and above the costs associated with species protection under the Act more generally, may be considered in designating critical habitat. Therefore, the methodology for distinguishing these two categories of costs is important. This is particularly true in the current case, where approximately 90 percent of the total costs of species conservation over the next 20 years are projected to be baseline costs, and 10 percent are projected to be incremental costs associated with the critical habitat designation.

In the absence of critical habitat, Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered

species or threatened species—costs associated with such actions are considered baseline costs. Once an area is designated as critical habitat, proposed actions that have a Federal nexus in this area will also require consultation and potential revision to ensure that the action does not result in the destruction or adverse modification of designated critical habitat. Costs associated with these actions are considered incremental costs. The DEA explains that incremental section 7 consultation that takes place as a result of critical habitat designation may fall into one of three categories: (1) Additional effort to address adverse modification in a consultation that also involves jeopardy; (2) re-initiation of a previously concluded consultation to address adverse modification; and (3) new consultation resulting entirely from critical habitat designation (*i.e.*, where a proposed action may affect unoccupied critical habitat). The DEA estimates that there would be three project-level informal consultations related to Federal grants that would need to be reinitiated in 2009 to address picture-wing fly critical habitat. There would also be one programmatic consultation that would need to be reinitiated in 2009 related to the Hawai'i Volcano National Park management plan, and subsequent programmatic consultations every five years. The DEA indicates that since these consultations would be for preservation and watershed management activities, no or only minimal project modifications would be anticipated.

We are soliciting data and comments from the public on the DEA, as well as on all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or its supporting documents to incorporate or address information we receive during this 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 as critical habitat, provided the exclusion will not result in the extinction of the species.

#### *Proposed Exclusions Under 4(b)(2) of the Act*

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. We may exclude an area from designated critical habitat based on economic impacts, national security, or

any other relevant impact. Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic impacts. For example, we consider whether there are landowners that have developed conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion of lands from, critical habitat. We also consider any social impacts that might occur because of the designation. During the development of a final designation, we will consider economic and other relevant impacts, including additional conservation plans that may be available, with regard to potential exclusion from the final critical habitat designation under section 4(b)(2) of the Act.

In preparing this notice, we have determined that voluntary conservation efforts by private landowners are vital for the conservation and recovery of the 12 Hawaiian picture-wing fly species. As one example, significant progress has been made in habitat restoration on Maui Land and Pineapple Company's (MLP) lands within the Puu Kukui Watershed Management Area (PKWMA), located in the West Maui Mountains. The proposed 584-acre (237-ha) critical habitat unit boundary for *Drosophila neoclavisetae* (Puu Kukui Unit 1) falls completely within the PKWMA. Since 1988, the MLP has proactively managed their 450 acres (182 hectares (ha)) within the PKWMA and is currently in its 15th year of contract with the State of Hawaii's Natural Area Partnership (NAP) Program to preserve the native biodiversity of the company's conservation lands. At just over 8,600 acres (3,483 ha), the PKWMA is the largest privately owned preserve in the State.

In 1993, the MLP became the first private landowner participant in the NAP program. They are pursuing four management programs stipulated in their Long Range Management Plan that emphasizes reducing nonnative species that immediately threaten the management area (Maui Land and Pineapple Company 1999). The primary management goals within PKWMA are to: (1) Eliminate ungulate activity in all Puu Kukui management units; (2) reduce the range of habitat-modifying weeds and prevent introduction of nonnative plants; (3) reduce the negative impacts of non-native invertebrates and small animals; (4) monitor and track biological and physical resources in the watershed in order to improve management understanding of the watershed's resources; and (5) prevent the extinction

of rare species within the watershed. Specific management actions to address feral ungulates include the construction of fences surrounding 10 management units and removal of ungulates within the PKWMA.

The nonnative plant control program within PKWMA focuses on weeds that modify habitat, prioritizing weeds according to the degree of threat to native ecosystems, and preventing the introduction of new weeds. The weed control program includes mapping and monitoring along established transects and manual/mechanical control. Natural resource monitoring and research address the need to track biological and physical resources of the PKWMA, and evaluate changes to these resources in order to guide management programs. Vegetation is monitored through permanent photographic points, nonnative species are monitored along permanent transects, and rare, endemic, and indigenous species are monitored. Logistical and other support for approved research projects, interagency cooperative agreements, and remote survey trips within the watershed are also provided.

At this time, we are evaluating the sufficiency of protection that the conservation activities being conducted by the MLP are providing for the 12 picture-wing flies and features essential for their conservation on their lands (450 acres (182 ha)) that fall within the 584-acre (237-ha) proposed critical habitat unit (Puu Kukui Unit 1). Therefore, we are specifically soliciting public comments on the possible exclusion of the MLP lands within proposed Puu Kukui Unit 1 under section 4(b)(2) of the Act.

#### *Benefits of Inclusion*

The benefits of including lands in critical habitat can be regulatory, educational, or promote the recovery of species. The principal regulatory benefit of designating critical habitat in this area would be that Federal actions affecting *D. neoclavisetae* would require consultation under section 7 of the Act. Consultation would ensure that a proposed action does not result in the destruction or adverse modification of critical habitat. The most likely Federal nexus would be associated with Service funding for management activities that target invasive species removal, and the likely outcome of a section 7 consultation would be conservation recommendations to avoid stands of *Cyanea kunthiana* and *Cyanea macrostegia* ssp. *macrostegia* when applying herbicides, or to use backpack sprayers to specifically target herbicide application. However, even in the

absence of critical habitat designation, these conservation recommendations would still be included within the PKWMA invasive species control program. Accordingly, we believe that few additional regulatory benefits would be derived by including the MLP lands within the area designated as critical habitat for *Drosophila neoclavisetae* beyond those conservation benefits already being achieved through the implementation of the PKWMA Watershed Management Plan (WMP).

There have been no section 7 consultations regarding *Drosophila neoclavisetae* or its host plants with the PKWMA to date. The DEA anticipates that there would be two informal consultations associated with projects to remove non-native species over the next 13 years. It also predicts that no formal consultations would be likely to occur over the 20-year timeframe of the analysis. The two informal section 7 consultations anticipated by the DEA would take place based on the species presence in the area. Accordingly, section 7 consultation under the jeopardy standard would be required for Federal activities that may affect *D. neoclavisetae*, regardless of critical habitat designation. We do not foresee any additional consultations beyond those anticipated by the DEA, and predict that the section 7 consultation process for critical habitat would be unlikely to result in additional protections for the species. Consequently, there would be little regulatory benefit of designating critical habitat on the MLP lands within Puu Kukui Unit 1.

The final listing rule for the 12 picture-wing flies (71 FR 26835) acknowledged the importance of this area to the overall conservation of *Drosophila neoclavisetae* (Service 2006). The MLP is aware of the areas where *D. neoclavisetae* occurs on their property, and is already implementing conservation actions to benefit the species (MLP 2008, p. 2). We therefore believe that any additional educational benefits resulting from the designation of critical habitat on these lands would be minimal. The designation of critical habitat may provide benefits to the recovery of a species, however, in this case the MLP is already committed to implementing conservation actions on their lands under the existing watershed management plan (WMP), and any additional benefits to the recovery of this species beyond those already being realized would be limited.

### *Benefits of Exclusion*

The MLP has a history of entering into conservation agreements with Federal and State agencies and other private organizations on their lands. These agreements further their mission of practicing prudent stewardship of their land and water resources to ensure the protection of rare and endangered plant and animal species, and water resources crucial to the community. The continued implementation of the WMP by the MLP will benefit *Drosophila neoclavisetae* through actions that manage invasive species and restore native species habitat. The WMP provides a significant conservation benefit to *D. neoclavisetae*'s host plant populations in the area, and we have a reasonable expectation that the strategies and measures will be effective.

We believe that *Drosophila neoclavisetae* is benefiting substantially from the MLP's proactive management actions, which include reducing ungulate browsing and habitat conversion, competition with nonnative weeds, and the risk of fire. These management actions also include the reintroduction of currently extirpated native species into restored habitats.

The exclusion of the MLP lands from the proposed Puu Kukui—Unit 1 would allow us to continue working with this landowner in a spirit of cooperation and partnership. The MLP management plan acknowledges a shared interest in promoting healthy ecosystems and in protecting populations and habitat of *D. neoclavisetae*. Since the area has been actively managed as a preserve since 1988, there is a reasonable expectation that the conservation management strategies and actions will continue to be implemented for the benefit of *D. neoclavisetae*'s habitat in the foreseeable future. Imposing an additional layer of section 7 consultation by designating critical habitat could undermine our existing conservation partnership with the MLP and remove their incentive to accept the additional time and expense of management planning. We believe that the designation of critical habitat would strain the existing proactive working relationship we share with the MLP, and may hinder future cooperative conservation projects.

Excluding the MLP lands from critical habitat designation would acknowledge their positive contribution to conservation on Maui. It would also reduce the cost of additional section 7 consultation, which we believe would be unnecessary. We are hopeful that this recognition would provide other

landowners with a positive incentive to undertake voluntary conservation activities on their lands, particularly where there is no regulatory requirement to implement such actions.

### *Weighing Benefits of Exclusion and Benefits of Inclusion*

We believe the proactive management of *Drosophila neoclavisetae* habitat provided under the Maui Land and Pineapple Company Watershed Management Plan provides significant benefits to this species. In contrast, the benefits of including their lands as critical habitat would likely be minor, since there have been no section 7 consultations in the area since the species was listed in 2006. If the MLP lands within the proposed Puu Kukui—Unit 1 were to be excluded from critical habitat designation, the Puu Kukui WMA plan would continue to provide conservation benefits to the species through the ongoing implementation of strategies and measures that are consistent with currently accepted principles of conservation biology.

### *Will Exclusion Result in Extinction of the Species?*

We believe that the exclusion of the MLP lands within the proposed Puu Kukui—Unit 1 from the final designation of critical habitat would not result in the extinction of the species. The continued implementation of their ongoing management programs will provide comparable or greater net conservation benefits than those that would result from critical habitat designation. These management programs provide tangible conservation benefits that reduce the likelihood of extinction for *D. neoclavisetae*, and increase the likelihood of its recovery. In addition, there are no known threats in the PKWMA associated with Federal actions requiring section 7 consultation, so extinction of the species as a consequence of not designating critical habitat would be unlikely. Further, because the 450 ac (182 ha) of the MLP's lands we are considering excluding from critical habitat designation are occupied by *D. neoclavisetae*, section 7 consultation would be required even in the absence of critical habitat designation, and any Federal actions that may affect the species would be evaluated under the jeopardy standard of section 7 of the Act, which provides assurances that the species would not become extinct.

In addition, § 195D–4 of the Hawaii Revised Statutes, Endangered species and threatened species, stipulates that species determined to be endangered or threatened under the Federal

Endangered Species Act shall be deemed endangered or threatened under the State law, and that it is unlawful under the State law (with some exceptions) to "take" such species, or to possess, sell, carry or transport them. The statutory protections provided under State law provide additional assurances that exclusion of the MLP lands from critical habitat designation would not result in extinction of *Drosophila neoclavisetae*.

In summary, there may be few regulatory, educational, or recovery benefits from the exclusion of the MLP lands from critical habitat designation. On the other hand, there may be greater conservation benefits that would result from the exclusion of these lands, which include the implementation of affirmative actions for controlling invasive species, protecting host plant habitat, monitoring of native species, and restoration activities. Accordingly, we are requesting public comments on whether the benefits of excluding this area from critical habitat designation would outweigh the benefits of its inclusion, and thus whether the MLP lands should be excluded under section 4(b)(2) of the Act.

### **Required Determinations—Amended**

In our November 28, 2007, proposed critical habitat rule (72 FR 67428), we said 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. In this document we affirm the information in our proposed rule concerning Executive Order (E.O.) 13132, E.O. 12988, the Paperwork Reduction Act, and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA, we revise our required determinations concerning E.O. 12866, the Regulatory Flexibility Act, E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act, and E.O. 12630 (Takings).

### *Regulatory Planning and Review*

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on

the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.* ), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), 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 the 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 revised 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.

According to the Small Business Administration (SBA), 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 proposed critical habitat 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 12 Hawaiian picture-wing fly species would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities. 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; some kinds of activities are unlikely to have any Federal involvement. The designation of critical habitat will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize this proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Chapter 4 of the DEA evaluates the potential economic effects of the proposed revised designation on small entities, based on the estimated incremental impacts associated with the proposed rulemaking. The screening analysis is based on the estimated impacts associated with the proposed rulemaking as described in chapters 3 and 4 and Appendix C of the DEA. The analysis evaluates the potential for economic impacts related to several categories, including: (1) Preservation and watershed management, (2) the purchase of Honouliuli Preserve, (3) game management, (4) timber harvest, (5) property values, and (6) administrative costs associated with section 7 consultation.

Incremental economic impacts associated with section 7 consultations would fall on the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, National Park Service, and Hawai'i Department of Lands and Natural Resources. The Hawai'i Department of Lands and Natural Resources may also experience an incremental economic impact associated with the opportunity loss of not selling mature trees from a portion of the Waiakea Timber Management Area. However, Federal

agencies are not considered small entities, and State governments are not considered small government jurisdictions for purposes of the Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA).

The Board of Water Supply of the City and County of Honolulu may experience incremental costs for conservation on its land in the Makaha Valley and Mt. Ka'ala units. However, the RFA/SBREFA defines small governmental jurisdiction as the government of a city, county, town, school district, or special district with a population of less than 50,000. Accordingly, the City and County of Honolulu is not considered a small government jurisdiction.

Nonprofit organizations such as Kamehameha Schools, the Nature Conservancy of Hawai'i (TNCH), the Queen Emma Foundation, and Watershed Partnerships could experience incremental costs associated with (1) the loss of property value for 3 acres of land in the Pit Crater unit; (2) conservation projects on managed lands including the Pu'u Kolekole, Pu'u Kukui, Palikea, Pu'u Kaua, and Kalua'a Gulch units; (3) conservation projects on land in the Kohala Mountains West unit; and (4) conservation projects in the Wailupe, Pu'u Kolekoke, Pu'u Kukui, Kohala Mountains East, and Kohala Mountains west respectively. However, none of these nonprofit organizations are considered "small organizations" for purposes of the RFA/SBREFA.

The James Campbell Co. LLC, Maui Land and Pineapple Company, Inc., and Moloka'i Ranch are private companies that could experience incremental impacts associated with critical habitat designation, however, none of these businesses are considered to be small businesses for purposes of the RFA/SBREFA. In this regard, the DEA concludes that none of the incremental economic impacts associated with designating critical habitat would be expected to fall on small entities.

In summary, we have considered whether the proposed critical habitat designation would result in a significant economic impact on a substantial number of small entities, and do not anticipate any substantial impacts on any small entities. We therefore certify that, if promulgated, the proposed revised designation would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.



*Executive Order 13211—Energy Supply, Distribution, and Use*

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. The DEA finds none of these criteria relevant to this analysis (Chapter 4 of the DEA). Thus, based on information in the DEA, we do not expect conservation activities within proposed critical habitat for the 12 Hawaiian picture-wing fly species to lead to energy-related impacts. As such, we do not expect the proposed designation of critical habitat to significantly affect energy supplies, distribution, or use, and a Statement of Energy Effects is not 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), we make the following findings:

(a) The rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except as (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that the proposed designation will significantly or uniquely affect small governments because it will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The proposed designation of critical habitat imposes no obligations on State or local governments. The SBA does not consider the Federal Government to be a small governmental jurisdiction or entity. Consequently, we do not believe that the revised critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

*Executive Order 12630—Takings*

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the 12 Hawaiian picture-wing fly species in a takings implications assessment. The takings implications assessment concludes that the proposed designation of critical habitat for the 12 Hawaiian picture-wing fly species does not pose significant takings implications for lands within or affected by the proposed designation.

**Authors**

The primary authors of this notice are the staff of the Endangered Species Program, 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: August 4, 2008.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E8–18519 Filed 8–11–08; 8:45 am]

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**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[FWS–R1–ES–2008–0073; 14420–1113–0000–C5]

**Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Remove the Bliss Rapids Snail (*Taylorconcha serpenticola*) From the List of Endangered and Threatened Wildlife; Notice of Document Availability.**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of new information that may impact our status review for the Bliss Rapids snail (*Taylorconcha serpenticola*). This information has become available since the close of the comment period on our 90-day finding (72 FR 31250) on a petition to remove the Bliss Rapids snail from the Federal List of Endangered and Threatened Wildlife, pursuant to the Endangered Species Act of 1973, as amended (Act). Interested members of the public are invited to submit comments on this new information as it applies to the listing status of the Bliss Rapids snail.

**DATES:** To ensure consideration in the 12-month finding on this petition, comments and information should be submitted to us by August 27, 2008.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket FWS–R1–ES–2008–0073; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on: <http://www.regulations.gov>. This generally