

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Speeds Creek .....	Approximately 1,800 feet upstream of the confluence with South Prong Falling Creek/Richmond College Lake.	None	+295	Richmond County (Unincorporated Areas).
	At the confluence with Solomons Creek ....	None	+135	
	Approximately 0.8 mile upstream of Sandhill Road (State Road 1971).	None	+176	
Treeces Branch .....	At the confluence with Cartledge Creek .....	None	+184	Richmond County (Unincorporated Areas).
	Approximately 780 feet upstream of Cartledge Creek Road (State Road 1005).	None	+242	
Unnamed Tributary to Wolf Branch Creek.	At the confluence with Wolf Branch Creek and Little Hamer Creek.	None	+237	Richmond County (Unincorporated Areas).
	At the Richmond/Montgomery County boundary.	None	+245	
Watery Branch .....	At the confluence with Speeds Creek .....	None	+145	Richmond County (Unincorporated Areas).
	Approximately 1,900 feet upstream of the confluence with Speeds Creek.	None	+165	
White Creek Tributary ..	Approximately 1,000 feet downstream of Osborne Road (State Road 1803).	None	+198	Richmond County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Osborne Road (State Road 1803).	None	+207	
Wolf Branch Creek .....	At the confluence with Middle Prong Hamer Creek.	None	+220	Richmond County (Unincorporated Areas).
	At the confluence of Little Hamer Creek and Unnamed Tributary of Wolf Branch Creek.	None	+237	

\* National Geodetic Vertical Datum.

# Depth in feet above ground.

+ North American Vertical Datum.

#### ADDRESSES

##### City of Hamlet

Maps are available for inspection at the Hamlet City Hall, 201 Main Street, Hamlet, North Carolina.

Send comments to The Honorable Cary Garner, Mayor of the City of Hamlet, P.O. Box 1229, Hamlet, North Carolina 28345.

##### City of Rockingham

Maps are available for inspection at the Rockingham City Hall, Planning Department, 514 Rockingham Road, Rockingham, North Carolina.

Send comments to The Honorable Eugene B. McLaurin, Mayor of the City of Rockingham, 514 Rockingham Road, Rockingham, North Carolina 28379.

##### Town of Hoffman

Maps are available for inspection at the Hoffman Town Hall, 2176 Caddell Road, Hoffman, North Carolina.

Send comments to The Honorable Joann Marsh, Mayor of the Town of Hoffman, P.O. Box 40, Hoffman, North Carolina 28347.

##### Richmond County (Unincorporated Areas)

Maps are available for inspection at the Richmond County Planning Department, 221 South Hancock Street, Rockingham, North Carolina.

Send comments to Mr. Jim Haynes, Richmond County Manager, P.O. Box 504, Rockingham, North Carolina 28380.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 22, 2006.

**David I. Maurstad,**

*Director, Mitigation Division, Federal  
Emergency Management Agency, Department  
of Homeland Security.*

[FR Doc. E6-22524 Filed 1-3-07; 8:45 am]

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#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

##### 50 CFR Part 17

##### RIN 1018-AU93

##### Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for 11 Species of Picture-wing Flies From the Hawaiian Islands

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

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

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the proposal to designate critical habitat for 11 species of Hawaiian picture-wing flies (*Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*) and the availability of the draft economic analysis of the proposed designation of critical habitat for these species. We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. We estimate costs related to conservation activities for the proposed

designation of critical habitat for the 11 species of Hawaiian picture-wing flies under sections 4, 7, and 10 of the Act to be approximately \$933,270 to \$6,742,520 over 20 years, or \$46,664 to \$337,126 annually in undiscounted 2006 dollars. We estimate costs to range from \$749,600 to \$5,139,460 over 20 years, or \$50,385 to \$345,454 annually using a three percent discount rate. We estimate costs using a seven percent discount rate to range from \$597,940 to \$3,794,230 over 20 years, or \$56,441 to \$358,149 annually.

**DATES:** We will accept public comments until January 19, 2007.

**ADDRESSES:** If you wish to comment on the proposed rule or draft economic analysis, you may submit your comments and materials identified by RIN 1018-AU93, by any of the following methods:

(1) *Mail or hand delivery:* You may submit written comments and information to Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, HI 96850.

(2) *Fax:* You may fax your comments to 808/792-9581.

(3) *E-mail:* You may send comments by electronic mail (e-mail) to [fw1pie\\_pwfchp@fws.gov](mailto:fw1pie_pwfchp@fws.gov). Please see the Public Comments Solicited section below for file format and other information about electronic filing.

(4) *Federal eRulemaking portal:* <http://www.regulations.gov>. Follow the instructions found there for submitting comments.

**FOR FURTHER INFORMATION CONTACT:**

Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, (see **ADDRESSES** section) (telephone 808/792-9400; fax 808/792-9581). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877-8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

**Public Comments Solicited**

We are soliciting comments on the proposed critical habitat designation that was published in the **Federal Register** on August 15, 2006 (71 FR 46994) and on our draft economic analysis of the proposed designation. Copies of the proposed rule to designate critical habitat and the draft economic analysis are available on the Internet at <http://www.fws.gov/pacificislands> or from our Pacific Islands Fish and Wildlife Office at the address and contact numbers above. Comments

previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in preparation of the final rule.

We are particularly interested in comments concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 et seq.), including whether it is prudent to designate critical habitat. We have not proposed critical habitat for a twelfth species, *D. neoclavisetae*, because the physical and biological features essential to its conservation in the Puu Kukui Watershed Management Area are not in need of special management considerations or protection;

(2) Specific data on those specific areas that should be included in the designations that were identified as occupied at the time of listing that contain the features essential for the conservation of the species; and those specific areas that were not occupied by the species at the time it was listed but which have subsequently been identified as occupied and those unoccupied areas that are essential to the conservation of the species and should be included in the designations and why such areas are essential;

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

(4) Data on any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(6) Whether the economic analysis adequately addresses the likely effects and resulting costs arising from State laws as a result of the proposed critical habitat designation;

(7) Whether the economic analysis correctly assesses the effect on regional costs associated with land use controls that could arise from the designation of critical habitat for these species;

(8) Whether the designation of critical habitat will result in disproportionate economic or other impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(9) Whether the economic analysis appropriately identifies all costs that

could result from the designation of critical habitat for these species;

(10) Whether the benefits of exclusion in any particular area outweighs the benefits of inclusion under section 4(b)(2) of the Act; and

(11) Whether critical habitat should be proposed in the Puu Kukui Watershed and why.

Our final designation of critical habitat will take into consideration all comments and any additional information received, including all previous comments and information submitted during the initial comment period.

Please include "RIN 1018-AU93" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly (see **ADDRESSES** section). Please note that the e-mail address [fw1pie\\_pwfchp@fws.gov](mailto:fw1pie_pwfchp@fws.gov) will be unavailable after the public comment period terminates.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their names and home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

**Background**

On August 15, 2006, we published a proposed rule in the **Federal Register** (71 FR 46994) to designate critical habitat for 11 species of Hawaiian picture-wing flies. In accordance with an amended settlement agreement approved by the United States District Court for the District of Hawaii on August 31, 2005 (*CBD v. Allen*, CV-05-274-HA), the Service must submit, for publication in the **Federal Register**, a final critical habitat determination by April 17, 2007.

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 or any other relevant impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the 11 species of Hawaiian picture-wing flies, we have prepared a draft economic analysis of the proposed critical habitat designation. We have not proposed critical habitat for a twelfth species, *D. neoclavisetae*, because the specific areas and physical and biological features essential to its conservation in the Puu Kukui Watershed Management Area are not in need of special management considerations or protection.

The draft economic analysis addresses the impacts of conservation efforts for these 11 species on activities occurring on lands proposed for designation as well as those proposed for exclusion. The analysis measures lost economic efficiency associated with a commercial timber operation, commercial cattle grazing, management of public and private conservation lands, and residential development, and administrative costs related to the consultation process under section 7 of the Act.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the 11 species of Hawaiian picture-wing flies, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for these 11 species in the areas proposed as critical habitat. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (e.g., lost economic opportunities associated with restrictions on land use). The study also analyzes whether a particular group or economic sector bears an undue proportion of the impacts, with specific analysis of the impacts to small entities and potential impacts on energy availability. Finally, this analysis estimates economic impacts to activities from 2006 (the year of the final listing for the 11 species) to 2026 (20 years from the year of proposed designation of critical habitat). Forecasts of economic conditions and other factors beyond the next 20 years would be speculative.

We solicit data and comments from the public on the draft economic

analysis, as well as on all aspects of the proposal to designate critical habitat. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from the final designation of critical habitat if the Secretary determines 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.

We estimate costs related to conservation activities for the proposed designation of critical habitat for the 11 species of Hawaiian picture-wing flies under sections 4, 7, and 10 of the Act to be approximately \$933,270 to \$6,742,520 over 20 years, or \$46,664 to \$337,126 annually in undiscounted 2006 dollars. We estimate costs to range from \$749,600 to \$5,139,460 over 20 years, or \$50,385 to \$345,454 annually using a three percent discount rate. We estimate costs using a seven percent discount rate to range from \$597,940 to \$3,794,230 over 20 years, or \$56,441 to \$358,149 annually.

We estimate costs related to conservation activities for the units proposed for exclusion from the final designation of critical habitat for the 11 species of Hawaiian picture-wing flies under sections 4, 7, and 10 of the Act to be approximately \$221,600 to \$1,754,590 over 20 years, or \$11,080 to \$87,730 annually in undiscounted 2006 dollars. We estimate costs to range from \$178,270 to \$1,324,930 over 20 years, or \$11,983 to \$89,056 annually using a three percent discount rate. We estimate costs using a seven percent discount rate to range from \$142,050 to \$966,480 over 20 years, or \$13,409 to \$91,229 annually.

#### Required Determinations—Amended

In our August 15, 2006, proposed rule (71 FR 46994), we indicated that we would be deferring 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 was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Order 13132 and Executive Order 12988; the Paperwork Reduction Act; the National Environmental Policy Act; and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal

Governments (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 13211, Executive Order 12630, and the Unfunded Mandates Reform Act.

#### Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise legal and policy issues. On the basis of our draft economic analysis, the designation of critical habitat for these species is not anticipated to have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will then need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our proposed designation of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must 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. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as 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 this proposed designation of critical habitat for the 11 species of Hawaiian picture-wing flies would affect a substantial number of small entities, we evaluated the entities potentially impacted within particular types of economic activities (*e.g.*, management of public and private conservation lands, residential development, forestry, and agriculture). We considered each industry or category individually to determine the impacts. 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 and so will not be affected by the designation of critical

habitat. Designation of critical habitat only affects activities conducted, funded, permitted or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us 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.

Our draft economic analysis of this proposed designation evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of these 11 species and proposed designation of critical habitat. We determined from our analysis that no small business entities will be affected because none of the potentially impacted entities meet the definition of small business entities. Based on these data, we have determined that this proposed designation would not result in a significant economic impact on a substantial number of small entities.

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

On May 18, 2001, the President issued Executive Order (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. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action and no Statement of Energy Effects is required.

#### *Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This 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. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (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) A small Government Agency Plan is not required because none of the potentially impacted entities is considered to be a "small entity" under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act.

#### *Takings*

In accordance with Executive Order 12630 ("Government Actions and

Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of proposing critical habitat for the 11 species of Hawaiian picture-wing flies. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take

permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the 11 species of Hawaiian picture-wing flies does not pose significant takings implications.

#### **Author**

The author of this document is the staff of the Fish and Wildlife Service.

#### **Authority**

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

Dated: December 21, 2006.

**David Verhey,**

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

[FR Doc. E6–22538 Filed 1–3–07; 8:45 am]

**BILLING CODE 4310–55–P**