

This table includes the following information: (1) The number of populations on each island we believe the designated critical habitat or other habitat essential for the conservation of the species can provide for; (2) the species for which we are unable to identify any habitat essential to their conservation (e.g., *Adenophorus periens* on Maui); (3) the species for which sufficient habitat essential to their conservation is not available for at least eight populations (e.g., *Alsinidendron obovatum* on the island of Oahu); the species for which we determined the designation of critical habitat is not prudent (e.g., *Pritchardia kaalae*); proposed critical habitat identified as not essential during the public comment periods and removed from final designation (e.g., proposed critical habitat for *Sesbania tomentosa* on Kahoolawe); the species for which the general recovery goal of 8 to 10 populations does not apply (e.g., *Hesperomannia lydgatei*); and the species whose population recovery goals include habitat that has been excluded from critical habitat designation under section 4(b)(2) of the Act.

#### 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 41 island of Hawaii plant species will not have a significant effect on a substantial number of small entities because a substantial number of small entities are not affected by the designation.

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.* and *America Trucking Associations, Inc. v. EPA.*)

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. By this definition, Federal and State governments and Hawaii County are not a small governmental jurisdictions because its population was 148,677 in 2000.

SBREFA further defines "small organization" as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. TNCH is a large organization that is dominant in the conservation and land management field on the Big Island. Thus, according to RFA/SBREFA definitions, TNCH is not likely to be considered a small organization.

Kamehameha Schools is the largest charitable trust in Hawaii, as well as the State's largest private landowner; it also has a substantial investment in securities and owns real estate in other states. In 2001, Kamehameha Schools had over \$1 billion in revenues, gains, and other support (Kamehameha Schools 2001). Thus, it is not likely to be considered a small organization.

To determine if the rule would affect a substantial number of small private 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) 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 by private entities that might be directly affected by the designation that could affect small entities include farming and ranching operations and lending institutions. Based on our draft economic analysis and addendum, there were 1,400 diversified farmers and 470 ranchers in Hawaii County in 2000. The 2000 average annual sales for diversified farmers on the island of Hawaii were \$59,600 per farmer, and the average annual sales for ranchers were \$30,100 per rancher (DBEDT 2002). Since \$8,700 is 15 percent of the average annual sales for a diversified farmer and 29 percent of the average annual sales for a rancher, it is assumed that critical habitat will have a significant economic impact (i.e., 3 percent or more of a business's annual sales) on the farmers or ranchers. However, there are 1,400 diversified farmers and 470 ranchers on the island of Hawaii. Based on the annual sales figures, we can define most of these farmers and ranchers as small businesses (i.e., less than \$750,000 in annual sales). Five farmers or ranchers represent 0.3 percent of the number of diversified farmers and 1 percent of the number of ranchers on the island of Hawaii. This does not equal a substantial number of the small businesses in either the diversified farming or ranching industries.

Our economic analysis also found there are between two and three small lending institutions on the island of Hawaii that may be involved in section 7 consultations regarding HUD loan