designation of critical habitat is not prudent for Cyanea dunbarii, Lysimachia maxima, and Schiedea sarmentosa at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such a designation of critical habitat would not be beneficial to the species. The three species have very low total populations and face anthropogenic threats (see Factor B). The publication of precise maps and descriptions of critical habitat in the Federal Register would make these plants more vulnerable to incidents of collection and vandalism and, therefore, could contribute to the decline of these species and increase enforcement problems. The listing of these species as endangered also publicizes the rarity of these plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants.

All involved parties and the major landowners have been notified of the location of these species. Protection of the habitats of these species will be addressed through the recovery process and through the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to plant species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a

species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. None of the three proposed species occurs on Federal lands and no known Federal activities occur within the present known habitat of these three plant species. The Service has not pursued prelisting conservation agreements for the three plant species due to a lack of time and resources.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plant species. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport such species in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale such species in interstate or foreign commerce, or remove and reduce such species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damaging or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of any such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few permits would ever be sought or issued. The proposed species are not common in cultivation or in the wild.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the species'

range. The only known population of Cyanea dunbarii is found on a steep slope on State-owned land. The only known population of Lysimachia maxima and one population of Schiedea sarmentosa are found on steep slopes on land owned by TNC. The other population of Schiedea sarmentosa is found on steep slopes on privately owned land. Collection, damage, or destruction of these species on non-Federal lands would constitute a violation of section 9, if conducted in knowing violation of Hawaii State law or regulations, or in violation of State criminal trespass law. The Service is not aware of any trade in these species or of any activities currently being conducted by the public that would be affected by this listing or result in violation of section 9 of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Pacific Islands Ecoregion Manager (see ADDRESSES section). Requests for copies of the regulations regarding listed plants and inquiries regarding prohibitions and permits may be addressed to the Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503/231–6241; facsimile: 503/231–6243.

Public Comments Solicited

The Service intends that any final action resulting from this 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 this proposed rule are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to these species;
- (2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;
- (3) Additional information concerning the range, distribution, and population size of these species; and
- (4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a