

entities are not affected by the designation.

Federal courts and Congress have indicated that an RFA/SBREFa analysis may be limited to entities directly subject to the requirements of the regulation (Service 2002). As such, entities not directly regulated by the listing or critical habitat designation are not considered in this section of the analysis.

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. 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. The RFA/SBREFa defines "small governmental jurisdiction" as the government of a city, county, town, school district, or special district with a population of less than 50,000. By this definition, Honolulu County is not a small governmental jurisdiction because its population was 876,156 in 2000. Although certain State agencies, such as DLNR, Department of Agriculture (DOA), and Department of Transportation (DOT), may be affected by the critical habitat designation, State governments are not considered small governments, for the purposes of the RFA. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the 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 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.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. SBREFa does not explicitly define either "substantial number" or "significant economic impact."

Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA (*Mid-Tex Electric Co-op Inc. v. F.E.R.C.*, 249 U.S. App. D.C. 64, 773 F.2d 327 (1985) and *American Trucking Associations, Inc. v. U.S. E.P.A.*, 175 F.3d 1027, 336 U.S.App.D.C. 16 (D.C.Cir., May 14, 1999)).

The primary projects and activities that might be affected by the designation that could affect small entities include ranching operations and conservation projects. Based on our draft economic analysis and addendum, there were 100 cattle livestock operations in Honolulu County in 2000. The combined cattle sales of all of these operations in 2000 was about \$556,000 (State Department of Agriculture 2002). Since this implies average annual cattle sales per business of \$9,267, it is likely that all or almost all of the Honolulu County cattle operations meet the definition of a small business (annual sales less than \$750,000). Thus, our draft economic analysis concluded that the proposed critical habitat designation might affect a half dozen out of 100 (or 12 percent) of the small businesses in the cattle industry in Honolulu County.

The actual impacts of the final rule will be even smaller. The final rule designates less land used for ranching as critical habitat. In turn, both the number of affected ranches and the number of Section 7 consultations involving ranching will be lower. As discussed in the addendum, the final designation could have a negative impact on about three ranches (about three percent of the total ranches on Oahu). These estimates were based on the proposed designations. However, this final rule designates 22,767 hectares (56,258 acres) less than had been proposed, or a 49 percent reduction.

These conclusions are supported by the history of consultations on Oahu. Since these 99 plant species were listed (between 1991 and 1996), we have conducted 2 formal consultations and 24 informal consultations, in addition to consultations on Federal grants to State wildlife programs that do not affect

small entities. The two formal consultations were conducted on behalf of the Army, for review of the "Biological Assessment for Programmatic Section 7 Consultation on Routine Military Training at Makua Military Reservation, and Makua Endangered Species Mitigation Plan." Thirty-nine of the 99 species, *Alectryon macrococcus*, *Abutilon sandwicense*, *Alsinidendron obovatum*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce herbstii*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea longiflora*, *Cyanea superba*, *Cyrtandra dentata*, *Delissea subcordata*, *Diellia falcata*, *Dubautia herbstobatae*, *Euphorbia haeleeleana*, *Flueggea neowawraea*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Lepidium arbuscula*, *Lipochaeta tenuifolia*, *Lobelia niihauensis*, *Lobelia oahuensis*, *Neraudia angulata*, *Nototrichium humile*, *Peucedanum sandwicense*, *Phyllostegia kaalaensis*, *Plantago princeps*, *Sanicula mariversa*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea nuttallii*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Tetramolopium filiforme*, and *Viola chamissoniana* ssp. *chamissoniana*, were reported from the action area. We conducted 24 informal consultations with the Army, U.S. Air Force, Navy, FAA, Department of Transportation, U.S. Coast Guard, Department of Land and Natural Resources Division of State Parks, Hawaii Army National Guard, U.S. Department of Agriculture's Animal and Plant Health Inspection Service, and U.S. Department of Energy.

None of these consultations affected or concerned small entities. We have determined that the State of Hawaii and Honolulu County are not small entities. The Army, Navy, NRCS, Corps, FCC, Department of Transportation, Environmental Protection Agency, FAA, FEMA, Dole Food Company, local television stations, and cellular, paging, and wireless services are not small entities. In 21 of the 24 informal consultations, we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect listed species. We initiated formal consultation for the remaining three. For both formal consultations, we found that routine military training at Makua Military Reservation, which included an indepth list of conservation measures the Army would carry out in the action area, was not likely to jeopardize listed species.

For these reasons, we are certifying that the designation of critical habitat