

### III. What Is Our Proposed Action?

EPA is proposing to approve revisions to New Jersey's regulations as described above. The State of New Jersey has adopted the above rule revisions in accordance with state rulemaking procedures. EPA is therefore proposing to approve the revisions to New Jersey's Operating Permits Rule, codified at N.J.A.C. 7:27-22, as a revision to New Jersey's Operating Permit Program.

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and

responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State Operating Permit Programs submitted pursuant to title V of the Clean Air Act, EPA will approve such regulations provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove such regulations for failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews such regulations, to use VCS in place of a State regulation that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: March 6, 2007.

**Alan J. Steinberg,**

*Regional Administrator, Region 2.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AU74**

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Hine's Emerald Dragonfly

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

**ACTION:** Revised proposed rule; reopening of comment period and 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 public comment period and the availability of the draft economic analysis for the proposed designation of critical habitat for the endangered Hine's emerald dragonfly (*Somatochlora hineana*) under the Endangered Species Act of 1973, as amended (Act). We are also revising our proposed rule, published on July 26, 2006 (71 FR 42442), to include an additional proposed critical habitat unit in Door County, Wisconsin, and amending the Required Determinations for the proposal. The draft economic analysis forecasts that costs associated with conservation activities for the Hine's emerald dragonfly would range from \$16.8 million to \$46.7 million in undiscounted dollars over the next 20 years. In discounted terms, potential economic costs are estimated to be \$13.3 to \$34.5 million (using a 3 percent discount rate) and \$10.5 to \$25.2 million (using a 7 percent discount rate). In annualized terms, potential costs are expected to range from \$0.8 to \$2.3 million annually (annualized at 3 percent) and \$0.9 to \$2.4 million annually (annualized at 7 percent). We are reopening the public comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, our revision to the proposed rule, the associated draft economic analysis, and the amended Required Determinations. Comments previously submitted need not be resubmitted as they will be incorporated into the public record and fully considered in preparation of the final rule.

**DATES:** We will accept public comments until April 3, 2007.

**ADDRESSES:** If you wish to comment, you may submit your comments and information concerning this proposal, identified by "Attn: Hine's Emerald Dragonfly Critical Habitat," by any one of several methods:

(1) Mail or hand-deliver to: John Rogner, Field Supervisor, U.S. Fish and Wildlife Service, Chicago Illinois Ecological Services Field Office, 1250 S. Grove, Suite 103, Barrington, IL 60010.

(2) Send by electronic mail (e-mail) to [hedch@fws.gov](mailto:hedch@fws.gov). Please see the Public Comments Solicited section below for file format and other information about electronic filing.

(3) Fax your comments to: (847) 381-2285.

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

**FOR FURTHER INFORMATION CONTACT:** John Rogner, Field Supervisor, Chicago Illinois Ecological Services Field Office, 1250 S. Grove, Suite 103, Barrington, Illinois 60010 (telephone (847) 381-2253, extension 28; facsimile (847) 381-2285).

**SUPPLEMENTARY INFORMATION:**

**Public Comments Solicited**

We intend that any final action resulting from the proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule are hereby solicited. Comments particularly are being sought 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 the benefit of designation will outweigh any adverse impacts to the species due to designation;

(2) Specific information on the amount and distribution of Hine's emerald dragonfly habitat, particularly what areas should be included in the designations that were occupied at the time of listing and that contain features that are essential for the conservation of the species and why; and what areas that were not occupied at the time of listing are essential to the conservation of the species and why;

(3) Information that would add further clarity or specificity to the physical and biological features determined to be essential for the conservation of the Hine's emerald dragonfly (*i.e.*, primary constituent elements), particularly whether the primary constituent elements as described fulfill the needs for the various life stages of the Hine's emerald dragonfly (*e.g.*, whether old fields adjacent to and in near proximity to larval areas are essential features);

(4) Whether lands not currently occupied by the species should be included in the designation, and if so, the basis for such an inclusion;

(5) Whether the methodology used to map critical habitat units captures all of the biological and physical features essential to the conservation of the Hine's emerald dragonfly;

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

(7) Whether the benefit of exclusion in any particular area outweigh the benefits of inclusion under Section 4(b)(2) of the Act;

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

(9) We are considering excluding areas under the jurisdiction of the Hiawatha National Forest in Michigan, the Mark Twain National Forest in Missouri, and the Missouri Department of Conservation and units under private ownership in Missouri from the final designation of critical habitat under section 4(b)(2) of the Act on the basis of conservation programs and partnerships. We will also review other relevant information for units being proposed in this rule as we receive it to determine whether other units may be appropriate for exclusion from the final designation under section 4(b)(2) of the Act. We specifically solicit comment on the inclusion or exclusion of such areas and:

(a) Whether these areas have features that are essential to the conservation of the species or are otherwise essential to the conservation of the species;

(b) Whether these, or other areas proposed, but not specifically addressed in this proposal, warrant exclusion;

(c) Relevant factors that should be considered by us when evaluating the basis for not designating these areas as critical habitat under section 4(b)(2) of the Act;

(d) Whether management plans in place adequately provide conservation measures and protect the Hine's emerald dragonfly, its habitat, and features essential to its conservation;

(e) Whether designation would assist in the regulation of any threats not addressed by existing management plans; and

(f) Whether designating these lands may result in an increased degree of threat to the species on these lands;

(10) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(11) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(12) Whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat;

(13) Whether the draft economic analysis appropriately identifies all costs and benefits that could result from the designation; and

(14) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations to be made "solely on the basis of the best scientific and commercial data available." Please submit comments electronically to [hedch@fws.gov](mailto:hedch@fws.gov) in ASCII or Microsoft Word file format. Please also include "Attn: Hine's Emerald Dragonfly Critical Habitat" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail, contact us directly by calling the Chicago Illinois Ecological Services Field Office at telephone number (847) 381-2253. Please note that the e-mail address [hedch@fws.gov](mailto:hedch@fws.gov) will be closed out at the termination of the public comment period.

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 home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address indicated in the **ADDRESSES** section.

Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at <http://www.fws.gov/midwest/Endangered/> or from the Chicago Illinois Ecological Services Field Office (see **ADDRESSES**).

Our final designation of critical habitat will take into consideration all comments and any additional information we received during both comment periods. Previous comments and information submitted during the initial comment period on the July 26, 2006, proposed rule (71 FR 42442) need not be resubmitted. On the basis of information received during the public comment periods, we may, during the development of our final critical habitat 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. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such 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.

### Background

The Hine's emerald dragonfly has bright emerald-green eyes and a metallic green body with yellow stripes on its sides. Its body is about 2.5 inches (in) (6.4 centimeters (cm)) long; its wingspan reaches about 3.3 in (8.4 cm). It lives in calcareous (high in calcium carbonate), spring-fed marshes and sedge meadows overlaying dolomite bedrock. Threats that resulted in the species' listing on January 26, 1995 (60 FR 5267) include habitat destruction, contamination of wetlands by pesticides or other pollutants, and decreases in the amount or quality of ground water flowing to the dragonfly's habitat.

On July 26, 2006, we published a proposed rule to designate critical habitat for the Hine's emerald dragonfly (71 FR 42442). In total, approximately 27,689 acres (ac) (11,205 hectares (ha)) fall within the boundaries of the proposed critical habitat designation in 49 units located in Cook, DuPage, and Will Counties in Illinois; Alpena, Mackinac, and Presque Isle Counties in Michigan; Dent, Iron, Morgan, Phelps, Reynolds, Ripley, Shannon, Washington, and Wayne Counties in Missouri; and Door and Ozaukee Counties in Wisconsin. We are considering excluding, under section

4(b)(2) of the Act, all 26 units in Missouri and 2 units in Michigan from the final critical habitat designation. In the proposal, we addressed a number of general issues that are relevant to the exclusions we are considering, including conservation partnerships on non-Federal lands, conservation agreements, and National Forest plans.

As a result of corrections described below, the proposed critical habitat now encompasses approximately 27,836 acres (ac) (11,264 hectares (ha)), including those areas we are considering for exclusion from the final designation. Other than the changes described herein, the proposed rule of July 26, 2006, remains intact. We will submit for publication in the **Federal Register** a final critical habitat designation for the Hine's emerald dragonfly on or before May 7, 2007.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic 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 geographic 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 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.

### Additional Proposed Critical Habitat Unit

As discussed in the July 26, 2006, proposal (71 FR 42442), additional sites in Wisconsin were evaluated to determine if they are essential for the conservation of the Hine's emerald dragonfly. Based on our evaluation of research results from 2006 fieldwork, we have determined that Kellner's Fen in Door County, Wisconsin, is essential to the conservation of Hine's emerald dragonfly. We are, therefore, proposing to include it in the critical habitat designation. Adult Hine's emerald dragonflies have been observed in this area, but breeding has not been confirmed. The additional proposed critical habitat unit, Wisconsin Unit 11, is described below.

### Wisconsin Unit 11—Door County, Wisconsin

Wisconsin Unit 11 consists of approximately 147 acres (59 hectares) in Door County, Wisconsin. This unit was not known to be occupied at the time of listing. All primary constituent elements for the Hine's emerald dragonfly are present in this unit. Adults have been observed in this unit over multiple years. Male patrolling behavior has been observed, and crayfish burrows are present. The unit consists of larval and adult habitat, including a floating sedge mat and lowland and upland conifer and deciduous forest. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. Known threats to the primary constituent elements which may require special management or protections include loss of habitat due to residential and/or commercial development, alteration of the hydrology of the wetlands, contamination of surface and ground water, logging, and invasive plants. All land in the unit is privately owned.

### Economic Analysis

Section 4(b)(2) of the Act requires that we designate 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. We have prepared a draft economic analysis based on the July 26, 2006, proposed rule (71 FR 42442) to designate critical habitat for the Hine's emerald dragonfly; the additional proposed unit in Door County, Wisconsin, is included in that analysis. The draft economic analysis estimates the reasonably foreseeable economic impacts of Hine's emerald dragonfly conservation measures within the proposed critical habitat designation. The analysis measures lost economic efficiency associated with (1) Residential and commercial development, (2) water use, (3) utility and road maintenance, (4) road and railway use, (5) species management, and (6) recreation. The draft economic analysis considers the potential economic effects of all actions relating to the conservation of the Hine's emerald dragonfly, including costs associated with sections 4, 7, and 10 of the Act, and those attributable to designating critical habitat.

The draft economic analysis considers the potential economic effects of all actions relating to the conservation of

the Hine's emerald dragonfly, including costs coextensive with listing. 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 the Hine's emerald dragonfly in proposed critical habitat areas. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect lost economic opportunities associated with restrictions on land use (opportunity costs). This 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 small entities and the energy industry. This information can be used by decision makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this draft analysis looks retrospectively at costs that have been incurred since the date the species was listed as endangered and considers those costs that may occur in the 20 years following designation of critical habitat. As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period.

The draft economic analysis forecasts that costs associated with conservation activities for the Hine's emerald dragonfly would range from \$16.8 million to \$46.7 million in undiscounted dollars over the next 20 years. In discounted terms, potential economic costs are estimated to be \$13.3 to \$34.5 million (using a 3 percent discount rate) and \$10.5 to \$25.2 million (using a 7 percent discount rate). In annualized terms, potential costs are expected to range from \$0.8 to \$2.3 million annually (annualized at 3 percent) and \$0.9 to \$2.4 million annually (annualized at 7 percent). Overall, the residential and commercial development industry is calculated to experience the highest estimated costs. According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly development-related losses range from \$13.0 to \$22.6 million (undiscounted) over 20 years, or \$10.1 to \$15.9 million assuming a 3 percent discount rate, and \$8.0 to \$11.2 assuming a 7 percent discount rate.

#### Required Determinations—Amended

In our July 26, 2006, proposed rule (71 FR 42442), we indicated that we were 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 Orders 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. Based on our draft economic analysis, potential post-designation (2007–2026) costs are estimated to range from \$16.8 to \$46.6 million in undiscounted 2006 dollars. In discounted terms, potential economic costs are estimated to be \$13.3 to \$34.5 million (using a 3 percent discount rate) and \$10.5 to \$25.2 million (using a 7 percent discount rate). In annualized terms, potential costs are expected to range from \$0.8 to \$2.3 million annually (annualized at 3 percent) and \$0.9 to \$2.4 million annually (annualized at 7 percent). Therefore, we do not believe that the proposed designation of critical habitat for the Hine's emerald dragonfly would result in 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 or accompanying draft economic analysis.

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 need to consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement under the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to 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 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 (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 upon our draft economic analysis 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. This determination is subject to revision based on comments received as part of the final rulemaking. 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 the proposed Hine's emerald dragonfly critical habitat designation would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (such as residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. 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.

If the 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.

In our draft economic analysis, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Hine's emerald dragonfly and proposed designation of its critical habitat. This analysis estimated prospective economic impacts due to the implementation of Hine's emerald dragonfly conservation efforts in six categories: Development activities, water use, utility and infrastructure maintenance, road and railway use, species management and habitat protection activities, and recreation. The following is a summary of information contained in the draft economic analysis:

#### (a) Development Activities

According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly development-related losses ranges from \$13.0 to \$22.6 million (undiscounted) over 20 years, or \$10.1 to \$15.9 million assuming a 3 percent discount rate and \$8.0 to \$11.2 million assuming a 7 percent discount rate. The costs consist of the following: (1) Losses in residential land value in Wisconsin and Michigan due to potential limitations on residential development; (2) impacts to Material Services Corporation (MSC) quarrying operations in Illinois; and (3) dragonfly conservation efforts associated with the construction of the Interstate 355 Extension. Given the small average size and value of private land parcels in Wisconsin and Michigan, the non-institutional landowners (those for which land value losses were computed; institutionally owned properties do not have assessed property values) are most likely individuals, who are not considered small entities by the SBA. MSC has 800 employees in Illinois and Indiana, and was recently purchased by Hanson, PLC, which has more than 27,000 employees worldwide. The SBA Small Business Standard for Crushed and Broken Limestone Mining and Quarrying industry sector is 500 employees. Therefore, MSC is not considered a small entity. The conservation-related costs associated with the construction of the Interstate 355 Extension are borne by the Illinois Tollway Authority. The Illinois Tollway Authority does not meet the definition of a small entity. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant effect on a substantial number of small development businesses.

#### (b) Water Use

According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly water use-related losses range from \$46,000 to \$7.0 million (undiscounted) over 20 years, or \$33,000 to \$5.4 million assuming a 3 percent discount rate and \$21,000 to \$4.0 million assuming a 7 percent discount rate. Public water systems may incur costs associated with drilling deep water aquifer wells. The U.S. Environmental Protection Agency has defined small entity water systems as those that serve 10,000 or fewer people. None of the municipalities that could be required to construct deep aquifer wells as a result of conservation efforts for the Hine's emerald dragonfly has populations below 10,000. As a result of

this information, we have determined that the proposed designation is not anticipated to have a substantial effect on a substantial number of small municipalities.

#### (c) Utility and Infrastructure Maintenance

According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly utility and infrastructure maintenance-related losses is estimated to be \$1.5 million (undiscounted) over 20 years, or \$1.3 million assuming a 3 percent discount rate and \$1.1 million assuming a 7 percent discount rate. The costs are associated with necessary utility and infrastructure maintenance using dragonfly-sensitive procedures. Within proposed critical habitat units, Commonwealth Edison is responsible for electrical line maintenance, county road authorities for road maintenance, and MidWest Generation for railroad track maintenance in Illinois units 1 and 2. Neither company is considered a small entity. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant effect on a substantial number of small entities.

#### (d) Road and Railway Use

According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly road and railway use-related losses range from \$1.7 to \$15.0 million (undiscounted) over 20 years, or \$1.5 to \$11.7 million assuming a 3 percent discount rate and \$1.3 to \$8.8 million assuming a 7 percent discount rate. The costs are associated with necessary railway upgrades for dragonfly conservation. MidWest Generation is responsible for railroad track improvements in Illinois. Neither MidWest Generation nor the individual travelers who would be affected by slower road speeds are considered small entities. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant effect on a substantial number of small entities.

#### (e) Species Management and Habitat Protection Activities

According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly species management and habitat protection-related losses is estimated at \$886,000 (undiscounted) over 20 years, or \$710,000 assuming a 3 percent discount rate and \$563,000 assuming a 7 percent discount rate. The costs primarily consist of species monitoring, maintenance of habitat,

invasive species and feral hog control, and beaver dam mitigation. Species management and habitat protection costs will be borne by The Nature Conservancy (Wisconsin chapter), The Ridges Sanctuary, the Service, the U.S. Forest Service, the Michigan Department of Natural Resources, and the Missouri Department of Conservation. None of those entities meets the definition of a small entity. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant effect on a substantial number of small entities.

(f) Recreation

According to the draft economic analysis, the forecast cost of Hine's emerald dragonfly recreation-related losses are estimated at \$19,000. Recreational off-road vehicles and equestrian activities have the potential to alter Hine's emerald dragonfly habitat and extirpate populations. The costs are associated with mitigating the effects of those recreational activities. Those costs will be borne by the Michigan Department of Natural Resources, Missouri Department of Conservation, the U.S. Forest Service, and various county police departments. None of those entities meets the definition of a small entity. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant effect on a substantial number of small entities.

Based on the previous, sector-by-sector analysis, we have determined that this proposed critical habitat designation would not result in a significant economic impact on a substantial number of small entities.

*Executive Order 13211*

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 due to potential novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Appendix A of the draft economic analysis provides a discussion and analysis of this determination. The Midwest Generation facilities that rely on the transportation of coal through Illinois Units 1 and 2 generate 1,960 megawatts of electricity. The dragonfly conservation measures advocated by the Service (through a

"Right-of-Way Management Team" formed as a result of an informal consultation that was done on a 404 permit to reestablish the use of the rail line), are not intended to alter the operation of these facilities. Rather, the recommended conservation activities focus on improving maintenance and railway upgrades. Thus, no energy-related impacts associated with Hine's emerald dragonfly conservation activities within proposed critical habitat are expected. As such, the proposed designation of critical habitat is not expected 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), 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) As discussed in the draft economic analysis of the proposed designation of critical habitat for the Hine's emerald dragonfly, the impacts on nonprofits and small governments are expected to be negligible. It is likely that small governments involved with development and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the Hine's emerald dragonfly within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of critical habitat for the Hine's emerald dragonfly will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

*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 Hine's emerald dragonfly. 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 this species does

not pose significant takings implications.

**Author**

The primary author of this notice is Kris Lah of the Chicago Illinois Ecological Services Field Office (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for the Hine’s emerald dragonfly (*Somatochlora hineana*) in § 17.95(i), which was proposed to be added on July 26, 2006, at 71 FR 42442, is proposed to be amended by adding an additional proposed critical habitat unit as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*

(i) *Insects.*

\* \* \* \* \*

Hine’s emerald dragonfly (*Somatochlora hineana*)

\* \* \* \* \*

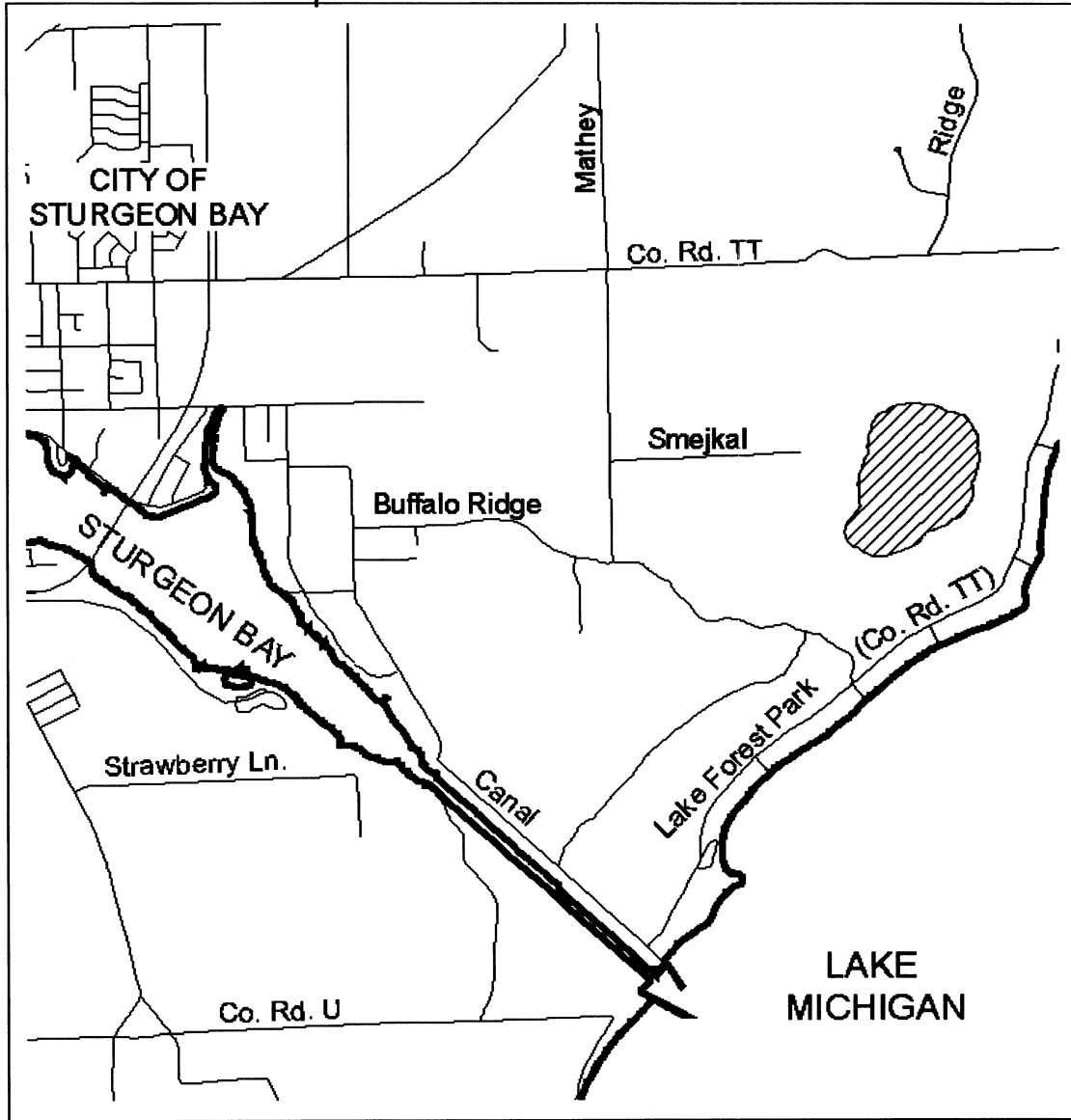
(30) Wisconsin Unit 11, Door County, Wisconsin.


(i) Wisconsin Unit 11: Door County. Located in T27N, R26E, SE ¼ Sec. 11, Sec. 12, NW ¼ Sec. 13, and NE ¼ Sec. 14 of the Sturgeon Bay East 7.5’ USGS topographic quadrangle. Lands are located south of County Road TT, east of Mathey Road, north of Buffalo Ridge Trail, west of Lake Forest Park Road (also County Road TT), about 1½ miles west of the City of Sturgeon Bay, and include portions of Kellner’s Fen.

(ii) Note: Map of Wisconsin proposed critical habitat Unit 11 (Wisconsin Map 7) follows:

**BILLING CODE 4310–55–P**

### Wisconsin Map 7. Hine's Emerald Dragonfly Proposed Critical Habitat Unit 11



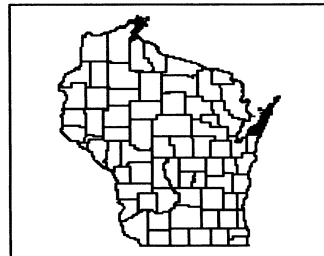
— Local Roads  
 Proposed Critical Habitat Unit

0 0.2 0.4 0.8 1.2 1.6 Miles

0 0.25 0.5 1 1.5 2 Kilometers



**DOOR CO.**



\* \* \* \* \*

Dated: March 14, 2007.  
**David M. Verhey,**  
*Acting Assistant Secretary for Fish and  
 Wildlife and Parks.*  
 [FR Doc. 07-1368 Filed 3-15-07; 5:05 pm]  
 BILLING CODE 4310-55-C