

Area Master Station Pacific Radio Transmitting Facility at Lualualei. The Navy regularly mows this area, which benefits the species by keeping the grasses from taking over the habitat (HINHP Database 2001; Navy 2001a; Navy 2001c). Twenty-three species, *Abutilon sandwicense*, *Alectryon macrococcus*, *Bonamia menziesii*, *Chamaesyce kuwaleana*, *Diellia falcata*, *Flueggea neowawraea*, *Hedyotis parvula*, *Lepidium arbuscula*, *Lipochaeta lobata*, *Lipochaeta tenuifolia*, *Lobelia niihauensis*, *Marsilea villosa*, *Melicope saint-johnii*, *Neraudia angulata*, *Nototrichium humile*, *Phyllostegia hirsuta*, *Plantago princeps*, *Sanicula mariversa*, *Schiedea hookeri*, *Tetramolopium filiforme*, *Tetramolopium lepidotum*, *Urera kaalae*, and *Viola chamissoniana* ssp. *chamissoniana*, are reported from lands at the Naval Magazine Pearl Harbor Lualualei Branch (HINHP Database 2001; Navy 2001b; Navy 2001d). One fenced enclosure at the Halona management area has been erected to protect *Abutilon sandwicense* from feral ungulates, and another enclosure at Puu Hapapa protects *Abutilon sandwicense*, *Bonamia menziesii*, *Flueggea neowawraea*, *Lipochaeta lobata* var. *leptophylla*, and *Nototrichium humile* from browsing by feral ungulates. Other management actions include some monitoring of rare plants, surveying for rare plants, and controlling some invasive plants in rare plant habitats (The Traverse Group 1988; Navy 1997, 2001a, 2001b; Navy 2001c; Navy 2001d).

The Service conducted an analysis for U.S. Navy lands similar to that described above for Army lands. We were not able to exclude Navy lands from final critical habitat for the following reasons:

- The Navy's INRMP fails to address 17 of the 20 listed species for which critical habitat has been proposed on Navy lands. Therefore, absent explicit beneficial management plans for these species, and absent a reasonable likelihood that such plans for these species will be funded and implemented in the future, the Service cannot identify compelling conservation benefits that temper the regulatory benefits of a critical habitat designation on these Navy lands.
- Since the time critical habitat was first proposed on Navy lands, the Service has worked closely with Navy staff to scientifically refine the proposed critical habitat. The changes from the proposed critical habitat to final critical habitat reflect our attempt to ensure that we have included on those lands that contain features essential to the species or, if unoccupied, are themselves

essential to the conservation of the species. In doing so, we have also been able to minimize the potential for negative impacts to military activities. Therefore, at this time we cannot identify any relevant negative impacts to the Navy's military mission as a consequence of this critical habitat designation.

In conclusion, the Service believes that it is necessary to include these Navy lands in final critical habitat when the above factors are considered. The Navy is an important partner of the Service and, as described above, is carrying out some conservation activities on Oahu for some of these listed plant species. The current Navy management practices for the areas that are designated as critical habitat, including mowing and fire suppression, are consistent with the conservation of the listed plants and maintenance of their habitat. For example, Navy mowing has benefitted listed species by keeping grasses from taking over their habitat. Similarly, Navy fire management practices, such as restricting access, can further the conservation of listed plants. Although some areas on Navy lands are included in the final critical habitat designation, the Service will consider amending this critical habitat designation if new information becomes available regarding potential impacts to military readiness, or if there is a change in Navy INRMP planning and implementation that was not previously considered and that addresses the conservation needs of these species. For one listed species, *Marsilea villosa*, occurs on land at the Naval Computer and Telecommunications Area Master Station Pacific Radio Transmitting Facility at Lualualei. The Navy regularly mows this area, which benefits the species by keeping the grasses from taking over the habitat (HINHP Database 2001; Navy 2001a; Navy 2001c).

Taxonomic Changes

At the time we listed *Hibiscus brackenridgei*, *Phyllostegia parviflora*, and *Mariscus pennatifloris*, we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii*. Subsequent to the final listings for these three species, we became aware of new taxonomic treatments for these species. Also, the recently published book *Hawaii's Ferns and Fern Allies* (Palmer 2003) has changed the family name for *Ctenitis squamigera* (from Asplenaceae to Dryopteridaceae). Due to the court-ordered deadlines, we are required to publish this final rule to designate

critical habitat on Oahu before we can prepare and publish a notice of taxonomic changes for these four species. We will prepare a taxonomic change notice for these four species after we have published the final critical habitat designations on Oahu.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of \$100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not formally reviewed this final critical habitat designation.

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

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal 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 governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Based on the information in our economic analysis (draft economic analysis and addendum), we are certifying that the critical habitat designation for 99 Oahu plant species will not have a significant effect on a substantial number of small entities because a substantial number of small