

The RFA/SBREFEA requires that agencies use the SBA's definition of "small business," which is codified at 13 CFR 121.201. The draft economic analysis identified the following small businesses. Zond Pond, a company formed to develop wind projects in Hawaii that have not yet been constructed, and several livestock operations. Zond Pond currently has no sales by which to evaluate whether it meets the definition of a small business. However, our DEA concluded, based on a public declaration from Zond Pond that it is not a small business and the projected scale of its windfarm projects, that Zond Pond does not qualify as a "small business" under SBA's small business definitions. In 2000, there were 170 cattle livestock operations in Maui County. The combined cattle sales of all of these operations in 2000 was about \$3.2 millions (Statistics of Hawaii Agriculture, 2000). Since this implies average annual cattle sales per business of \$19,000, it is likely that all of almost all of the Maui County cattle operations meet the definition of a small business (annual sales less than \$750,000).

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.) in this particular area/market affected by the regulation. We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider 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 critical habitat designation.

The primary projects and activities that might be affected by the designation and could affect small entities include ranching operations in Maui County. The economic analysis predicts that between zero and two section 7 consultations will be conducted over the next 10 years on ranches in Maui County. The economic analysis estimates that these consultations may affect one to four businesses out of 170 (1 to two percent) of the small businesses in the cattle industry in Maui County. (This is an overestimate of the number of businesses potentially affected because it is based on more consultations occurring than is currently estimated.)

The entire island of Kahoolawe is under State ownership and within the State Conservation District. The current

and projected land uses on Kahoolawe are land restoration and ordnance removal (Decision Analysts Hawaii (DAHI) 2001). For these reasons, the draft economic analysis concluded that the proposed rule would not affect a substantial number of small entities on the island of Kahoolawe. Based on the above analysis, a significant economic impact on a substantial number of small entities will not result from the proposed critical habitat designation on Maui and Kahoolawe.

This conclusion is supported by the history of consultations on Maui. Since these 60 plant species were listed (between 1991 and 1999), on the island of Maui we have conducted only one formal consultation and 16 informal consultations, in addition to consultations on Federal grants to State wildlife programs, which do not affect small entities. Three informal consultations were conducted with the U.S. Air Force, for the Maui Space Surveillance Site, who requested we review their final draft "Environmental Assessment, "Integrated Natural Resources Management Plan for the Maui Space Surveillance Complex," and the effects of the construction of the surveillance site on listed and proposed endangered and threatened species. Three informal consultations were conducted with Haleakala National Park, regarding a collecting permit for two of the 60 species, *Geranium arboreum* and *Geranium multiflorum*, and we reviewed the "Environmental Assessment for Replacement of the Summit Comfort Station and Utilities Systems" and a park highway resurfacing project. One informal consultation was conducted with the Service's Ecological Services Program for the effects of fencing and replanting on listed endangered and threatened species within the Auwahi Partnership Project area. One informal consultation was conducted with the Service's Ecological Services Program for the effects of fencing and hunting on listed endangered and threatened species within the Kahikinui Partnership Project area. One informal consultation was conducted with the Service's Ecological Services Program, for the effects of fencing and outplanting on listed endangered and threatened species within the Puu Makua Partnership Project area. One informal consultation was conducted with the Service for the effects of ungulate exclusion on listed endangered and threatened species within the Puu Kukui Partnership Project area. One informal consultation was conducted with the Department of Defense for

review of the effects of the Kanaio National Guard Training Area on listed endangered and threatened species and review of "Natural Resources Management Plan: Kanaio Guard Training Area." Two informal consultations were conducted with the Department of Transportation for review of the effects of the proposed Kihei-Upcountry Highway on listed endangered and threatened species. One informal consultation was conducted with the U.S. Department of Agriculture for review of the effect of feral pig removal on listed endangered and threatened species within Waikamoi and Kapunakea Preserves. One informal consultation was conducted with the Service's Ecological Services Program for the effects of fencing and replanting listed endangered and threatened species within the Puu O Kali restoration area. One informal consultation was conducted with NRCS for the effects of ranching operations on listed endangered and threatened species within 38 acres of private land. One formal consultation was conducted with the Federal Aviation Administration (FAA) for the review of the "Final Environmental Impact Statement, Kahului Airport Improvements."

None of these consultations affected or concerned small entities. In all 16 informal consultations, we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect listed species. For the formal consultation, we determined that the airport improvement project, which included a mandatory state-of-the-art alien species interdiction facility, was not likely to jeopardize listed species nor adversely affect designated critical habitat for *Gouania hillebrandii* on the island of Maui. In addition, only the FAA's proposed airport improvement project is ongoing. The FAA is not a small entity. Therefore, the requirement to reinstate consultation for ongoing projects will not affect a substantial number of small entities on Maui.

There has been one informal consultation on the island of Kahoolawe. The consultation was conducted on behalf of the Department of the Navy for the effects of ordnance cleanup on listed endangered and threatened species. The Department of the Navy is not a small entity; therefore this consultation did not affect or concern small entities. In this case, we concurred with the agency's determination that the project as proposed was not likely to adversely affect listed species. Although this project is ongoing, it does not affect nor concern small entities, so the